

# *Civil Appellate and Revisional Jurisdiction*



Presented by :

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## *What is Appeal?*

- Appeal- Not defined in CPC.
- Appeal - a remedy by which a cause determined by an inferior forum is subjected before a superior forum for the purpose of testing the correctness of the decision given by the inferior forum.
- It is reconsideration of the decision of the Lower court by the higher court –on facts as well as laws.
- With a power to set aside, confirm, modify or remand.

- Appeal ---- A creature of statute .
- Not an inherent or independent right, like suit.
- Suo-motu appeal is not possible, like Revision.
- Mainly against the decree.
- Against the orders— Not all –but only if, stated to be appealable, in CPC or any substantive law..
- Right of appeal is-a substantive right as both-questions of law and facts both can be agitated.

- Appeal -- continuation of the suit wherein the entire proceedings are left open before the appellate authority.
- Subsequent events can be considered by the appellate authority.
- Appeal only against a decree and not against mere adverse finding.
- Abates on death of a party if LR is not brought on record in the prescribed period, Unlike Revision.

## Smt. Ganga Bai vs Vijaikumar AIR 1974 SC 1126

There is a basic distinction between the right of suit and the right of appeal.

There is an inherent right in every person to bring suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice.

It is no answer to a suit howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit.

But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law.

# Banarsi And Ors vs Ram Phal (2003)

## 9 SCC 606

### Powers of Appellate Court-

- The decree, to the extent to which it is against the respondent, cannot be interfered, set aside or modified to his advantage unless he files an appeal or takes cross objection.
  - The power under Rule 33 of Order 41 is subject to at least three limitations:-
  - firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the Court;
- .

# Banarsi And Ors vs Ram Phal (2003)

## 9 SCC 606

### Powers of Appellate Court-

- Secondly, a claim given up or lost cannot be revived; and
- Thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party.

## *Union Of India vs K.V. Lakshman*

### *AIR 2016 SC 3139*

- Right to file first appeal against the decree under Section 96 of the Code is a valuable legal right of the litigant and unless restricted by law, the whole case therein is open for rehearing both on questions of fact and w.
- The jurisdiction of the first appellate Court is very wide, like that of the Trial Court and it is open to the appellant to attack all findings of fact or/and of law in first appeal.
- It is the duty of the first appellate Court to appreciate the entire evidence and may come to a conclusion different from that of the Trial Court.



*Shasidharvs Ashwini Uma Mathod*  
*AIR 2015 SC 1139*

- If the Appellate Court did not deal with submissions urged by the parties, nor it took note of the grounds taken by the appellants in grounds of appeal, nor took note of cross objections filed by plaintiffs
- nor made any attempt to appreciate the evidence adduced by the parties in the light of the settled legal principles and decided cases applicable to the issues arising in the case with a view to find out as to whether the judgment of the trial Court can be sustained or not and if so, how, and if not, why?
- Whether such Judgment can be tenable?

*Shasidharvs Ashwini Uma Method*  
*AIR 2015 SC 1139*

- First appellate court is expected to decide appeal keeping in view the scope and powers conferred on it.
- Failure to do so would causing prejudice to the appellant whose valuable right to prosecute the first appeal on facts and law would be adversely affected which, in turn, deprived him of a hearing in the appeal in accordance with law.

*Madhukar And Ors vs Sangram*  
*AIR 2001 SC 2171*

- The judgment of the Appellate Court must
- reflect its conscious application of mind,
- it should record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties.
- While reversing a finding of fact the Appellate Court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding.

*Chinthamani Ammalvs Nandagopal Gounder*  
*(2007) 4 SCC 163*

- Restrictions on powers of Appellate Court-
- Not to have seen witnesses puts appellate judges in a permanent position of disadvantage against the trial judge.
- Hence unless it is shown that the trial judge has failed to use or has palpably misused his advantage ...the higher court ought not reverse the conclusions so arrived at on the basis of its own comparisons and criticisms of the witnesses, and of its view of the probabilities of the case. ...

*Chinthamani Ammalvs Nandagopal Gounder*  
*(2007) 4 SCC 163*

- Restrictions on powers of Appellate Court-
- when there is conflict of oral evidence and the decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judges notice, the appellate court should not interfere with the finding of the trial Judge on a question of fact.

## *Cross-objection Rule 22*

- Whether without filing Cross -Objection, Respondent is entitled to support the decree excluding the finding given against him?
- For Example—Decree for eviction refused on the ground of bonafide requirement but passed on the ground of Sub-letting.
- Respondent/Plaintiff – not filed Appeal or Cross-objection.
- Whether Appellate court can confirm the decree for sub-letting and also on bonafide requirement, reversing the finding of trial court on that point?

*Punamchand Nanawati v/s Ramanlal Balibhai*  
*1988 Bom. R.C. 64*

- Explanation to Order 41 Rule 22 (2) is merely an enabling provision and thereby Respondent can file cross objection though decree is in his favour. But even without filing such cross objection, he was entitled to support that decree excluding the finding given against him.
- Hence even without filing cross appeal or cross objection, plaintiff can challenge that finding given against him.

## *Union Of India vs Ibrahim Uddin (2012) 8 SCC 148*

Powers of Appellate Court to permit additional evidence –

- only and only if the conditions laid down in Rule 27 of Order 41 are found to exist.
- The parties are not entitled, as of right, to the admission of such evidence.
- The matter is entirely within the discretion of the court and is to be used sparingly.
- Such a discretion is only a judicial discretion circumscribed by the limitation specified in the rule itself.



## *Union Of India vs Ibrahim Uddin* *(2012) 8 SCC 148*

powers of Appellate Court to permit additional evidence –

- The words "for any other substantial cause" must be read with the word "requires",
- Thus, where, for any other substantial cause, the Appellate Court requires additional evidence, that this rule will apply.
- An application under Order XLI Rule 27 CPC should be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved.

*ParsotimThakur & Ors. v. Lal MoharThakur & Ors.,  
AIR 1931 PC 143*

Powers of Appellate Court to permit additional evidence –

- Provisions of O.41, R.27 are clearly not intended to allow a litigant who has been unsuccessful in the lower Court to patch up the weak parts of his case and fill up omissions in the Court of appeal.
- Under R.27, Cl.(1) (b) it is only where the appellate Court “requires” it (i.e. finds it needful) the order shall be made.

*ParsotimThakur & Ors. v. Lal MoharThakur & Ors.,  
AIR 1931 PC 143*

Powers of Appellate Court to permit additional evidence –

- The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but “when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent.”
- The defect may be pointed out by a party, but the requirement must be the requirement of the court upon its appreciation of evidence as it stands.

*K Kamalan v/s Ayyasamy*  
*AIR 2001 SC 2802*

- Incidentally the provisions of O<sub>41</sub> Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the court of Appeal.
- It does not authorize any lacunae or gaps in evidence to be filled up.
- The authority and jurisdiction as conferred on to the Appellate court to let in fresh evidence is restricted for the purpose of pronouncement of a judgment in a particular way.

*K Kamalan v/s Ayyasamy*  
*AIR 2001 SC 2802*

- The Appellate courts have to be cautious and must always act with great circumspection in dealing with the applications for letting in additional evidence particularly in the form of oral evidence at the appellate stage that too after a long gap of time as it is not a matter of right but discretion of court, which is to be exercised by the court on fulfillment of certain conditions only.

- Whether Appellate court can pass an order / decree in favour of the Respondent who has not preferred appeal or cross objection?

K. Muthuswami Gounder V. Palnniappa AIR 1998 S.C. 3118

“The general rule is that a decree is binding only on the parties to it, unless it set aside. Appellate court must not vary or reverse a decree in favour of a party who has not preferred any appeal or cross objection and this rule holds good notwithstanding Rule 33. However in exceptional cases the Rule enables the appellate court to pass a such decree or order as ought to have been passed , even if such decree or order would be in favor of parties who have not preferred any appeal.


The power though discretionary, should not be declined to be exercised merely on the ground that the party has not filed any appeal.”

## K. Muthuswami Gounder V. Palnniappa

AIR 1998 S.C. 3118

- Powers of Appellate court Under Order 41 Rule 33 – very wide to do complete justice between the parties
- Such power can be exercised even in favour of a party who had not preferred any appeal or cross objection.
- However discretion has to be exercised with care and caution and that too in rare cases.





Whether against an ex parte decree- both the Appeal and an Application under Order 9 Rule 13 can lie Simultaneously?

*BhanuKumar Jain vs Archana Kumar*  
*(2005) 1 SCC 787*

- Yes. Defendant can take recourse to both the proceedings simultaneously. If the appeal is dismissed/decided and the ex-parte decree merges with that of the appellate court, a petition under Order 9, Rule 13 would not be maintainable.
- However the converse is not true.
- When an application under Order 9, Rule 13 of the Code is dismissed, the defendant can prefer an appeal in terms of Order 43, Rule 1 of the Code. Once such an appeal is dismissed, the Appellant cannot raise the same contention in the First Appeal.

Whether mere filing of appeal takes away the jurisdiction of trial court to entertain an application, for setting aside an ex parte decree?

*P. Kiran Kumar vs AS Khadar*  
*(2002) 5 SCC 161*

- No. Mere filing of appeal does not take away the jurisdiction of trial court to entertain an application for setting aside an ex parte decree.
- Only if the trial court decree merges with the order of the appellant court by reversal, confirmation or varying it, the trial court is precluded from setting aside the ex parte decree.
- Explanation was added to discourage the two pronged attacks on the decree i.e. by preferring an application to the trial court under Order IX Rule 13 for setting aside the decree and by filing an appeal to the superior court against it.

## *Civil Revisional Jurisdiction*

- Section 115 CPC-
- The High Court **may** call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears
  - (a) to have exercised a jurisdiction not vested in it by law, or
  - (b) to have failed to exercise a jurisdiction so vested, or
  - (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,
- the High Court may make such order in the case as it thinks fit:

## *Civil Revisional Jurisdiction*

Revisional Power can be exercised by High Court--Either Suo-motu

- Or on the Application moved by the party, Provided no appeal lies against the impugned order.
- It is to satisfy itself whether jurisdiction exercised by the lower court is proper, legal and correct?
- It does not abate. It also cannot be dismissed for default, like Appeal.
- Exercise of jurisdiction is discretionary: the High Court is not bound to exercise jurisdiction merely because the conditions are satisfied

## *Civil Revisional Jurisdiction*

- No restriction on power of High court to pass order- It may make such order as it thinks fit.
- Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or order proceeding, except where
- the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or (b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

## *Civil Revisional Jurisdiction*

- Provided that the High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.
- Explanation: In this section, the expression "Any case which has been decided: includes any order made, or any order deciding an issue, in the course of a suit or other proceeding



## *What is “case Decided?”*

Not necessary that entire suit or other proceeding should come to an end. If a distinct part of the suit or other proceedings is finally disposed of, so far as the subordinate court is concerned, it would be a ‘Case Decided’

The test is whether there is an adjudication on the rights and obligations of the parties to the Lis.

Rejection of an amendment application in a suit by which the plaintiff wanted to add further items of properties in the plaint would be a case decided. However Permitting the plaintiff to adduce evidence after closure of evidence by defendant would not be a case decided.

## *“ What is case Decided?”*

- A Decision as to maintainability of suit.
- Finding on a preliminary issue of jurisdiction of the court.
- Decision that a suit is not barred by res judicata.
- Staying or refusing to stay a suit under Section 10 of the Code.
- An order bringing or refusing to bring on record LR of the deceased party.
- Allowing or refusing to a suit to be withdrawn with liberty to bring a fresh suit.

## *What is “case not Decided?”*

- Overruling an objection to a question put to a witness.
- Refusal to decide an issue as a preliminary issue.
- An order permitting further evidence to be produced.
- A decision to issue or not to issue a commission.
- Permitting the plaintiff to adduce evidence after closure of evidence by defendant .

## *Shiv Shakti Coop. Housing v Swaraj Developers* *(2003) 6 SCC 659*

A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding.

If the answer is 'yes' then the revision is maintainable. But on the contrary, if the answer is 'no' then the revision is not maintainable.

The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject matter of revision under Section 115

☐ Preferring an application under Section 115 of the Code is not a substantive right. It is a source of power for the High Court to supervise the subordinate courts

