

First Appeals

JUDICIAL ACADEMY

JHARKHAND

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Origin of Appeals

The word **appeal** functions as both a verb and a noun. Its meanings include **an urgent or formal request for support, mercy, or a decision**.

The origins of "appeal" can be traced back to the late 13th century. It derives from the Latin verb *appellare*, meaning "to address, call upon, or name". This Latin word is a combination of *ad-* ("to") and *pellere* ("to beat, push, drive").

Historically, this roots back to an old Roman nautical expression that literally meant "driving a ship toward a particular landing," which naturally evolved into "summoning" or "approaching someone with a request".

It entered the English language by way of the Old French word *apeler*, which had heavily adopted the legal meaning of "to accuse" or "to call upon a judge".

Scope of 1st Appeals

Manjula v. Shyamsundar, (2022) 3 SCC 90

'8. Section 96 of the Code of Civil Procedure, 1908 (for short "CPC") provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41 Rule 31 CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state:

- (a) points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the trial court.

It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact.

Manjula v. Shyamsundar, (2022) 3 SCC 90

The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the trial court are open for reconsideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41 Rule 31CPC and non-observance of these requirements lead to infirmity in the judgment.'

Supreme Court on how 1st Appeal judgment is to be drafted

Santosh Hazari v. Purushottam Tiwari (2001) 3 SCC 179

Three-Judges Bench, Hon. Shri R.C. Lahoti, J. speaking for the Bench on how a first appeal judgment is to be drafted:

“15. A perusal of the judgment of the trial court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did not produce any documentary evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance.

The first appellate court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant.

The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. The task of an appellate court affirming the findings of the trial court is an easier one.

The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice (see *Girijanandini Devi v. Bijendra Narain Choudhary* [*Girijanandini Devi v. Bijendra Narain Choudhary*, 1966 SCC OnLine SC 236 : AIR 1967 SC 1124]).

Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179

We would, however, like to sound a note of caution. *Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it.*

While writing a judgment of reversal the appellate court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial court must weigh with the appellate court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgment.

This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate court is entitled to interfere with the finding of fact. (See *Madhusudan Das v. Narayanibai* [*Madhusudan Das v. Narayanibai*, (1983) 1 SCC 35] .)

Santosh Hazari v. Purushottam Tiwari (2001) 3 SCC 179

The rule is — and it is nothing more than a rule of practice — that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should not interfere with the finding of the trial Judge on a question of fact. (See *Sarju Pershad v. Jwaleshwari Pratap Narain Singh* [*Sarju Pershad v. Jwaleshwari Pratap Narain Singh*, 1950 SCC 714] .)

Secondly, 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. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it.

We need only remind the first appellate courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate court continues, as before, to be a final court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law be a substantial one.”

Somakka v. K.P. Basavaraj (2022) 8 SCC 261 :

Referring to Order 41 Rule 31 CPC, Hon'ble Supreme Court commented upon unsustainability of a cryptic and cursory approach of the High Court as the first appellate court.

“30. It has been a matter of debate in a catena of decisions as to what would be the scope, power and duty of the first appellate court in deciding an appeal under Section 96CPC read with Order 41 Rule 31CPC. We briefly deal with the law on the point.

31. The learned Judge V.R. Krishna Iyer, J., (as he then was a Judge of the Kerala High Court) in 1969, while deciding the case between *Kurian Chacko v. Varkey Ouseph* [*Kurian Chacko v. Varkey Ouseph*, 1968 SCC OnLine Ker 101] , dealing with a similar judgment of the first appellate court which had been disposed of by a brief order, observed as follows: (SCC OnLine Ker para 2)

‘2. An appellate court is the final court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him and I have no doubt that in the present case the learned Subordinate Judge has fallen far short of what is expected of him as an appellate court.’

H.K.N. Swami v. Irshad Basith, (2005) 10 SCC 243

‘3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons.

Sitting as the first appellate court it was the duty of the ... Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title.’

Vinod Kumar v. Gangadhar, (2015) 1 SCC 391

‘18. In our considered opinion, the High Court did not deal with any of the submissions urged by the appellant and/or the respondent nor it took note of the grounds taken by the appellant in grounds of appeal nor made any attempt to appreciate the evidence adduced by the parties in the light of the settled legal principles and decided case law 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.

19. Being the first appellate court, it was the duty of the High Court to have decided the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31CPC mentioned above.

It was unfortunately not done, thereby, resulting in causing prejudice to the appellant whose valuable right to prosecute in the first appeal on facts and law was adversely affected which, in turn, deprived him of a hearing in the appeal in accordance with law. It is for this reason, we are unable to uphold the impugned judgment.’

Order 41 Rule 11. Power to dismiss appeal without sending notice to Lower Court

11. Power to dismiss appeal without sending notice to Lower Court.— 1[(1) The Appellate Court after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day may dismiss the appeal.]

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

2[(4) Where an Appellate Court, not being the High Court, dismisses an appeal under sub-rule (1), it shall deliver a judgment, recording in brief its grounds for doing so, and a decree shall be drawn up in accordance with the judgment.]

Mahender Pal Chabra v. Subhash Aggrawal, (2024) 14 SCC 767

8. The first appellate court is the last court which can appreciate the evidence on record and record findings of fact.

As such a first appeal normally should not be thrown out at the stage of Order 41 Rule 11CPC just as a plaint normally is not rejected under Order 7 Rule 11CPC except for and on the grounds stated in the said provision.

The appellant having paid full court fees would be entitled to a reasonable discussion of the points raised in first appeal based on appreciation of evidence led before the trial court.

The appellate court at least ought to have discussed the points raised by the appellant.

Mahender Pal Chabra v. Subhash Aggrawal, (2024) 14 SCC 767 :

33. From the above settled legal principles on the duty, scope and powers of the first appellate court, we are of the firm view and fully convinced that the High Court committed a serious error in neither forming the points for determination nor considering the evidence on record, in particular which had been relied upon by the trial court. The impugned judgment [*K.P. Basavaraj v. Somakka*, 2006 SCC OnLine Kar 992] of the High Court is thus unsustainable in law and liable to be set aside.

Panchsheel on 1st Appeals

1. PASS A SPEAKING ORDER ON ADMISSION, INVOKE O 41 R 11 IN THOSE (EXCEPTIONAL) CASES WHERE IT CAN BE RELIED ON.
2. CONSIDER INTERIM RELIEF WHICH WILL BALANCE EQUITIES. IMPOSE CONDITIONS WHICH WILL PREVENT ABUSE OF INTERIM RELIEF/LONG PENDENCY.
3. FORMULATE POINTS OF DETERMINATION.
4. CONSIDER O 41 R 27 WITH *INTEREST REIPUBLICAE UT SIT FINIS LITUM*
5. FACTS AND LAW – THREADBARE AND DETAILED ANALYSIS