

The Above Second Appeal Is Filed By The vs Naralasetti on 21 June, 2022

THE HON'BLE SRI JUSTICE SUBBA REDDY SATTI

SECOND APPEAL No.411 of 2018

JUDGMENT :

The above second appeal is filed by the plaintiff in the suit against the judgment and decree dated 01.02.2018 in A.S.No.10 of 2011 on the file of Senior Civil Judge, Bapatla, reversing the judgment and decree dated 28.10.2010 in O.S.No.313 of 2006 on the file of Principal Junior Civil Judge, Ponnur.

2. For the sake of convenience, the parties to this judgment are referred to as they were arrayed in the plaint.

3. Suit O.S.No.313 of 2006 is filed for recovery of Rs.77,740/- with future interest at the rate of 24% p.a. from the date of suit till the date of realization.

4. In the plaint it was contended inter alia that an extent of Ac.20.07 cents of land, wet and dry, in Mulukuduru Panchayat originally belonged to late Tummala Narasaiah. The said Narasaiah is having four sons, namely, Tummala Satyanarayana, Dr.Tummala Veeraiah, Dr.Tummala Suryanarayana and Dr.Tummala Seshagiri Rao. Tummala Narasaiah died in the year 2000 and his son Dr.Tummala Veeraiah died in February, 2002. By the date of death of Narasaiah, plaintiff was cultivating Ac.13.65 cents, which includes Ac.3.57 cents i.e. plaint schedule property as tenant and has been paying maktha without committing any default.

5. While so, disputes arose between Tummala Satyanarayana and his sister-in-law Dr.T.Indira Devi, W/o late Veeraiah. Dr.T.Seshagiri Rao was sailing with T.Satyanarayana and Dr.T.Suryanarayana was sailing with Indira Devi. In fact, Dr.T.Suryanarayana appointed Dr.T.Indira Devi as his General Power of Attorney Holder. A.T.C.No.3 of 2002 on the file of Special Officer, Ponnur was filed by the plaintiff against T.Satyanarayana, T.Indira Devi, T.Suryanarayana and T.Seshagiri Rao to declare him as cultivating tenant of Ac.13.65 cents. O.S.No.174 of 2002 was filed by the plaintiff against A.Venkateswara Rao and others for grant of permanent injunction. A.T.C.No.5 of 2002 on the file of Special Officer, Ponnur, was filed by T.Indira Devi and T.Suryanarayana, represented by GPA Holder against the plaintiff and others restraining them from paying 2/4th share of maktha to Tummala Satyanarayana or anybody.

6. Pending the above three matters, compromise was affected between the parties and a compromise decree was passed on 27.07.2002 in A.T.C.No.5 of 2002 recognizing the plaintiff as the cultivating tenant in respect of Ac.10.76 cents, includes the suit schedule property. As per the compromise, lease between the plaintiff, Dr.T.Indira Devi and Dr.T.Suryanarayana is subsisting. While the plaintiff was cultivating Ac.10.76 cents as tenant, T.Suryanarayana sold his Ac.5.39 cents and

Dr.T.Indira Devi sold Ac.1.44 cents, out of her Ac.5.37 cents. Thus, the plaintiff is continuing as cultivating tenant of T.Indira Devi for the remaining extent of Ac.3.93 cents.

7. According to the plaintiff, Dr.T.Indira Devi at the time of alienating Ac.1.44 cents, offered to sell the plaint schedule property to the plaintiff at the same cost, which she sold Ac.1.44 cents. But disputes arose between the plaintiff and his landlady Indira Devi, resulting in plaintiff filing A.T.C.No.2 of 2003 on the file of Special Officer, Ponnur to determine the price of schedule land at Rs.1,25,000/- per acre; that the sale of the schedule land has become effective on payment of first installment of Rs.49,125/- by way of demand draft No.053831 dated 26.09.2003; that the plaintiff is entitled to pay balance of sale price of Rs.4,42,125/- in nine installments and for grant of permanent injunction; to declare the sale deeds executed by landlady in favour of defendants herein are void etc., Along with A.T.C 2 of 2003, I.A.No.1004 of 2003 was filed for grant of injunction restraining the landlady/Indira Devi from alienating the plaint schedule property. By order dated 26.09.2003, learned Special Officer granted the order of status quo; that while the order of status quo is in force, landlady Dr.T.Indira Devi sold away Ac.3.57 cents, out of Ac.3.93 cents to the 1st defendant, G.Srinivasa Rao under a registered sale deed No.139, dated 03.02.2006 and Ac.0.36 cents to U.Ramaraao, under a registered sale deed No.140, dated 03.02.2006; that by the time of sale, plaintiff cut the crop and stored the same in two heaps in S.No.56/2, Ac.3.47 cents which is item No.1 of the schedule property.

8. The defendants/purchasers, pursuant to the conspiracy, thrashed both paddy heaps on the intervening night of 05/06.02.2006 and committed theft of paddy, 110 bags, and also damaged the standing black gram crop in about Ac.0.25 cents. However, the plaintiff enjoyed second crop of black gram, he did not claim anything towards the said crop. Immediately, on 12.02.2006, plaintiff gave complaint to the Sub Inspector of Police, Ponnur Rural Police Station and the same was registered as Crime No.22 of 2006 for the offences punishable under Sections 448, 426, 379 of IPC. Police referred the case as Civil in nature, however, plaintiff filed private complaint and filed the suit for recovery of value of 110 bags of paddy.

9. 2nd defendant filed written statement and the same was adopted by 1st defendant. In the written statement, it was contended that 1st defendant purchased Ac.3.57 cents under a registered sale deed dated 03.02.2006 and 2nd defendant purchased Ac.0.36 cents under registered sale deed dated 03.02.2006. In the said sale deeds, it was clearly mentioned that vendor Indira Devi has been in possession and enjoyment of the schedule properties, and they are bonafide purchasers. It was further contended that the landlady cultivated the land during 2005-2006 and raised crop and offered to sell the land and defendants 1 and 2 purchased the land by paying substantial amounts. Landlady delivered the land along with paddy heaps and after thrashing, they took the paddy and police also after investigation, referred the case as false. It was contended that the plaintiff was not declared as cultivating tenant and no documentary proof was filed that the plaintiff cultivated the plaint schedule property for the year 2005-2006 and eventually prayed the Court to dismiss the suit.

10. Basing on the pleadings of respective parties, the trial Court framed the following issues:

(1) Whether the defendants removed theft property and stored in their house is true?

(2) Whether the contest taken by the defendant is true? (3) Whether the plaintiff is entitled for recovery of valued/costs of 110 bags of paddy from the defendants?

(4) To what relief?

11. During the trial, plaintiff examined himself as P.W.1 and got marked Exs.A-1 to A-12. On behalf of defendants, 1st defendant examined himself as D.W.1 and no documents were marked.

12. The trial Court decreed the suit with costs for an amount of Rs.77,740/- with interest @ 6% p.a. from the date of decree till the date of realization. Against the said judgment and decree, defendants filed A.S.No.10 of 2011 on the file of Senior Civil Judge, Bapatla. Plaintiff also filed cross objections in not granting interest from the date of filing of the suit till the date of decree. Pending appeal, interlocutory applications were filed to receive certified copy of order in A.T.C.No.2 of 2003 and also certified copy of judgment in C.C.No.456 of 2011 and common order in C.R.P.Nos.3591 of 2011 and 816 of 2011. Lower Appellate Court by judgment and decree dated 01.12.2018 allowed the appeal by setting aside the judgment and decree dated 28.10.2010 in O.S.No.313 of 2006. Lower Appellate Court also dismissed the petition filed to receive additional documents. Cross objections filed by the plaintiff were also dismissed. Aggrieved by the said judgment and decree of Lower Appellate Court and dismissing cross objections, appellant/plaintiff filed the present second appeal.

13. On 03.04.2019 this Court heard the appellant/party-in- person and learned counsel for respondents. On 04.06.2019, the second appeal was admitted, and this Court framed the following substantial question of law:

(1) Whether the findings of the 1st appellate Court are perverse and are contrary to the evidence on record?

(2) Whether the 1st appellate Court misconstrued and misinterpreted the contents of the exhibits marked, particularly, Ex.A.1, sale deed Ex.A.3, Exs.A.5 and A.12?

(3) Whether the 1st appellate Court committed an error in not drawing the presumption under Section 114 of the Indian Evidence Act about the subsistence of the tenancy as alleged and whether the finding of surrender of tenancy is perverse and not based on record?

(4) Whether the 1st appellate Court which is a Civil Court has any jurisdiction in a case under CPC to decide about the tenancy rights of the plaintiff which has to be decided by the Tenancy Tribunal only?

(5) Whether the findings of the 1st appellate Court that Smt.Indira Devi is a necessary and proper party is incorrect and opposed to law, particularly as there is no plea in the written statement and as the suit is filed for recovery of an amount of Rs.77,740/- said to be the value of 110 bags of paddy which are allegedly stolen by the defendants?

(6) Whether the rejection of the cross objection filed by the present appellant is correct?

14. I.A.No.1 of 2021 was filed by respondents under Order 41 Rule 27 read with 151 of CPC to receive judgment in C.C.No.456 of 2011 dated 16.12.2014, judgment in CrI.A.No.33 of 2011 dated 22.09.2015 and common order dated 12.06.2015 in C.R.P.Nos.3591 of 2011 and 816 of 2011. Appellant filed counter in I.A.No.1 of 2021 and opposed the petition.

15. I.A.No.2 of 2021 was filed by the appellant under Order 41 Rule 27 read with 151 of CPC to receive certified copy of order in S.L.P (C) Nos.28696-28697 of 2015 dated 27.10.2021.

16. Heard Sri Musunuri Satyanarayana, Appellant/Party-in- person and Sri Sistla Satyanarayana Murthy, learned counsel for the respondents.

17. Appellant/Party-in-person contended that pending A.T.C.No.2 of 2003, by violating the order of status quo granted on 26.09.2003 in I.A.No.1004 of 2003, the landlady sold the plaint schedule property to the respondents/defendants under two registered sale deeds on 03.02.2006. He would contend that appellant has been cultivating the plaint schedule property since long time and in fact, when disputes arose among the land owners, the appellant filed A.T.C.No.3 of 2002 and O.S.No.174 of 2002 and the landlady T.Indira Devi and T.Suryanarayana, represented by GPA Holder filed A.T.C.No.5 of 2002. Thereafter compromise was arrived at and the same was recorded in A.T.C.No.5 of 2002 and accordingly, a compromise decree was passed on 27.07.2002. The same was marked as Ex.A-1. According to the appellant, by virtue of compromise, he was declared as cultivating tenant of Ac.10.76 cents including the plaint schedule property and lease between the plaintiff, T.Indira Devi and T.Suryanarayana is subsisting. He also would contend that defendants neither were in possession of the land nor was possession delivered to the defendants pursuant to sale deeds. He also would contend that A.T.C.No.2 of 2003 filed by him was ordered. Though the said order was reversed in appeal and confirmed in revisions filed by him, by virtue of order in S.L.P (C) Nos.28696-28697 of 2015 dated 27.10.2021, the Hon ble Apex Court recorded finding that he has been cultivating tenant of the schedule land. He also would contend that the Lower Appellate Court failed to consider the cross objections and thus, prayed to allow the second appeal.

18. Learned counsel for the respondents would contend that respondents being purchasers of land, took paddy legitimately and the said act cannot be construed as theft and hence the suit for recovery of amount is not maintainable. He also would contend that merely because the Hon ble Apex Court allowed the SLP and confirmed the order in ATC and declared the sale deeds as null and void it does not mean that the purchasers committed theft of paddy being the bonafide purchasers. Plaintiff could not establish the element of theft. He also would contend that the order of status quo granted by the learned Tenancy Tribunal is no order in the eye of law and it will not inure to the benefit of the appellant. He also would contend that the order of the Hon ble Apex Court in S.L.P (C) Nos.28696- 28697 of 2015 dated 27.10.2021 operates prospectively and the findings recorded by the Hon ble Apex Court will not inure to the benefit of the appellant. He also would contend that the judgments in Criminal cases bind Civil cases and hence the appellant/plaintiff could not maintain the suit for recovery of money. Thus, prayed the Court to dismiss the second appeal.

19. Heard. Perused the entire record.

20. Undisputed facts from the pleadings and evidence are that A.T.C.No.2 of 2003 filed by the Appellant/plaintiff against Dr.T.Indira Devi under Sections 16 and 15 of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (for short "Tenancy Act") was allowed on 30.11.2009. A.T.A.Nos.2 of 2010 and 3 of 2010 filed by respondents were allowed on 20.12.2020. C.R.P.Nos.3591 of 2011 and 816 of 2011 filed by appellant herein were dismissed by a common order dated 12.06.2015. S.L.P (C) Nos.28696-28697 of 2015 filed by appellant herein against the said orders, were allowed by the Hon ble Apex Court on 27.10.2021. The findings, of the Hon ble Apex Court, are extracted herein for better appreciation of case:

"...the findings of the District Judge and the High Court, regarding surrender (either in part or fully) of the tenancy, are wholly untenable."

"... ... the findings recorded by the High Court and the District Court, as regards lack of evidence in subsisting tenancy in favour of the appellant are contrary to the record. The order passed in the compromise petition, clearly recorded, in more than one place, that the lease between the appellant on the one hand, and Indira Devi, on the other, was subsisting and continuing. Being an admitted document, recording an incontrovertible fact, the burden was upon the respondents to prove that the appellant's tenancy has been terminated, or surrendered in a manner known to law. They plainly failed to do so. As a result, the finding regarding surrender of tenancy is erroneous."

"... ... In the absence of a similar notice setting out with particulars of the rent payable as well as the period, the District Judge and the High Court could not have upset the order of the tribunal as regard the appellant's exercise of right to purchase the property, under Section 15."

"For the above reasons, the impugned order of the High Court, as well as the judgment of the District Court, are hereby set aside. The order of the Tribunal is hereby restored."

21. Whether additional evidence can be received in Second Appeal?

22. I.A.No.1 of 2021 is filed by respondents to receive the certified copy of judgment dated 16.12.2014 in C.C.No.456 of 2011; judgment dated 22.09.2015 in Crl.A.No.33 of 2015 and common order dated 12.06.2015 in C.R.P.Nos.3591 of 2011 and 816 of 2011. In the affidavit filed in support of the petition, it was stated that the appellant in the second appeal was pursuing civil and criminal remedies same cause; that the appellant filed private complaint in C.C.No.144 of 2006 on the file of I Additional Judicial Magistrate of First Class, Ponnur and the same was transferred to II Additional Judicial Magistrate of First Class, Tenali and renumbered as C.C.No.456 of 2011; that case was ended in acquittal after elaborate trial on 16.12.2014; that the appellant in the second appeal filed Crl.A.No.33 of 2015 on the file of XI Additional District and Sessions Judge, Tenali against the

calendar and judgment in C.C.No.456 of 2011 and the same was dismissed on 22.09.2015; that the advocate appeared in the Lower Appellate Court by oversight failed to produce the same before Court and they are necessary documents. With the same pleadings, respondents further prayed to receive common order in C.R.P.Nos.3591 of 2011 and 816 of 2011.

23. Counter was filed by appellant herein opposing to receive those documents. In the counter it was stated that certified copy of judgment in C.C.No.456 of 2011 and common order in C.R.P.Nos.3591 of 2011 and 816 of 2011 along with order in A.T.C.No.2 of 2003 were filed as additional evidence before the Lower Appellate Court in A.S.No.10 of 2011 and the Lower Appellate Court dealt with the same in Para No.26 of its judgment and dismissed the application and he thus, prayed to dismiss I.A.No.1 of 2021.

24. I.A.No.2 of 2021 filed by appellant to receive the order dated 27.10.2021 in S.L.P (C) Nos.28696-28697 of 2015. Parties to the S.L.P., are, Appellant herein on one side, respondents herein and their vendor on the other side. Appellant filed S.L.P. against common order in C.R.P.Nos.3591 of 2011 and 816 of 2011 dated 12.06.2015. No counter was filed by the respondents to this petition.

25. In Chapala Chinnabbayi and Ors. Vs. Naralasetti Anusuyama and Ors¹, the Division Bench of the composite High Court of Andhra Pradesh, on a reference, came to conclusion that the High Court may permit a party to adduce additional evidence in Second Appeal under the following circumstances:-

(1) Adducing additional evidence is in the interest of justice; (2) Evidence relating to the subsequent happenings or events, which are relevant for disposal of the Second Appeal.

26. Keeping the ratio in the above judgement, so far as the documents filed by the respondents in I.A.No.1 of 2021 are concerned, out of three documents, two documents namely, judgment dated 16.12.2014 in C.C.No.456 of 2011 and common order in C.R.P.Nos.3591 of 2011 and 816 of 2011 dated 12.06.2015 were filed before the Lower Appellate Court. The Lower Appellate Court, in fact, in Para No.26 of its judgment held that there is no necessity to receive those documents as additional evidence. Having filed such an application before the 2006 (1) ALD 669 Lower Appellate Court, the respondents herein, in the affidavit filed in support of the present petition pleaded that the respondents counsel in the Lower Appellate Court by oversight failed to produce the same before the Lower Appellate Court. This averment/statement made on oath by 1st respondent in the second appeal is in correct and the respondents by making such an averment tried to prevaricate the Court. Making false statement on oath disentitles the respondents from getting any relief. However, in view of the arguments advanced, to meet the ends of justice, this Court deems it fit to receive those judgments and deal with the same for proper adjudication of the lis between the parties.

27. The learned counsel for respondents would contend since the competent criminal Courts acquitted the respondents for the offence of theft, judgments of the criminal courts are binding on the Civil Court and hence, the suit filed for recovery of amount is liable to be dismissed. Learned

counsel for respondents also tried to impress the Court about the relevancy of common order in C.R.P.Nos.3591 of 2011 and 816 of 2011, since the revisional Court dismissed the revisions filed by the appellant and negated his claim with regard to status as cultivating tenant and to set aside the sale deeds dated 03.02.2006. On these grounds, the respondents prayed the Court receive the judgements as additional evidence.

28. Though the conduct of respondents in making prevaricate statements in affidavit i.e. I.A.No.1 of 2021 and blaming their advocate in the Lower Appellate Court disentitles them to get the relief, in view of reasons mentioned supra, this Court is inclined to receive those documents in the second appeal by allowing I.A.No.1 of 2021. Accordingly, I.A.No. 1 of 2021 is ordered. Since I.A.No.1 of 2021 is allowed, judgment in C.C.No.456 of 2011 dated 16.12.2014 is marked as Ex.B.1; judgment in Crl.A.No.33 of 2015 dated 22.09.2015 is marked as Ex.B.2 and common order in C.R.P.Nos.3591 of 2011 and 816 of 2011 dated 12.06.2015 is marked as Ex.B.3.

29. The appellant in the second appeal, filed I.A.No.2 of 2021. The Hon ble Apex Court set aside the common order in C.R.P.Nos.3591 of 2011 and 816 of 2011 dated 12.06.2015 and the order in A.T.A.No.2 of 2010 dated 20.12.2010 reversing the order dated 30.11.2009 in A.T.C.No.2 of 2003. The observations of the Hon ble Apex Court were already extracted supra and the order of the Hon ble Apex Court is relevant to decide the issue in second appeal.

30. Since the Hon ble Apex Court pronounced its judgment pending the second appeal, it being a subsequent event and the order of Hon ble Apex Court is having a bearing on the present issue, this Court is inclined to allow I.A.No.2 of 2021 filed by the appellant. Accordingly, I.A.No. 2 of 2021 is allowed. Since I.A.No.2 of 2021 is allowed, certified copy of order dated 27.10.2021 in S.L.P (C) Nos.28696-28697 of 2015 is marked as Ex.A.13.

31. Appellant filed the suit for recovery of amount, mainly contending that he is the cultivating tenant of plaint schedule property of Dr.T.Indira Devi; that he also filed A.T.C.No.2 of 2003 for various reliefs under Section 16 of the Tenancy Act and filed I.A.No.1004 of 2003 for grant of injunction. He also further pleaded that the Special Officer granted status quo on 26.09.2003; that the appellant being the plaintiff raised crop and after harvest, he raised two heaps; that pending A.T.C, notwithstanding the order of status quo, landlady sold the property to the respondents and they conspired together and the respondents/defendant with the help of tractor thrashed both paddy heaps on the intervening night of 05/06.02.2006 and committed theft of yield of about 110 bags. Thus, he filed the suit for recovery of amount.

32. Written statement filed by 2nd defendant was adopted by 1st defendant. In the written statement it was stated that landlady cultivated the land during 2005-2006 and raised crop and offered to sell the land; that after execution of sale deeds, landlady delivered the land along with heaps of paddy and hence, they are entitled to said heaps of paddy and took them away after thrashing. The specific assertions made in the written statement by defendants with regard to their thrashing paddy heaps and took the crop coupled with the evidence of D.W.1 in his cross examination "It is true I utilize the paddy heaps which are already in the plaint schedule property as on the date of purchase i.e. on 05.02.2006. It is true thrashed paddy was shifted to his house from

the plaint schedule property and sold out the same. I could not say the rate of paddy and the quantity", manifestly proved that respondents thrashed paddy heaps and took away paddy. Thus, the admission of the respondents in this regard is categorical, clear and unambiguous.

33. Though the respondents pleaded that they are bonafide purchasers of the plaint schedule property, a perusal of the evidence of D.W.1 disproves the same. D.W.1 in his cross examination deposed that "It is true to the North of plaint schedule property, land of my brother and his wife is situated. It is true to the South of plaint schedule property, my mother's property is shown. It is true my mother purchased the property in the year 2004. It is true my brother and his wife purchased the property in the year 2005. My family is a joint family." These admissions made by D.W.1 in his cross examination prove that land of defendants is on two sides of plaint schedule property and hence they are aware of the lease in favour of the appellant and appellant's cultivation of land. In view of the same, respondents would not be allowed to plead that they are bonafide purchasers of land.

34. It is relevant to extract Section 109 of the Indian Evidence Act, 1872, which reads thus:

"109. Burden of Proof as to relationship in the cases of partners, landlord and tenant, principal and agent.- When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it."

35. A perusal of the above section indicates that respondents/ defendants are contending that they are bonafide purchasers and they are not aware of the lease. No evidence was let in by them to prove that appellant is not lessee of schedule property.

36. In Pulikandam Subba Reddy Vs. Gorantal Veeraswamy², it was held thus:

"On a reading of Section 109 and illustration (d) Section 114 of the Evidence Act together, the law is that the landlord relationship between the landlord and the tenant continues until it is proved to have ceased. When a person is found to be in possession as a tenant on a particular date, it must be presumed to continue unless the contrary is established by the person who contends to the contrary. Even the terms of lease like the period of lease, the rate of rent etc., should be presumed and the burden of proving contrary is on the person who affirms it."

37. It is also apt to extract explanation II to Section 3 of the Transfer of Property Act, 1882, which reads thus:

"Explanation II. -Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof."

38. In R.K.Mohammed Ubaidullah and others Vs. Hajee C. Abdul Wahab (D) by LRs. and others³, the Hon ble Apex Court held thus:

1995 (2) ALD 1000 "It may be mentioned here that an Explanation was introduced into the Transfer of Property Act by the Amending Act 21 of 1929. Even prior to this amendment, the law, as declared in decided cases, was that, when a person purchased property from the owner knowing that it is in the possession of another, he is under a duty to inquire into the nature of that possession, and, in the absence of such inquiry knowledge of title under which possession is held, should be attributed to the purchaser".

39. In Daniels Vs. Davision⁴, the Lord Chancellor held that:

"where there is a tenant in possession under a lease, or an agreement, a person purchasing part of the estate must be bound to inquire on what terms that persons is in possession ... that a tenant being in possession under a lease, with an agreement in his pocket to become the purchaser, those circumstances altogether give him an equity repelling the claim of a subsequent purchaser who made no inquiry as to the nature of his possession."

40. In Veeramalai Vanniar Vs. Thadikara Vanniar⁵, it was held that:

"It is the duty of the subsequent purchaser to inquire from the persons in possession as to the precise character in which they were in possession at the time when the subsequent sale transaction was entered into. If there be a tenant in possession of land a purchaser is bound by all the equities which the tenant could enforce against the vendor and such equity extends not only to the interest connected with the tenancy but also to interests under the actual agreement."

41. A perusal of evidence of D.W.1 extracted supra manifests that respondents are having land on two sides of plaint schedule (2000) 6 SCC 402 (1809) 16 Ves Jun 249 AIR 1968 Mad 383 property and they are having knowledge about appellant s cultivating the land of their vendor. D.W.1 further deposed that there is no mention in the document (sale deed) that land was delivered along with crop. In view of the categorical admissions made by D.W.1 in his cross examination, this Court came to irresistible conclusion that respondents are aware of the lease in between the appellant herein and Dr.T.Indira Devi. Thus, they cannot plead and they are bonafide purchasers. Apart from this, the findings of Hon ble Apex Court extracted supra, with regard to surrender of tenancy by the appellant herein and failure of respondents to prove that tenancy has been terminated or surrendered in the manner known to law and restoring the order in A.T.C.No.2 of 2003, are binding on this Court. Thus, this Court is of the opinion that findings of the Lower Appellate Court while reversing the judgment of the trial Court that the plaintiff failed to prove that he is tenant of Indira Devi for the year 2005-2006 is contrary to evidence on record. Lower Appellate Court also misconstrued and misinterpreted the contents in Exs.A.1, A.3, A.5 and A.12. Lower appellate Court also committed wrong in drawing presumption under Section 114 of the Indian Evidence Act, 1872

about the subsisting tenancy. The findings recorded by the Lower Appellate Court that vendor of respondents is also proper and necessary party is without any pleading and evidence.

42. During the course of arguments, learned counsel for the respondents would contend the findings recorded in Exs.B.1 and B.2 are binding on Civil Courts and hence, suit filed by the appellant for recovery of amount is liable to be dismissed. Whether the judgment of a criminal Court binds Civil Court is no longer res integra.

43. In Shanti Kumar Panda Vs. Shakuntala Devi⁶, the Hon ble Apex Court held that -

"A decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. An order passed by the Executive Magistrate in proceedings under Sections 145/146 of the Code is an order by a criminal court and that too based on a summary enquiry. The order is entitled to respect and weight before the competent court at the interlocutory stage. At the stage of final adjudication of rights, which would be on the evidence adduced before the court, the order of the Magistrate is only one out of several pieces of evidence."

44. In K.G.Premshanker Vs. Inspector of Police and Ors.⁷, the Hon ble Apex Court considered the effect of decision of a criminal Court in civil proceedings. it was held that -

30. What emerges from the aforesaid discussion is -- (1) the previous judgment which is final can be relied upon as provided under Section 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res-judicata may apply; (3) in a criminal case, Section 300 Cr.P.C. makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil Court would be relevant if conditions of any of the Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except (2004) 1 SCC 438 (2002) 8 SCC 87 as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

The Hon ble Apex Court ultimately held that civil proceedings as well as criminal proceedings are required to be decided basing on the facts and evidence recorded by the parties.

The Hon ble Apex Court further held that -

32. In the present case, the decision rendered by the Constitution Bench in M.S. Sheriff's case (supra) (M.S.Sheriff Vs. State of Madras - AIR 1954 SC 397) would be binding, wherein it has been specifically held that no hard and fast rule can be laid down and that possibility of conflicting decision in civil and criminal Courts is not a relevant consideration. The law envisages "such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for limited purpose such as sentence or damages."

33. Hence, the observation made by this Court in V.M. Shah's case (supra) (V.M.Shah Vs. State of Maharastra - AIR 1996 SC 339) that the finding recorded by the criminal Court stands superseded by the finding recorded by the civil Court is not correct enunciation of law. Further, the general observations made in Karam Chand's case (Karam Chand Ganga Prasad and Union of India - (1970) 3 SCC

694) are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in M.S. Sheriff's case as well as Sections 40 to 43 of the Evidence Act.

34. In the present case, after remand by the High Court, civil proceedings as well as criminal proceedings are required to be decided on the evidence, which may be brought on record by the parties.

45. In Iqbal Singh Marwah and Ors. Vs. Meenakshi Marwah and Ors.⁸, the Constitution Bench of the Hon ble Apex Court held that -

"There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein."

It was further held that -

"Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein."

46. In Ramdayal Jat Vs. Laxmi Prasad⁹, the Hon ble Apex Court held that "A judgment in a criminal case, thus, is admissible for a limited purpose. Relying only on or on the basis thereof, a civil proceeding cannot be determined, but that would not mean that it is not admissible for any purpose whatsoever."

A civil proceeding as also a criminal proceeding may go on simultaneously. No statute puts an embargo in relation thereto. A decision in a criminal case is not binding on a civil court.

(2005) 4 SCC 370 (2009) 11 SCC 545 In M.S.Sheriff and Anr. Vs. State of Madras and Ors. ([1954] 1 SCR 1144), a Constitution Bench of this Court was seized with a question as to whether a civil suit or a criminal case should be stayed in the event both are pending. It was opined that the criminal matter should be given precedence.

In regard to the possibility of conflict in decisions, it was held that the law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. It was held that the only relevant consideration was the likelihood of embarrassment."

47. In Vishnu Dutt Sharma Vs. Daya Sapa¹⁰, the Hon ble Apex Court held that -

25. It does not lay down that a judgment of the criminal court would be admissible in the civil court for its relevance is limited. {See Seth Ramdayal Jat Vs. Laxmi Prasad (supra). The judgment of a criminal court in a civil proceeding will only have limited application, viz., inter alia, for the purpose as to who was the accused and what was the result of the criminal proceedings.

26. Any finding in a criminal proceeding by no stretch of imagination would be binding in a civil proceeding."

48. In Kishan Singh (Dead) Through LRs. Vs. Gurpal Singh and Ors.¹¹, the Hon ble Apex Court held that -

"19. Thus, in view of the above, the law on the issue stands crystallized to the effect that the findings of fact recorded by the Civil Court do not have any bearing so far as the criminal case is concerned and vice-versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal (2009) 13 SCC 729 (2010) 8 SCC 775 cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Indian Evidence Act, 1872 dealing with the relevance of previous Judgments in subsequent cases may be taken into consideration."

49. Thus, in view of the ratio laid down by the Hon ble Apex Court, the contention of the learned counsel for respondents that Exs.B.1 and B.2, judgments of Criminal Courts are binding on civil Court falls to ground.

50. In the instant case, suit was filed for recover of amount and the plaintiff's contention is that he is the cultivating tenant and the landlady sold the property to the respondents after he raised heaps. After purchase, respondents thrashed the heaps and took away the paddy. The pleading and evidence of the parties are clear to the effect that appellant/plaintiff is tenant of the schedule property and he raised paddy crop and after harvesting the same, he kept the same as heaps. At the same time, the admissions made by 2nd defendant in the written statement coupled with the evidence of D.W.1, makes it clear that after purchase of the property, they thrashed the heaps and took away the paddy. When the evidence in civil suit is clear and unambiguous, acquittal of respondents in criminal cases is of no consequence and has no bearing. Thus, this Court is of the

opinion that the argument advanced by the respondents advocate is meritless and falls to ground.

51. Learned counsel for the respondents also put forth another contention that order of the Hon ble Apex Court in S.L.P. operates prospectively. In support of the said contention, he relied upon the decision of the Hon ble Apex Court in State of Manipur and Ors. Vs. Surjakumar Okram and Ors.¹². The doctrine of prospective overruling would not apply to the case on hand. Thus, the judgment referred to supra would not help the respondents.

52. 5th substantial question of law framed by the Court is, Whether the rejection of the cross objection filed by the present appellant is correct?

53. Appellant/plaintiff filed cross objections in the appeal since the trial Court did not grant interest pending the suit. Section 34 of Code of Civil Procedure deals with interest, which reads thus:

"34. Interest (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree order interest to be paid on the principal sum adjudged, from the date of the suit to the date of decree at a rate not exceeding twelve percent. per annum, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding twelve percent. per annum as the Court deems reasonable on such principal sum, from the Civil Appeal Nos.823-827 of 2022 (Arising Out of SLP (C) Nos.2001-2005 of 2021) dated 01.02.2022 = MANU/SC/0126/2022 date of the 100 decree to the date of payment or to such earlier date as the Court deems fit:

Provided-----

Though interest is a matter of contract, Court can decide its reasonableness on the touch-stone of settled principles. Award of interest of discretionary and the same is clear from the word „may employed in Section 34 of the Act.

54. The contention of appellant that he is entitled to interest pending suit. Trial Court granted interest after the decree till realization. Though granting of interest is discretion of the Court, such discretion is to be exercised basing on the facts of each case. The suit was filed for recovery of amount on the ground that defendants/respondents took away the paddy from the fields in possession of plaintiff as cultivating tenant. The sale deeds of respondents were declared as null and void. This Court concluded that respondents are not bona fide purchasers. Pleadings and evidence of respondents are very clear about their taking away paddy pursuant to the sale deeds. In fact D.W.1 deposed that no mention was made in the sale deeds about existence of crop. All these instances make the things more than discernable that taking away paddy crop from the fields is not legal and entail the appellant/plaintiff to relief of interest pendente lite. Courts below in view of the facts involved in this case, ought to have granted interest pendente lite. Thus, this Court concludes that appellant is entitled to interest pendente lite at 9% p.a. from the date of filing of the suit till the date of decree.

55. In view of foregoing discussion, the second appeal is allowed, with costs throughout, setting aside the judgment and decree dated 01.02.2018 in A.S.No.10 of 2011 on the file of Senior Civil Judge, Bapatla. The judgment and decree dated 28.10.2010 in O.S.No.313 of 2006 on the file of Principal Junior Civil Judge, Ponnur is hereby restored. Interest at 9% p.a. on the principal amount, from the date filing of suit till the date of decree is also granted.

As a sequel, all the pending miscellaneous applications shall stand closed.

_____ SUBBA REDDY SATTI, J 21st June, 2022 PVD