APHC010539702026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3330]**
(Special Original Jurisdiction)

THURSDAY, THE 15th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO

SECOND APPEAL No. 821/2026

BETWEEN:

1. S.ZEENATHUNNISA BEGUM, W/o. S.M.SALAUDDIN S.M.SULTAN, AGED ABOUT 65 YEARS, RESIDING AT D.No.11/103OLD AT PRESENT D.No.54/103 NEW, KAGITHALAPENTA, H/O. CHEMMUMEAH PETA, KADAPA CITY.

2. S.M.AZEEMUDDIN, S/o. S.M.SALAUDDIN S.M.SULTAN, AGED ABOUT 43 YEARS, RESIDING AT D.No.11/103 OLD AT PRESENT D.No.54/103 NEW, KAGITHALAPENTA,H/O. CHEMMUMEAHPETA, KADAPA CITY.

3. S.M.CHIRAGUDDIN, S/o. S.M.SALAUDDIN S.M.SULTAN, AGED ABOUT 41 YEARS, RESIDING AT D.No.11/103 OLD AT PRESENT D.No.54/103 NEW, KATITHALAPETNA,H/O. CHEMMUMEAHPETA, KADAPA CITY.

4. S.M.SHAIKUDDIN, S/o. S.M.SALAUDDIN S.M.SULTAN, AGED ABOUT 39 YEARS, RESIDING AT D.No.11/103 OLD AT PRESENT D.No.54/103 NEW, KATITHALAPETNA,H/O. CHEMMUMEAHPETA, KADAPA CITY.

...APPELLANT(S)

AND

1. SYED SHAHIDA BEGUM, W/o. H.S.Azeezuddin, aged about 67 years, residing at D.No.21/122, Gunta Bazaar Street, H/o. Seven Roads, Kadapa City.

...RESPONDENT

Second Appeal filed under Section 100 of C.P.C., pleased to allow with costs throughout, and to set aside the Judgment and Decree dated 24.06.2026 passed in A.S.No.161 of 2024 on the file of the Honble Additional Civil Judge Senior Division, Kadapa, dismissing and confirming the Judgment and Decree dated04.04.2023 passed in O.S.No.42 of 2016 on the file of the Honble Principal Junior Civil Judge-cum-Judicial Magistrate of First Class, Kadapa, and consequently to decree the suit of the Appellants/Plaintiffs as prayed for and to dismiss the counter-claim of the Respondent/Defendant, and/or to pass such other order or orders.

Counsel for the Appellant(S):

1. SHAIK MD UMAR ABDULLAH

Counsel for the Respondent:

1. DHEERA KANISHKA

The Court made the following:

JUDGMENT:

The present second appeal under Section 100 of Code of Civil Procedure, 1908, has been preferred by the appellants being aggrieved by Judgment and Decree dated 24.06.2026 in A.S. No. 161 of 2024, on the file Additional Civil Judge (Senior Division) Kadapa, confirming the Judgement in Suit O.S. No. 42 of 2016 on the file of Principal Junior Civil Judge Kadapa, whereby the learned Trial Court has dismissed the suit filed by the appellant who is plaintiff in the suit and allowed the counter claim filed by the respondent/defendant.

2. The contentions of the respondents in respect of filing of two separate appeals on the ground that where a single judgment has been passed in a suit containing counter claim also, by deciding both the plaint as well as the counter claim, he submits that only one appeal is filed and it amounts to resjudicata, hence prayed to dismiss the second appeal as no substantial question of law involved under Section 100 of CPC.

3. Heard learned counsel for the appellant and counsel for the respondents and on perusal of the record.

4. POINT FOR CONSIDERATION: This Court has carefully examined the impugned judgment, the pleadings and the record of the case, and the legal position governing appeals arising from a suit and counter-claim. The principal issue for determination is whether the

present second appeal is maintainable when the trial Court has adjudicated both the suit and the counter-claim by a common judgment, but the appellant has chosen to challenge the decision through a single appeal on the principle of *resjudicata*.

5. In the case of ***Premier Tyres Ltd. v. Kerala State Road Transport Corpn.,*** reported in 1993 Supp (2) SCC 146, the Hon'ble Apex Court has held that where more than one suit were filed together the main issues were common and appeals were filed against the judgment and decree in all the suits and one appeal was dismissed either as barred by time or abated then the order operated as *res judicata* in other appeals. The question is that what happens where no appeal is filed, from the decree in connected suit. Effect of non filing of appeal against a judgment or decree is that it becomes final. This finality can be taken away only in accordance with law. Same consequences follow when a judgment or decree in a connected suit is not appealed from.

6. In the case of ***Harbans Singh & Ors vs Sant Hari Singh & Ors.,*** reported in 2009 (2) SCC 526, the Hon'ble Apex Court has held that if two suits had been heard together since disputes and issues raised by the parties were common, the decree in Civil Suit 'A' granted by the trial Court was affirmed by the first Appellate Court. The appellants challenged the judgment only in Civil Suit 'B' and the

judgment of the first Appellate Court in second appeal but no appeal filed in the connected Suit 'A', then the judgment in the said suit attained finality and could not be questioned by reason of the principle of res judicata.

7. A Division Bench of High Court of Himachal Pradesh at Shimla, on reference of two conflicting decisions of two Single Benches, has been answered in the case of ***Ramesh Chand Vs Om Raj and Others*** reported in 2022 SCC Online HP 2094, framed the question posed that whether a common appeal questioning the correctness of the judgment and decree passed in civil suit as well as in counter claim was legally maintainable before the Court below. The Hon'ble Division Bench after considering a catena of judgments including the judgement in the case of judgment of Apex Court in *Narhari* v. *Shanker*, 1950 SCC 668: AIR 1953 SC 419 in para 42 of the judgment after deducing the law laid down in several judgment has summarised the following extracted here under:

> i. When two suits are consolidated and tried together with common issues framed and common evidence led by the parties, resulting in a common judgment and decree, the same can be subjected to challenge by way of a single appeal at the instance of the aggrieved party;
>
> ii. Where a single appeal is filed questioning the judgment and decree passed in two suits, which were consolidated and

decided by a common judgment, decision of such single appeal, by a common judgment, reversing or modifying the claim in one suit out of the two, can be challenged by the aggrieved party also, in a single appeal.

iii. When two suits though not consolidated but are decided by a common judgment, resulting into preparation of two separate decrees, the aggrieved party would be required to challenge both of them by filing separate appeals;

iv. When both the suit and the counter claim are decreed by a common judgment, regardless of whether separate decree has been prepared in the counter claim, both would be required to be challenged by separate appeals;

***v**. In a case where two separate appeals are required to be filed against judgment of the suit and the counter claim and if appeal is filed only against one and not against the other, non filing of appeal against such judgment and decree would attach finality thereto and would attract not only the principle of resjudicata but also waiver and estoppal and the judgment and decree not appealed against would be taken to have been acquiesced to by the party not filing appeal;*

vi. When however, two appeals are filed against a common judgment passed by the trial Court, both by the plaintiff and the defendant, and are disposed of by the first appellate Court by modifying/reversing/affirming judgment of the trial Court, the aggrieved party, would be required to challenge both by two separate appeals, in absence of which, non-filing of appeal against one shall attract bar of the principles of res-judicata against another.

vii. Where more than one appeals are required to be filed or are filed and one or more of them are dismissed for default, delay or any other similar reason, any such situation would attract res judicata and such dismissal would satisfy the requirement of appeal being heard and finally decided on merits "in a former suit" for the purpose of attracting principles of res judicata."

8. In view of the settled legal position and the authoritative pronouncements referred to as above, this Court has no hesitation to hold that the present second appeal is not maintainable in law. Since the trial Court adjudicated both the suit and the counter-claim through the common impugned judgment, separate appeals were required to be filed by the appellants, before the lower appellate Court who were aggrieved by the common judgment and decrees. The filing of only a single appeal is contrary to the settled principles governing appeals arising out of adjudication of a suit and counter-claim. The decree which has not been independently challenged has attained finality and is binding upon the parties. Consequently, the present Second Appeal is barred by the principles of *res judicata*, in view of the judgements of the Hon'ble Supreme Court and the High Court of Himachal Pradesh (referred supra). Therefore, the present appeal does not involve any substantial question of law.

9. Accordingly, the Second Appeal is dismissed, as it is not maintainable. The judgment and decree passed by the learned Trial

Court declaring the right and title of the defendant counter claim call for no interference and is hereby affirmed. No order as to costs.

As a sequel, interlocutory applications, if any pending in this Second Appeal shall stand closed.

JUSTICE TARLADA RAJASEKHAR RAO

Date: 15.10.2026
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THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

S.A.No. 821 OF 2026

Date: 15-10-2026

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