# APPEALS, SECOND APPEALS AND REVISION UNDER THE CODE OF CIVIL PROCEDURE

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# INDEX

**Part I**

**Evolution of the law;**

**Introduction;**

1. In every civilized society there are two sets of laws (i) substantive laws and (ii) procedural laws. Substantive laws determine the rights and obligations of citizens. Procedural laws prescribe the procedure for the enforcement of such rights and obligations. Of the two, substantive laws are no doubt the more important. But the efficacy of substantive laws, to a large extent, depends upon the quality of the procedural laws. Unless the procedure is simple, expeditious and inexpensive, the substantive laws, however good, are bound to fail in their purpose and object. Substantive law, according to Sir Henry Maine[1], has at first the look of being gradually secreted in the interstices of procedure.

2. The history of civil procedure in this country really begins with the year 1859, when the first uniform Code of Civil Procedure was enacted. Before 1859, the law of Civil Procedure was in a chaotic condition. Not only was there no uniform law of Civil Procedure applicable to the whole of the country, but in the same area different systems of procedure prevailed. For example, in Bengal alone, there were as many as nine[2] systems of procedure simultaneously in force. The first effort in the direction of evolving a uniform procedure was made when Sir Charles Wood, then President of the Board for the Affairs of India, directed the Second Law Commission to address themselves to the preparation of "a Code of simple and uniform procedure" applicable to all the courts. The Commission prepared four draft Codes of procedure, which were intended to apply to ordinary civil courts of the lower provinces of Bengal, the Presidencies of Madras and Bombay and the North-Western Provinces. Four Bills based on these drafts were ultimately amalgamated and enacted as the Code of Civil Procedure, 1859. The Code of 1859 was, however, not applicable to the Supreme Courts in the Presidency Towns and to the Presidency Small Cause Courts. Soon after it was passed, it was subjected to a series of amendments. In the meantime, it was extended, subject to some modifications, to the whole of British India and to the High Courts in the exercise of their civil, intestate, testamentary and matrimonial jurisdiction.

3. The new Letters Patent of 1865, however, modified this position, and empowered the High Courts to make their own rules and orders for regulating civil proceedings. At the same time, it

[1] Sir Henry Maine, Dissertations on Early Law and Custom (r883), page 389
[2] Whitley Stokes: The Anglo-Indian Codes (1888) Vol. II, pages 381, 384, cit. page 385, 386, 388

imposed a duty on them to be guided by the provisions of the Code of 1859, as amended from time to time.

4. The 1859 Code was soon found to be "ill-drawn, ill-arranged and incomplete." In 1863-64, a fairly comprehensive Bill was prepared by Mr. Harrington (afterwards Sir Heway Harrington) to replace it. But, for some reason, the enactment of the Bill into law was deferred. In the meantime, Acts dealing with particular branches of law were enacted, and these necessitated corresponding changes in the Code. The work of revision was taken up seriously when Dr. Whitley Stokes, at that time Secretary to the Government of India in the Legislative Department, was permitted by the Law Member to recast the draft Bill prepared by Mr. Harrington. He re-arranged in a systematic manner the provisions of the Code of 1859. He introduced a number of new provisions based on orders and rules made in England under the Judicature Acts. He also borrowed some provisions of the New York Civil Code. Sir Arthur Hobhouse (later Lord Hobhouse), who was the then Law Member, made substantial contribution to the draft Bill. With certain modifications, the Bill was enacted as the Code of Civil Procedure, 1877.

5. Soon after the enactment of the Code of 1877, it was realised that the new Code required several amendments. As many as 130 sections of the Code were amended in 1879. Further amendments were proposed in 1882. It was then decided, that the Code should be completely re-cast. It was in these circumstances that the Code of Civil Procedure, 1882, was enacted.

6. Experience of a quarter of a century of the working of the Code of 1882 showed that the general lines on which it proceeded were sound. It was, however, discovered, that in respect of some matters the provisions of the Code were too rigid to meet sufficiently the varying needs of the different areas of the country. Moreover, there was some conflict of judicial opinion on the interpretation of certain provisions of the Code. To remedy these and other defects, a comprehensive revision of the Code was undertaken in the first decade of the 20th century. The revision was undertaken by a Select Committee, which collected valuable material on the subject and prepared a draft Bill. A Special Committee presided over by Sir Earle Richards, which included Dr. Rashbeharv Ghose, examined the Bill carefully. This Committee, while giving due regard to the provisions of the Bill, relied upon the Code of 1882 as the basis of revision. It re-arranged all the provisions of the Code into two parts-

I. "the body of the Code" and
II. "the Schedule".

The Committee explained the principle underlying the re--arrangement thus:

7. "The general principle[3] on which we have proceeded has been to keep in the body of the Bill those provisions which appear to us to be fundamental and those provisions which confer powers operating outside the province in which the court is situated. In some cases, we have adopted the plan of inserting leading provisions in the Bill, stating in general terms the powers of the court and of leaving the details to the rules."

8. In the proposed revised Code, the provisions pertaining to details of procedure and other matters of minor character were relegated to rules contained in a Schedule. The object of the re-arrangement was to separate the fundamental and basic provisions, which could not be amended except by the legislative process, from the comparatively minor and detailed provisions in respect of which it was desirable to provide a more elastic and speedy machinery for modification than the tardy process of legislation. Sir Earle Richards, Law Member, while moving for leave to introduce the Bill which ultimately became the Code of Civil Procedure 1908, observed as follows:

"They (the Special Committee) do not desire to do away with uniformity in main principles . . . . . But they think that, with due regard to those considerations, it is possible to confer a power to change the less important provisions of the Code in order that defects in them can be remedied at once as they are discovered and in order that in special circumstances the courts may have power to simplify our legal machinery and to make it more adapted to the wants of less advanced communities".

9. It was accordingly proposed that the new Code should empower the High Courts to make rules for regulating their own procedure and the procedure of subordinate courts and to modify the rules contained in the first Schedule to the Code. Provision was also made for a Rules Committee to report to the High Court on all proposals for making new rules or modifying the existing rules[4].

10. Apart from the re-arrangement of the provisions of the Code into sections and rules, the Committee did not make many changes of a radical character. Its approach was justifiably conservative. The Bill, as settled by the Special Committee, was enacted as the Code of Civil Procedure, 1908, without any substantial modifications.

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[3] Report of the Special Committee, Gazette of India, 1907, Part V, page 179 (at p. I85), para. 12.

[4] Gazette of India, 1907, Part VI, pages 136-137

11. The foregoing survey reveals that the Code of 1908[5] is a product of well-thought out efforts and experimentation extending over more than half a century. The Code has stood the test of time. It has on the whole worked satisfactorily and smoothly and has evoked the admiration of many distinguished authorities. An eminent Chief Justice of a High Court observed recently thus,
"The more you study the Civil Procedure Code the more you realise what an admirable piece of legislation it is."

12. The language of sections 96 and 100 of the Code, which deal with appeals can be compared with S. 115. While the former two provisions specifically provide for right of appeal, the same is not the position vis-à-vis S. 115. Section 115 does not speak of an application being made by a person aggrieved by an order of subordinate court. It is a source of power of the High Court to have effective control on the functioning of the subordinate courts by exercising supervisory power. (***Shiv Shakti Co-Op Housing Society v Swaraj Developers AIR 2003 SC 2434***)

13. In ***Shankar Ramchandra Abhyankar v Krishnaji Dattatreya Bapat, AIR 1970 SC 1***, the Supreme Court held that the revisional jurisdiction partakes of the appellate jurisdiction of a superior court. The above view was re-affirmed in a subsequent decision wherein it was held that when the aid of the High Court is invoked on the revisional side it is done because it is a superior court and it can interfere for the purpose of rectifying the error of the court below. Subject to the limitations placed on the exercise of revisional jurisdiction, it remains a part of the general appellate jurisdiction of a superior court in a wider and larger sense. ***(Nalakath Sainuddin v Koorikadan Sulaiman AIR 2002 SC 2562)***

**Part A. Provisions of appeal and revision as enumerated in the earlier Codes of Civil Procedure**

**Provisions of First Appeal (Appeal from original decree);**
**1877 Code of Civil Procedure[6]**

**Chapter XLIII**
**Of appeals from orders;**

**Section 588. Orders Appealable;**
An appeal shall lie from the following orders under this Code and from no such other orders :-

a. Orders under Section 20, staying proceedings in a suit,

[5] Chagla C. J. (as he then was) in his foreword to Soonavala's Treatise on the Law of Execution Proceedings (1958)
[6]https://books.google.co.in/books?id=KgMTAAAAYAAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false

b. Orders under Section 32, striking out or adding the name of any person as plaintiff or defendant,
c. Orders under Section 44, adding a cause of action,
d. Orders under Section 47, excluding a cause of action,
e. Orders rejecting or returning plaints under Section 53, clause (d) or section 54, clauses (b) or (d), or section 57, clauses (b) and (c),
f. Orders rejecting applications under Section 102 (in cases open to appeal) for an order to set aside the dismissal of a suit,
g. Orders under Section 120 where a party fails to appear in person,
h. Orders under Section 168 for attachment of property,
i. Orders under Section 176 where a party refuses to give evidence or produce a document called for by the Court,
j. Orders under Section 244, as to questions relating to the execution of decrees, of the same nature with appealable orders made in the course of a suit,
k. Orders under Section 258 compelling decree-holders to certify,
l. Orders under Section 261 as to objections to draft-conveyances or draft-endorsements,
m. Orders under Section 312 for confirming or setting aside a sale,
n. Orders in insolvency matters under Section 351, 352, 353, 357,
o. Orders rejecting applications under Section 370 for dismissal of the suit,
p. Orders disallowing objections under section 372,
q. Orders as to inter-pleader suits under Section 473, 475 or 476
r. Orders under sections 479, 480, 481, 485, 492, 493, 496, 503
s. Orders under Section 514 superseding an arbitration
t. Orders under Section 518 modifying an award
u. Orders under any of the provisions of this Code, imposing fines, or for the imprisonment of any person, except when such imprisonment is in execution of a decree,
v. Refusals under Section 558 to re-admit, or under Section 560 to re-hear, an appeal,
w. Orders under Section 562 remanding a case.

The orders passed in appeals under this section shall be final.

**Section 589. Court which shall hear appeals;**
An appeal from any order specified in Section 588, clause (n), shall lie to the High Court.

When an appeal from any other order is allowed by this chapter, it shall lie to the Court to which an appeal would lie from the decree in the suit in relation to which such order was made or, when such order is passed by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

**Section 590. Procedure in appeals from orders;**

The procedure prescribed in Chapter XLI shall, so far as may be, apply to appeals from orders under this Code, or under any special or local law in which a different procedure is not provided.

**Section 591. No appeal, before decree, from order passed in course of suit; but if decree appealed against, error or defect therein may be set forth;**
Except as provided in this chapter, no appeal shall lie from any order passed by any Court on the exercise of its original or appellate jurisdiction; but if any decree be appealed against, any error, defect or irregularity in any such order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

**1882 Code of Civil Procedure[7]**

**Section 582**
**Appellate Court to have same powers as Courts of original jurisdiction;**

The Appellate Court shall have, in appeals under this Chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under Chapter V, and in Chapter XXI, so far as may be, the word "plaintiff" shall be held to include a plaintiff-appellant or defendant-appellant, the word "defendant" a plaintiff-respondent or defendant-respondent, and the word "suit" an appeal, in proceedings arising out of the death, marriage or insolvency of parties to an appeal.

The provisions hereinbefore contained, including those of Section 372A, shall apply to appeals under this chapter so far as such provisions are applicable.

**Revision;**

**Section 646B- Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes;**

(1) If it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.
(2) On receiving the record and statement the High Court may pass such order in the case as it thinks fit.

[7] https://books.google.co.in/books?id=BvASAAAAYAAJ&printsec=frontcover#v=onepage&q&f=false

(3) With respect to any proceeding subsequent to decree in any case submitted to the High Court under this section, the High Court may make such order as in the circumstances appears to it to be just and proper.
(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this section.

**Provisions of Second Appeal in the earlier Codes;**

**1877 Code of Civil Procedure;**

**Chapter XLII, Of Appeals from Appellate Decrees;**

**Section 584- Second Appeals to High Courts;**
Unless when otherwise provided in this Code or by any other law, from all decrees passed in appeal by any court subordinate to a High Court, an appeal shall lie to the High Court on any of the following grounds, (namely)

a. The decision being contrary to some specified law or usage having the force of law;
b. The decision having failed to determine some material issue of law or usage having the force of law;
c. A substantial error or defect in the procedure as prescribed by this Code or any other law, which may have produced error or defect in the decision of the case upon merits

**Section 585- Second Appeal only on grounds mentioned in Section 584;**
No second appeal shall lie except on the grounds mentioned in Section 584.

**Section 586- No second appeal in certain suits;**
No second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees

**1882 Code of Civil Procedure**

**Chapter XLII – Of Appeals from Appellate Decrees;**

**Section 584- Second Appeals to High Courts;**
Unless, when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to a High Court, an appeal shall lie to the High Court on any of the following grounds (namely):

a. The decision being contrary to some specified law or usage having the force of law;

b. The decision having failed to determine some material issue of law or usage having the force of law;
c. A substantial error or defect in the procedure as prescribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits.

An appeal may lie under this section from an appellate decree passed *ex parte*

**Section 585- Second Appeal on no Other Grounds;**
No second appeal shall lie except on the grounds mentioned in Section 584.

**Section 586- No second appeal in certain suits;**
No second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

**Chapter XLIII- Of Appeals from Orders;**

Section 588. Orders Appealable.
An appeal shall lie from the following orders under this Code, and from no other such orders-

1. Orders under Section 20, staying proceedings in a suit;
2. Orders under Section 32, striking out or adding the name of any person as plaintiff or defendant;
3. Orders under section 36 or section 66, directing that a party shall appear in person;
4. Orders under section 44, adding a cause of action;
5. Orders under section 47, excluding a cause of action;
6. Orders returning plaints for amendment or to be presented to the proper Court;
7. Orders under Section 111, setting-off or refusing to set-off, one debt against another;
8. Orders rejecting applications under Section 103 (in cases open to appeal) for an order to set aside the dismissal of a suit;
9. Orders rejecting applications under Section 108 for an order to set aside a decree *ex-parte*;
10. Orders under Sections 113, 120 and 177;
11. Orders under Section 116 or section 245, rejecting, or returning for amendment, written statements or applications for execution of decrees;
12. Orders under Sections 143 and 145, directing anything to be impounded;
13. Orders under Section 162, for the attachment and sale of moveable property;
14. Orders under Section 168 for attachment of property, and orders under Section 170 for the sale of attached property;
15. Orders under Section 261, as to objections to draft-conveyances or draft-endorsements;

16. Orders under Section 294, and orders under Section 312 or Section 313, for confirming, or setting aside, or refusing to set aside, a sale of immoveable property;
17. Orders in insolvency-matters, under Section 351, section 352, section 353, or section 357;
18. Orders under Section 366, paragraph two, section 367 or section 368;
19. Orders rejecting applications under Section 370 for dismissal of a suit;
20. Orders under Section 371, refusing to set aside the abatement or dismissal of a suit;
21. Orders disallowing objections under Section 372;
22. Orders under Section 454, section 455 or Section 458, directing a next friend or guardian for the suit to pay costs;
23. Orders in interpleader-suits under Section 473, clause (a), (b), or (d), Section 475 or 476
24. Orders under Section 479, section 480, Section 485, Section 492, Section 493, Section 496, Section 497, Section 502, and Section 503;
25. Orders under Section 514, superseding an arbitration;
26. Orders under Section 518, modifying an award;
27. Orders of refusal under Section 558 to re-admit, or under Section 560 to re-hear, an appeal;
28. Orders under Section 562, remanding a case;
29. Orders under any of the provisions of this Code, imposing fines, or for the arrest or imprisonment of any person, except when such imprisonment is in execution of a decree.

The orders passed in appeals under this section shall be final.

**Section 589. What Courts to hear Appeals;**

When an appeal from any order is allowed by this chapter, it shall lie to the Court to which an appeal would lie from the decree in the suit in relation to which such order was made, or, when such order is passed by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

**Section 591. No other appeal from orders; but error therein may be set forth in memorandum of appeal against decree;**

Except as provided in this chapter, no appeal shall lie from any order passed by any Court in the exercise of its original or appellate jurisdiction; but, if any decree be appealed against, any error, defect or irregularity in any such order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

**Part B: The Code of Civil Procedure and Law Commission Reports**

**Work of various Law Commissions;**

Attempts made in the past—The Commission has made a number of recommendations

in its earlier reports for speedy disposal of cases and with a view to tackling the mounting arrears pending in various courts in the country. The relevant reports are as under:
(i) 14th report on 'Reform of Judicial Administration'
(ii) 27th report on 'Code of Civil Procedure, 1908'
(iii) 54th report on 'Code of Civil Procedure, 1908'
(iv) 55th report on 'Rate of interest after decree and interest on costs under sections 34 and 35 of the Code of Civil Procedure, 1908'
(v) 56th report on 'Notice of Suit required under certain Statutory Provisions'.
(vi) 58th report on 'Structure and Jurisdiction of the Higher Judiciary'
(vii) 77th report on 'Delay and arrears in trial Courts'
(viii) 79th report on 'Delay and arrears in High Court and Other Appellate Courts'.
(ix) 99th report on 'Oral and Written arguments in the Higher Courts'
(x) 114th report on 'Gram Nyayalaya'.
(xi) 124th report on 'The High Court Arrears - A Fresh Look'.
(xii) 125th report on 'The Supreme Court - A Fresh Look'.
(xiii) 128th report on 'Cost of Litigation'
(xiv) 129th report on 'Urban Litigation - Mediation as Alternative to Adjudication'.
(xv) 136th report on 'Conflicts in High Court Decisions on Central Laws -How to Foreclose and How to Resolve'
(xvi) 139th report on 'Urgent Need to Amend Order XXI, rule 32(2), Code of Civil Procedure to Remove an anomaly which nullifies the Benevolent Intention of the Legislature and occasions injustice to Judgment-Debtors sought to be benefited'
(xvii) 140th report on 'Need to amend Order V, rule 19A of the Code of Civil Procedure, 1908, relating to service of summons of registered post with a view to foreclosing likely injustice'
(xviii) 144th report on 'Conflicting Judicial Decisions pertaining to the Code of Civil Procedure, 1908'
(xix) 155th report on 'Suggesting some amendments to the Code of Civil Procedure (Act No. V of 1908)'

**Extracts from the 14th Law Commission Report, 1958;**

"**1J.25.** *The Commission also thought that a statutory requirement should be made providing that the Judge admitting the second appeal should state the point or points of law which arise for consideration and enabling the High Court to admit a second appeal on specified points only and it should be provided by rules that where a second appeal is filed, certified copies of the judgments of both the Courts below should accompany the memorandum of appeal and, if in any such appeal the appellant proposes to raise any question of the construction of a document, a true translation of the document should also be filed along with the memorandum of appeal*."

**Proper role of High Court;**

***1J.52.*** *This situation necessitates a restatement of the proper role of the High Court. We state below what, in our view, is its proper role.*

**High Court not an ordinary Court of last resort;**

***1J.53.*** *Standing as it does at the apex of a hierarchy, the High Court is no ordinary court of last resort. Its special position does not fit easily into the well-worn epigram that trial courts search for truth and appellate courts search for error.*
***1J.54.*** *This is our basic approach to the role of the High Court. We do not conceive of second appeals as "yet another dice in the gamble."*
***1J.55.*** *There should be one authoritative and dignified tribunal in various appellate matters[8] to give decisions which are recognised as binding all over the State, and which keep alive the immense unity of the law.*

**Extracts from the 54th Law Commission Report, 1973;**

**Commission's approach to proper scope of second appeal;**

***"1J.22.*** *It is in the light of the amended Article 133 that we propose to approach the question about the scope of section 100 of the Code as it should be after it is amended. It would be noticed that clauses (a), (b) and (c) of section 100 to which we will presently refer, are, in a sense, very wide in effect. In fact as we will have occasion to point out, clauses (b) and (c) have led to a plethora of conflicting judgments and it may be safely stated that ingenuity of the lawyers determined to seek admission for second appeals of their clients in the High Court, coupled with judicial subtlety which generally believes that even an erroneous finding of fact does, on the ultimate analysis, lead to injustice, has unduly and unreasonably widened the horizon of section 100. It is easy enough to understand what a point of law is; but in dealing with second appeals, courts have devised and successfully adopted several other concepts, such as a mixed question of fact and law, a legal inference to be drawn from facts proved, and even the point that the case has not been properly approached by the courts below. This has created confusion in the minds of the public as to the legitimate scope of the second appeal under section 100 and has burdened the High Courts with an unnecessarily large number of second appeals.*

***Approach of High Courts to second appeal;***

***1J.23.*** *The approach to second appeals has traditionally differed from High Court to High Court, and from Judge to Judge even in the same High Court. The Kerala High Court, for instance admits second appeals, where the appellate court has reversed the findings of fact recorded by the trial court[91]; this position is prima facie difficult[10] to reconcile with the plain provisions of section 100.*

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[8] Cf. Lord Birkenhead's Description of the Privy Council, (1927) 63 LJ 304
[9] Kerala amendment to section 100.
[10] 27th Report, para. 123 and 14th Report Vol. I.

*Even where such a position does not exist, it is not uncommon that judges are more lenient in admitting second appeals where the courts below have recorded conflicting findings of fact.*
*This aspect of the matter has been noticed by several Committees and Commissions which dealt with the question of the growing arrears in the High Courts, substantially because of the indiscriminate admission of second appeals and civil revision applications, and we will have to say something very radical later on. To anticipate our recommendation, we might say at this stage that we are recommending[11] that section 115 of the Code, relating to revision, should be deleted."*

***Arrears in High Courts;***

***1J.26.*** *These recommendations, however, do not appear to have been implemented and the position of the arrears pending in the High Court, partly because of indiscriminate admission of second appeals and civil revision application, grew from bad to worse. The Shah Committee, which dealt with this problem in 1972, has observed that "it is necessary to provide for a stricter and better scrutiny of second appeals and they should be made subject to special leave, instead of giving an absolute right of appeal limiting it to question of law." It reiterated the observations made by the Law Commission in its Fourteenth Report, and repeated its recommendation that the second appeals should be circulated to the Judges for reading outside the working hours of the court for determining the question whether the second appeals should be admitted straightaway and notice issued to the respondents or whether they should be placed for preliminary hearing under Order 41, rule 11.*

***Status and calibre of final Court of appeal a vital consideration;***

***1J.74.*** *Since we are retaining the right of second appeal with the above modification, the query may be raised why the litigant who, before coming to the High Court, has had one right of an appeal before a subordinate court, should have the right of two appeals on questions of law. In other words, why a multiplicity of appeals should be allowed. Now, it is to be remembered that in any legal system which recognises the binding force of precedent, the status and calibre of the final appellate court on questions of law is vital. This consideration over-balances the consideration of multiplicity of appeals.*
*It is obvious that the numerous subordinate courts in the districts cannot be final arbiters on questions of law. If the law is to be uniformly interpreted and applied, questions of law must be decided by the highest Court in the State whose decisions are binding on all subordinate courts.*
*If the right of second appeal is so abridged as to remove questions of law from the High Court, it would create a situation wherein a number of subordinate courts will decide differently questions of law, and their decisions will stand. Such a situation would be unsatisfactory.*

***1J.75.*** *The subordinate appellate courts functioning in the districts are not superior courts of record, and their interpretations of law are not binding on other courts. In fact, ordinarily, subordinate courts in one district are not even aware of the pronouncements of other courts in other districts (except when a point of law is declared by the High Court in appeal). It is section 100 which enables the High Court to function as the author, distributor and clearing house of pronouncements of law for the benefit of all subordinate courts.*

[11] Recommendation relating to section 115

*The interpretation of the law by the High Court is (subject to the law declared by the Supreme Court) binding on all subordinate courts. It is, therefore, essential for uniformity that every error of law, raising a substantial question is promptly rectified by the High Court by a correct pronouncement of the law.*

**Extracts from the 79th Law Commission Report, 1979;**

*5.30. We, therefore, recommend that the following proviso should be added to Order 3, Rule 4, sub-rule (3) of the Code of Civil Procedure, 1908:*

*To be added to Order 3, Rule 4(3), C P. C.*

*"Provided that in regard to an appeal or petition for revision against an Interlocutory order passed in the course of a suit or other proceeding, pending on the date of filing of such appeal or petition, service of any notice or document issued by the court hearing the appeal or petition on the pleader representing any party in the suit or other proceeding in the trial court shall, unless the court otherwise directs, be as effectual as service upon the party represented by the pleader, but nothing in this proviso shall authorise service on the pleader of any injunction issued by the court of appeal or revision."*

**No further appeal;**

**8.4.** *We are also of the opinion that there should be no further right of appeal in the High Court against the judgment passed in appeal by a single Judge. We have already recommended that so far as regular first appeals are concerned, they should be heard by Division Benches and not by single judges. This would bring about the application of a plurality of minds for the disposal of those appeals. Regarding other first appeals decided by single judges, in our opinion the decision should have a stamp of finality, except in those cases where the matter is taken up by certificate or special leave in appeal to the Supreme Court. We shall, in a later Chapter advert to the reasons which have weighed with us in arriving at this conclusion.*

**Change needed as to regular First Appeals;**

**8.12**. *We have given the matter our consideration and are of the opinion that so far as regular first appeals in the High Courts against final judgments of trial courts are concerned, there should be a rule, making it imperative that when the High Court dismisses such appeals under Order 41 Rule 11, Code of Civil Procedure, it should do so by a brief order giving reasons for the dismissal of the appeal at the preliminary stage. The High Court, when it decides a regular first appeal against the final judgment, has to record its findings, both on questions of fact and law, and its findings on questions of facts are final. The normal rule is that an appeal which raises triable issues for court of appeal should not be dismissed in limine. The Supreme Court also, in one of the cases (**M T Vetale v Smt. Sugandha, AIR 1972 SC 1932, 1933, para 4**), expressed the view that when a first appeal raises triable issues, it should not be dismissed in limine. To give effect to our*

*recommendation made above, necessary amendment should be made in Order 41, Rule 11 of the CPC, 1908.*

**10.1. The need for second appeals;**

*The search for absolute truth in the administration of justice must, in the very nature of things, be put under some reasonable restraint. Such search has to be reconciled with the doctrine of finality. There must come, in the course of litigation, a stage when the decision rendered on a question of fact should become final and the matter should be allowed to rest where it lies, without further appeal on facts. At the same time, any rational system of law must provide for taking the cause to a specified superior court on a question of law-a superior court whose decision on the question of law will become binding on subordinate courts. There should be one authoritative and final tribunal in various appellate matters, competent to give decisions which are recognised as binding all over the State and which keep alive what Lord Birkenhead so felicitously described as the 'immense unity of the law'. When a substantial question of law is in issue, the general interest of society in the predictability of the law clearly necessitates a system of appeals to the highest court of the State.*

**Question of law;**

**11.7.** *So far as questions of law are concerned, there no doubt exists under the Code a right of second appeal to the High Court, against the judgment passed in appeal by a court subordinate to the High Court, if a substantial question of law is involved. We have, in an earlier Chapter, examined the rationale of second appeal under section 100 of the Code. As we have already stated, the principle underlying such appeals is that on questions of law, the authoritative pronouncement should emanate from the High Court, whose pronouncement on such questions would be binding on all the courts in the State. Now, most of regular second appeals are decided by single Judges and no further appeals can be filed in the High Court against such decisions in view of the express bar created by section 100A of the Code of Civil Procedure. Enunciations of principles of law when given by single judges in second appeals thus bind the courts in the State. It would, therefore, seem somewhat anomalous that such enunciations of law should lose their binding force if they emanate from single judges of the High Court when dealing with first appeals. Necessity of affording a right of second appeal on substantial questions of law may exist when the matter is decided by a court subordinate to the High Court, but this consideration loses its relevance where the decision sought to be appealed from is itself that of a High Court judge. In this sense, a further appeal under the Letters Patent is anomalous, even on questions of law. There may be justification for allowing an appeal to the High Court (on law) from a judgment in first appeal passed by a subordinate court, but not when the first appeal itself is decided by a judge of the High Court. The demands of uniformity of law are amply satisfied by allowing an appeal to the High Court, and a further appeal is not needed. Of course, in all appropriate cases, where the question of law is of importance or needs an authoritative pronouncement by a larger Bench, it would be always open*

*to the single judge to refer the matter to a larger Bench. But there is no compelling reason for permitting a second appeal in such cases.*

**Filing of fresh revision proceedings;**

**12.3**. *We have, in an earlier Chapter laid stress on the point that in revisions against interlocutory orders, records of the court below should not be sent for unless an express order is made for the purpose by the High Court. We have also expressed the view that it would be the responsibility of the petitioner in such a case to file copies of pleadings, documents, depositions, applications and replies thereto or orders as were sought 'to be relied upon at the time of the bearing of the revision. The copies are to be accompanied by an affidavit about their correctness. To give effect to this recommendation, necessary modifications may be made in the rules of the High Court.*

**Extracts from the 124th Law Commission Report, 1988;**

1.12. *The Law Commission, dealing with the Code of Civil Procedure (27th Report) opined against curtailment of the right of appeal but desired to put some restriction on the revisional jurisdiction of the High Court under Section 115 of the Code of Civil Procedure. It did not feel that any curtailment of jurisdiction of the High Court was called for.*

1.13. *The Law Commission reverted to the Code of Civil Procedure in the circumstances mentioned in the report. It took notice of the fact that appeals from appellate decrees (second appeals) are admitted too frequently, that there is some scope for circumscribing and thereby curtailing the right of second appeal by so amending Section 100 of the Code of Civil Procedure, that an appeal will lie only on substantial question of law and that substantial question of law so involved be formulated and specified at the time of admission of the appeal and the appeal will be heard on the questions of law so specified. Subsequent experience shows that the situation has hardly improved in the matter of admission of second appeals. Except this specific recommendation, certain peripheral changes were suggested in the procedure for hearing appeals. The question of effective curtailment of the appellate jurisdiction of the High Court was not tackled.*

1.17. *As no perceptible change was visible in the situation, Government of India constituted an informal Committee (**Satish Chandra Committee, 1986, p. 192**) consisting of three Chief Justices of three different High Courts to examine the problem of arrears and to suggest remedial measures. The Committee submitted its report specifically emphasizing the fact that the Judge strength in the High Court is inadequate, that there is inordinate delay in filling in vacancies and that these are the two principal causes which have contributed to the piling up of arrears in High Courts. It recommended certain peripheral changes in the matter of appointment to the High Court. It recommended abolition of second appeal where the subject matter of the original suit does not exceed Rs. 10,000. It recommended amendment of Section 115 of the Code of Civil Procedure conferring revisional jurisdiction on the High Court in tune with Section 3 of the Code*

*of Civil Procedure (UP Amendment) Act, 1978. It recommended abolition of the letters patent appeal…*

1.21. *The High Court is at the apex of the State Judicial apparatus. Each state will have a High Court. Each High Court is invested with constitutional power to issue prerogative writs. Each High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. Every High Court is invested with control over all subordinate courts in the State and this control has become very pervasive and expansive by judicial decisions. The system of both civil and criminal justice provides for either an appeal or a revision to the High Court depending upon the nature of civil disputes, the jurisdiction of the trial court as well as the level of the court at which the criminal case is tried. Accordingly, unless the base level, where a litigation is initiated and vertically moves upward to the High Court by way of appeal or revision, is re-structured and this proliferating appellate jurisdiction is either controlled or curtailed, the inflow of work in the High Court would neither be regulated nor diminished. The Law Commission is of the firm view that, wherever possible, proliferating appellate and wide original jurisdiction should be controlled or curtailed without impairing the quality of justice.*

**Extracts from the 136th Law Commission Report, 1990;**

2.4. ***Appellate Jurisdiction in constitutional matters and other matters****- The scheme of appellate jurisdiction of the higher judiciary, as envisaged in the Constitution, reveals how anxious the Constitution-makers have been to ensure that within the country or within a State, there shall be uniformity of interpretation, as far as possible. For example, the right of appeal to the Supreme Court in every matter which involves an interpretation of the Constitution, shows that the makers of the Constitution desired that such questions must be ultimately decided by the highest court in the land. Coming to questions of ordinary civil law, the provision in Article 133 of the Constitution, which gives a right of an appeal if there is involved a substantial question of law which needs to be decided by the Supreme Court, is an indication of the basic premise that if there has been a controversy on a question of law and the controversy needs to be decided by the Supreme Court, then that Court must have jurisdiction to hear and decide the matter. It is thus evident that the Constitution accords prime consideration to the need for uniformity.*

2.6. ***Access to the Supreme Court****-Before the Supreme Court is called upon to make a pronouncement on a particular subject, there is the question of access to the Supreme Court. The need for giving the citizens such access to the highest court of the land where a question of law is involved was very much before the Constitution-makers and supplies the principal rational for those provisions. The Constitution envisages a right of appeal to the Supreme Court when there is involved a substantial question of law that needs to be decided by the Supreme Court. This right of appeal is not merely for the benefit of the litigant involved in the immediate controversy. It is also intended to enable the obtaining of pronouncements of law by the highest court. In this sense,*

*such a right of appeal is intended to benefit the legal system itself, by advancing and promoting the cause of uniform interpretation.*

***2.7. Binding effect of High Court judgement**--It is true that a provision mandating that the pronouncement of a High Court on questions of law shall bind courts and authorities within the State is not found in the Constitution. But it is settled beyond doubt that the pronouncements of a High Court have the same authority within the State as those of the Supreme Court have throughout India. This follows from a number of judicial decisions that have affirmed and reaffirmed the principle mentioned above.*

*In fact, it is because of the existence of such a principle and it is against the back-ground of such a principle that section 100 of the Code of Civil Procedure, 1908 formulates the right of second appeal to the High Court in terms of phraseology which focuses itself upon the involvement of a question of law. But for this emphasis on a question of law, an emphasis which the Law Commission of India had an opportunity of dealing with in its report on the Code this aspect could have escaped attention. But today, it cannot escape attention.*

*This emphasis, as found in section 100 of the Code of Civil Procedure, was more specifically formulated in the recommendation of the Law Commission which has ultimately found its place in the section as amended in 1976. The Law Commission made the following observations as to the rationale underlying the right of second appeal*:

*"I-J. 58. The rationale behind allowing a second appeal on a question of law is, that there ought to be some tribunal having a jurisdiction that will enable it to maintain, and where necessary, re-establish uniformity throughout the State on important legal issues, so that within the area of the State, the law, in so far as it is not enacted law, should be laid down, or capable of being laid down, by one court whose rulings will be binding on all courts, tribunals and authorities within the area over which it has jurisdiction. This is implicit in any legal system where the higher courts have authority to make binding decisions on question of law".*

*"I-J. 59. When a case involves a substantial point of law, the general interest of society in the predictability of the law clearly necessitates a system of appeals from courts of first instance to a central appeal court".*
*"As has been observed. "The real justification for appeals on questions of this sort is not so much that the law laid down by the appeal court is likely to be superior to that laid down by a lower court, as that there should be 'a final rule laid down which binds all future courts and so facilitates the prediction of the law. In such a case the individual litigants are sacrificed, with some jus-tification, on the altar of law-making-, and must find such consolation as they can in the monument of a leading case".*

***2.8. Second appeal to High Court*** *- One can view section 100 of the Code of Civil Procedure from another angle. The section is based on the principle that within the State, there should be uniformity on questions of law. It is on this basis that section gives a right of second appeal to an aggrieved party if a question of law is involved and if certain other conditions are satisfied. The basic objective of this provision of the Civil Procedure Code was considered at some length in the Law Commission's Report on the Code of Civil Procedure. The Commission took the opportunity of analysing the type of questions which should appropriately reach the High Court by way of second appeal. Dealing with this aspect, the Law Commission had an occasion to observe: -*

*" Nature of the question of law regarded as appropriate for second appeal."*
*"I-J. 77, We shall indicate very broadly the nature of the questions of law which we regard as appropriate for submission to the High Court under section 100 as we propose to revise. First and the most important of all is the consideration of uniformity throughout the State. It is obvious that on questions of law uniformity must be maintained. In so far as interpretation of enacted laws having statewise importance is concerned, it is the task of the Judiciary to maintain the unity and the High Court as the highest tribunal at the State level, should continue to have the ultimate authority to establish unity by resolving or avoiding the possibility of different views in lower courts."*

*2.9. The above passages show that in conferring a right of second appeal, the legal system is as much concerned with the quality of the law, as it is with the grievance of the particular litigant. Unfortunately, this aspect of the scheme of appeal is not visible on the surface. Therefore, it often escapes notice. But, it is an aspect of vital importance. The objective of maintaining certainty in the law, and of avoiding (or removing) want of uniformity is implicit in the provision of the code as to second appeal, as already stated.*

**Part II- Salient features of First Appeals, Second Appeals and Revision;**

**C. FIRST APPEAL**

**<u>Code of Civil Procedure, 1908</u>**
**Section 96. Appeal from original decree.**

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

1[(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed 2 [ten thousand rupees.]]

**NORMS**[12]

**I. Scope;**

The expression 'appeal' has not been defined in the Code. Any application by a party to an appellate court, asking it to set aside or reverse a decision of a subordinate court, is an appeal within the ordinary acceptation of the term. (***Namamal v Radhey Shyam AIR 1970 Raj 26 (FB)) (pages 437, Mulla)***

This section gives in express words, a right of appeal from every decree passed by any court exercising original jurisdiction to the court authorised to hear appeals from the decision of such court. (***page 439, Mulla***)

Where a right of appeal has been conferred, its scope must be determined by a reference to the provisions of the statute conferring it. (***Kishenlal v Sohanlal, 1954 ILR Raj 597, AIR 1954 Raj 138, Prem Narain v Divisional Traffic Manager, AIR 1954 Bom 55***)) The right of appeal, which is a statutory right can be conditional or qualified. Where a law authorises filing an appeal, it can impose conditions as well. (***The Gujarat Agro Industrial Co Ltd v The Municipal Corpn of City of Ahmedabad (1999) 3 LRI 14***)

**II. Who may appeal?**

No person, unless he is party to the suit, is entitled to appeal under this section. (***Rustomji v Official Liquidator, 49 IC 881, Indian Bank v Bansiram AIR 1934 Mad 360).*** But a person who is not a party can appeal with the leave of the appellate court, if he would be prejudicially affected by it and if the decree will be binding on him as res judicata. (***Adi Pherozshah Gandhi v HM Seervai, Advocate General of Maharashtra, Bombay AIR 1971 SC 385, Jatan Kamvar Golcha v Golcha Properties Pvt Ltd, AIR 1971 SC 374)***

The test to determine whether a person is aggrieved by a decision is whether it is to his detriment, pecuniary or otherwise or causes him some prejudice in some form or the other. The question

[12] The discussion of norms across the document is borrowed from The Code of Civil Procedure, Abridged, Sir Dinshaw Fardunji Mulla, 15th Edition, 2012, LexisNexis Butterworths Wadhwa, Nagpur.

whether a party is adversely affected by a decree or an order is a question of fact to be determined considering the circumstances in each case. (***Adi Pherozshah Gandhi supra)***

## III. What does the first appeal entail?

Section 96 provides for a first appeal. A first appeal is a valuable right and the parties have a right to be heard, both on questions of law and fact and decided by giving reasons of its findings (***Madhukar v Sangram (2000) 2 LRI 1126***) the jurisdiction of the courts in the first appeals, second appeals or revisions are all conferred by the legislature.

It is the duty of the lower appellate court to discuss the entire evidence afresh, take notice of the grounds taken and the reasons advanced by the trial court to reach its decision (***Ram Bhajan v Abdul Rehman AIR 1997 P & H 120).***

## IV. Right of Appeal;

Unless a right of appeal is clearly given by statute, it does not exist, whereas a litigant has, independently of any statute, a right to institute any suit of a civil nature in some court or another (***Zair Hussain Khan v Khurshed Jan (1906) ILR 28 A11 545, 549-550***). No right of appeal can be given except by express words (***Narayan v Secretary of State (1896) ILR 20 Bom 803, Sainika Motors v State Transport Authority 1956 ILR Raj 110, AIR 1956 Raj 65***)

An appeal does not lie against mere 'findings' recorded by a court unless the findings amount to a decree or order. Where a suit is dismissed, the defendant against whom an adverse finding might have come to be recorded on some issue has no right of appeal and he cannot question those findings before the appellate court. (***Deva Ram v Ishwar Chand AIR 1996 SC 378***)

A party can carry a matter and appeal on a limited question (***AIR 1994 AP 16) (DB***). A party who abandons a particular plea, at a particular stage, cannot be allowed to re-agitate the same in appeal. (***Mahesh Chand Sharma v Raj Kumari Sharma AIR 1996 SC 869, (1996) 8 SCC 128***). The plea regarding factual points on inadequacy in the evidence of the plaintiff cannot be allowed to be raised for the first time in appeal. (***FCI v Williamson Major & Co, AIR 1999 Cal 219 (DB***)

In ***Thakurji Shri Radhda Ballabhji Birajman Gram Mandawar v. Board of Revenue,*** **2008 SCC OnLine Raj 832: (2008) 2 RLW (Rev) 1206: (2008) 3 RLR 803: (2008) 4 WLC 429,** paragraph 4 discusses that it "*is well settled that a right of appeal is not a natural or inherent right attaching to litigation and does not exist and cannot be assumed unless expressly given by statute or by rules having the force of statute. The scope of first appeal differs from that of a second appeal in that the former is not limited to any particular grounds of appeal such as those provided in second appeal. The provisions restricting the grounds that may be taken in second appeal based on public*

*policy expressed in the maxim interest re publicae ut sit finis litium. It concerns the State that there be an end to litigation."*

## V. Mode of First Appeal;

There is a longer discussion regarding the mode of first appeal in ***V. Subramaniam v. T. Krishnan, 2007 SCC OnLine Mad 390***

**"11.** *As correctly pointed out by the learned Senior Counsel appearing for the appellant, the First Appeal is a valuable right of 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 a conscious Application of mind as it is laid down by the Honourable Supreme Court in* ***Santosh Hazari v. Purushottam Tiwai, 2001 (3) LW 308.*** *The Honourable Supreme Court in the said case has laid down that first, the findings of fact based on conflicting evidence arrived at by the Trial Court must weigh with the Appellate Court, more so when the finding is based on oral evidence to decide whether it suffers from material irregularity or decision arrived at inadmissible evidence and secondly the First 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. The law in this aspect has been laid down in the above said judgment as follows;*

> *"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 a 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 (**Girijanandini Devi & ors v. Bijendra Narain Choudhary, AIR 1967 SC 1124)**. 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 conjectures and surmises, the Appellate Court is entitled to interfere with the finding of fact (See* ***Madhusudan Das v. Smt. Narayani Bai & Ors. AIR 1983 SC 114 : 1982 (95) LW 144 SN****). 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 Ramdeo Sahy v. Jwaleshwai Pratap Narain Singh & Ors., 1950 SCC 714 : AIR 1951 SC 120 : 64 LW 373****). 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 the 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."*

*That reason was also followed by this Court in* ***B. Parvathy v. Ramakrishna Mission, 2001 (2) TLNJ 89; Nambi Iyyengar & Another v. The District Collector & Others, Tirunelveli, 2001 (2) TLNJ 312; and Palanisamy Servai (Died) & Others v. Veerabadran Servai (Died) & Others, 2002 (1) TLNJ 128,*** *and held that the First Appellate Court while reversing the judgment of the Trial Court ought to give independent reasonings by applying its mind independently on the evidence adduced by the parties before the Trial Court.*

## VI. Consideration before First Appellate Court;

In an appeal against a decree, raising a ground in the form of substantial question of law is not enough unless that question of law in fact arises in the case. To find out whether the first Appellate Court considered the reasons given by the trial court, a mere mechanical reading of the two judgments is not enough, nor it is enough to find out whether all the reasons have been re-written in the Appellate Court's judgment or not. What is binding is the finding. Reasons may be the same for upholding the finding of fact, reasons may be supplemented by the first Appellate Court and sometimes each individual reason may be considered by the first Appellate Court. The questions are, whether, in the process of arriving at a conclusion, the first Appellate Court applied its mind to the facts of the case and whether the first Appellate Court; judgment discloses that the reasons given by the trial court were considered. (***SS Khurana v Mahaveer Prasad AIR 2004 Raj 107***)

In a case of reversal of findings of the trial court by the first Appellate Court, it was held that the first Appellate Court must give its own reasoning by applying its mind independently on evidence adduced before the trial court. (***V Subramaniam v T Krishnan 2007 (3) MadLJ 583***)

In an appeal preferred against the judgment of the trial court by the intervenor-defendant it was held that the first Appellate Court was authorised to consider all points decided by the trial court in the suit including the issue of title as well as correctness or in-correctness of the record of rights. Being the last court of facts, the first Appellate Court is bound to give its own finding and reasoning on all points discussed in the judgment of the trial court. It was further observed that the first Appellate Court is entitled to reverse the findings of the trial court after scrutinising the entire materials available on record, although the party against whom the findings has been given did not prefer appeal. (***Deodhari Singh v Mulchand Hazam 2007 (2) AIR Jhar r. 360***)

## VII. Absence of pleading;

The question was, whether there was a necessity for a sale by the Karta of a Joint Hindu family. Although there was no pleading on the subject, a finding on the subject had been recorded by the trial court. The High Court (in its appellate powers) declined to go into the question on the ground that there was no pleading on the point. It was held by the Supreme Court that the High Court should have examined the material on record and given its own finding. (***Narayana Prabhu vs Janardhana Mallan AIR 1996 SC 3276)***

## VIII. Disregard of materials on record;

The High Court should, when deciding an appeal take into account, the fact that the lower court's finding showed a complete disregard of the materials on record. Thus, where the question was, whether a certain trust was a public trust, the lower court

should not disregard the materials on record, showing that the public had worshipped in the temple and made grants, thereby showing the public character of the temple. (***Bihar State Board of Religious Trust v Ramsubaran Dass AIR 1996 SC 3354)***

**IX. Decree;**

All decrees are appealable unless the appeal is barred under this Code or any other law. The words 'any court exercising original jurisdiction' under S. 96 has to be read to mean that if the original jurisdiction has been exercised by any court, the decree passed shall be deemed to be a decree by a court exercising original jurisdiction. (***Namdev Devangan vs Seeta Ram AIR 1998 MP 148***)

A decree passed in a summary suit under O. 37 of the Code where leave to defend has been refused is almost automatic and the consequence of passing a decree cannot be avoided. Against the decree an appeal would lie under S. 96. When an appeal would lie, an application under A. 227 of the Constitution would not be entertained. (***Ajay Bansal v Anup Mehta, AIR 2007 SC 909)***

The duty of the Appellate Court is to discuss the entire evidence, points of law and submission of parties. Where the judgment is not showing the factual or legal grounds on which the Appellate Court came to a conclusion different from the one arrived at by the Trial Court, such appellate judgment cannot be termed as proper. Summary dismissal or mere expression of concurrence with the conclusion of trial court is not contemplated by the Code. (***Ramji v State of HP, 2008 (2) Shim LC 60)***

**X. Reasoned Judgments;**

Order 41 Rule 31 requires the first appellate court to write a self-contained judgment, to give reasons for its decision on the points for determination and while doing so, the first appellate court, being the final court of facts has to consider all the evidence on record. (***Rukmanand Ajit Saria v Usha Sales Pvt Ltd AIR 1991 NOC 108 (Gau***)). The appellate court must consider the reasons given by the trial court for its finding. (***SVR Madaliar v Rajabu F Buhari AIR 1995 SC 1607, (1995) 4 SCC 15)***

Where the High Court set aside the finding of fact recorded by the High Court without a reasoned order, the Supreme Court held that the conclusions reached by the High Court cannot be endorsed. ***(K Jagdish Singh v Madhuri Devi, AIR 2008 SC 2296)***

## XI. Decree-Holder may Accept what the Decree Awards him and Appeal for what the Decree Refuses Him;

If the decree awards the decree-holder a sum smaller than what he claims, he may accept the smaller sum and appeal for the balance. He may approbate the decree as to what it awards him, and reprobate the decree as to what it refuses him (***Hurrybux vs Johurmull, AIR 1929 Cal 796***)

Where the plaintiff is granted an alternative relief, he is not debarred from filing appeal with respect to the main relief that he had been denied. Thus, in a suit for specific performance, where the court granted the alternative relief of damages, the plaintiff is not barred from filing appeal against the denial of the main relief. (***Banwari Lal v Sundra, AIR 2007 P&H 133***)

## XII. Ex-parte Decree;

An appeal against an ex parte order/decree cannot be converted into a proceeding to set aside the ex parte decree under Order 9 Rule 13. But the appellant can rely on any ground affecting the merits of the case, i.e. a defect, error or irregularity which has affected the decision of the case (on the merits). (***Laxmibai v Keshrimal Jain AIR 1995 MP 178***)

## XIII. Appeal and Review;

A Delhi High Court judgment lays down the following propositions as to the procedure to be followed, when, in respect of the same judgment, review as well as appeal is sought---

a. If an appeal as been already filed before the review is applied for, and the appeal is still pending, then review cannot be made.
b. If application for review is already filed, then the review application can be heard and disposed of, provided the appeal is not disposed of, before the review application is taken up for disposal. (***Hari Singh v S. Seth, AIR 1996 Del 21***)

## XIV. Disposal of Appeal- Court becomes Functus Officio;

When an appeal is dismissed and finally disposed of, the Court becomes functus officio and all applications pending adjudication before the appellate court become infructuous. Thus, after dismissal of appeal, where the appellate court further passes order to dismiss a pending application under Order 6 Rule 17 of the Code, the order is improper. (***Nirma Ram vs Sita Ram, AIR 2007 HP 2)***

Where in a first appeal before the High Court, an application under Order 41 Rule 27 was filed for acceptance of additional evidence, and the High Court proceeded to dismiss the appeal

without considering the said application, it was held that the order was liable to be set aside and the matter be remitted for consideration of the application for additional evidence in accordance with law. (***Hakam Singh v State of Haryana, AIR 2008 SC 2990)***

**Areas of concern within the regular First Appeal;**

**XV. Adjudication against which first appeal does not lie:**

1) Dismissal of suit in default
2) Determination of any question within Section 47 (prior to the amendment of 1976-77 against such determination regular first appeal was maintainable as it was included in the definition of decree under Section 2 (2)
3) Decree passed by the court with the consent of the parties
4) From a decree in any suit of the nature cognizable by Judge, Small Causes Court when the amount or valuation of the subject matter of the suit does not exceed Rs. 10,000 except on a question of law
5) Against decree passed by the Judge, Small Causes Court (JSCC) in view of Section 7, through which Section 96 relating to appeal is not extended to courts constituted under Provincial Small Causes Court Act, 1887. Section 25 of the PSCC Act provides revision against decree passed by the JSCCs on a question of law.

**XVI. Sub-section (3)- Consent Decree;**

This provision is based on the broad principle of estoppel. Under the Code, Order 23 Rule 3 provides for the passing of a consent decree.

In a case relating to lease of property for residential purposes, where the suit was said to have been compromised and a compromise decree was passed, the Supreme Court held that no appeal is maintainable in view of the specific bar contained in sub-s. (3) of S. 96 of the Code (***Pushpa Devi Bhagat v Rajinder Singh, AIR 2006 SC 2628, Lord Radha Krishna Ji Maharaj v Acharya Gopal Krishna Goswami 2009 (1) UC 374)***

In the above case, the Supreme Court laid down the law as follows:

"The position that emerges from the amended provisions of O.23 can be summed up thus:

i. No appeal is maintainable against a consent decree having regard to the specific bar contained in Section. 96 (3)
ii. No appeal is maintainable against the order of a court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) R. 1, O. 43

iii. No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in R. 3A.

iv. A consent decree operates as an estoppel and is valid and binding unless it is set aside by a court which passed the consent decree, by an order on an application under the proviso to Rule 3 of O. 23.

## XVII. Conditional right of appeal under S. 96?

Right of appeal under Section 96 C.P.C. is not conditional. Accordingly, admission of such appeal cannot be conditional e.g. it cannot be ordered along with admission of appeal that in case certain amount is not deposited within certain time order of admission of appeal shall stand withdrawn or recalled[13] vide ***Management of M/s Devi Theatre v. Vishwanath Raju AIR 2004SC332 and G.L. Vijain v. K. Shankar AIR 2007 SC 1103*** (Such condition may be attached with stay order.)

## XVIII. Sub-section (4) – Restriction on Right of Appeal;

The Code bars appeals except on points of law in certain cases. Sub.s (4) restricts the right of appeal and bars appeals on facts against decrees passed in suits cognisable by the courts of small causes and where the amount or value of the subject-matter of the suit does not exceed ten thousand rupees.

In a suit the plaint was not returned by the Court of Small Causes and the suit was decided by that Court. An appeal was filed against the decree on the ground that sub. S(4) of S. 96 permitted filing of an appeal against a decree of a Court of Small Causes where the value of the subject matter does not exceed Rs. 10000. Repelling the plea, a Division Bench of Calcutta High Court held that the use of the phrase 'from a decree in any suit of the nature cognizable by Courts of Small Causes' itself signifies that if a decree is passed by a Court of Small Causes without returning the plaint, there is no scope of appeal. This, sub-section (4) of S. 96 has no application to the case (***Bankim Chandra Lohar v Sitangshu Kumar Bhanja, AIR 2009 Cal 285 (DB))***

## XIX. Plaintiff's Case Admitted by the Defendant;

Where all the material allegations in the plaint are admitted by the defendant (who has put forth no substantial defence), the court can pronounce the judgment immediately. A judgment so pronounced in the counsel's presence cannot be appealed against. (***D. Kedari v H Co Op Marketing Society, AIR 1994 AP 301)***

[13] https://csja.gov.in/images/p1198/session_3.pdf

## D. Second Appeal

### S. 100. Second Appeal

(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

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(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

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(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

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(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

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(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

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Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

**I. Scope;**

The amended S. 100 has drastically cut down the scope of the section. Under the Code, a second appeal is henceforth competent, only if the case involves a substantial question of law. An appeal may also lie from an appellate decree passed *ex-parte*. In a second appeal, the memo of appeal must state precisely the substantial question of law involved.

The appeal must be heard on the said question of law so formulated and the respondent has a right to argue that the case does not involve such question. However, the High Court may hear the appeal on any other substantial question of law, not so formulated, if it is satisfied that the case involves such question. (**Mulla, Page 459)**

Where an appeal was admitted without framing substantial question of law, it was held that the appellate court can formulate the question of law as contemplated under S. 100 of the Code at any

point of time before hearing of the appeal, even without amending the grounds of appeal. (***Malkiat Kaur v Hardev Singh, AIR 2011 P&H 93, 2011 (2) Civil Court C 854)***

"9. *Before examining the merits of the matter, we may briefly refer to the scope of second appeals as also the procedure for entertaining them, as laid down in section 100 of the Code of Civil Procedure.*

*9.1) Second appeals would lie in cases which involve substantial questions of law. The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. In the context of section 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing in the final outcome, will not be a substantial question of law. Where there is a clear and settled enunciation on a question of law, by this Court or by the High Court concerned, it cannot be said that the case involves a substantial question of law. It is said that a substantial question of law arises when a question of law, which is not finally settled by this court (or by the concerned High Court so far as the State is concerned), arises for consideration in the case. But this statement has to be understood in the correct perspective. Where there is a clear enunciation of law and the lower court has followed or rightly applied such clear enunciation of law, obviously the case will not be considered as giving rise to a substantial question of law, even if the question of law may be one of general importance. On the other hand, if there is a clear enunciation of law by this Court (or by the concerned High Court), but the lower court had ignored or misinterpreted or misapplied the same, and correct application of the law as declared or enunciated by this Court (or the concerned High Court) would have led to a different decision, the appeal would involve a substantial question of law as between the parties. Even where there is an enunciation of law by this court (or the concerned High Court) and the same has been followed by the lower court, if the appellant is able to persuade the High Court that the enunciated legal position needs reconsideration, alteration, modification or clarification or that there is a need to resolve an apparent conflict between two viewpoints, it can be said that a substantial question of law arises for consideration. There cannot, therefore, be a strait-jacket definition as to when a substantial question of law arises in a case."* ***(State Bank of India v SN Goyal*** (supra))

**II. Re-appreciation of evidence;**

Interference with a finding of fact by the High Court is not warranted if it involves a re-appreciation of the evidence (***Ram Kumar Aggarwal v Thawar Das (1999) 4 LRI 687, Tirumala Tirupati Devasthanam v KM Krisinath (1998) 3 SCC 331, Secretary, Taliparamba Education Society v MM Illath (1997) 4 SCC 484, Satya Pal Sikka & Ors v Amar Nath & Ors (1998) 8 SCC 358)***

The High Court is not expected to re-appreciate the evidence just to replace the findings of the lower courts. (***Navneeth Ammal v Arjuna Chetty AIR 1996 SC 3521, (1996) 6 SCC 166***)

The High Court, in second appeal, cannot reverse the concurrent findings of the lower courts, under ordinary circumstances. (***Shamsuddin Rahman v Behari Das AIR 1996 SC 2535, Parsini v Atma Ram & Ors AIR 1996 SC 1158, State of Haryana v Khalsa Motor Ltd (1990) 4 SCC 659***)

A question of law cannot be raised in second appeal if it is not based on undisputed or proved facts. (***Ramkrishna Granthagar v AB Ghosh AIR 1992 Cal 264 (DB))***

### III. Exception to re-appreciation of evidence (Conflicting);

However, in deciding a second appeal in the proper perspective, the second appellate court may have to enter into a question of facts. (***BB Lohar v Prem Prakash Goyal, AIR 1999 Sikkim 11***). If the court has patently gone wrong in casting the burden of proof and has misread the evidence or has not considered the basic requirements to substantiate the case, it cannot be said that the High Court is not competent to re-appreciate the evidence to correct the mistake by the lower appellate court. (***Rajee v Babu Rao AIR 1996 Mad 262)***

In ***P Chandrasekharan v S. Kanakarajan, AIR 2007 SC 2306, (2007) 5 SCC 669,*** the Supreme Court has held that there cannot be any doubt whatsoever that a substantial question of law is different from a question of law. Interpretation of document which goes to the root of the title of a party to the lis would indisputably give rise to a question of law. It has been further observed that 'what is prohibited for the High Court while exercising this jurisdiction under s. 100 of CPC is to interfere with a finding of fact. This limited jurisdiction, inter alia, would become exercisable when the findings are based on misreading of evidence or so perverse that no reasonable person of ordinary prudence could take the said view. (***Page 460, Mulla***)

### IV. Points to note while considering a second appeal;

In ***State Bank of India v SN Goyal, AIR 2008 SC 2594, (2008) 8 SCC 92***

*9.3) It is a matter of concern that the scope of second appeals and as also the procedural aspects of second appeals are often ignored by the High Courts. Some of the oft-repeated errors are:*

*(a) Admitting a second appeal when it does not give rise to a substantial question of law.*

*(b) Admitting second appeals without formulating substantial question of law.*

*(c) Admitting second appeals by formulating a standard or mechanical question such as "whether on the facts and circumstances the judgment of the first appellate court calls for interference" as the substantial question of law.*

*(d) Failing to consider and formulate relevant and appropriate substantial question/s of law involved in the second appeal.*

*(e) Rejecting second appeals on the ground that the case does not involve any substantial question of law, when the case in fact involves substantial questions of law.*

*(f) Reformulating the substantial question of law after the conclusion of the hearing, while preparing the judgment, thereby denying an opportunity to the parties to make submissions on the reformulated substantial question of law.*

*(g) Deciding second appeals by re-appreciating evidence and interfering with findings of fact, ignoring the questions of law.*

*These lapses or technical errors lead to injustice and also give rise to avoidable further appeals to this court and remands by this court, thereby prolonging the period of litigation. Care should be taken to ensure that the cases not involving substantial questions of law are not entertained, and at the same time ensure that cases involving substantial questions of law are not rejected, as not involving substantial questions of law.*

**V. Substantial question of law;**

According to the proviso to S. 100, the Court shall indicate in its order, the substantial question of law which it proposes to decide, even if such substantial question of law was not earlier formulated by it. The existence of a 'substantial question of law' is thus, the *sine qua non* for the exercise of the jurisdiction under S. 100 (***Sen Panchgopal Barua v Umesh Chandra Goswami AIR 1997 SC 1041, (1997) 4 SCC 713)***

The High Court cannot allow a new plea in second appeal on the ground that it is a question of law. It must be a substantial question of law. ***(Kshitish Chandra Purkait v Santosh Kumar Purkait, AIR 1997 SC 2517***). The expression 'substantial question of law' has not been defined in the Code. The proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is an open question in the sense that it is not finally settled by the Supreme Court or by the Privy Council or by the Federal Court or calls for discussion of alternative views. If the question has been settled by the highest court or the general principles to be applied in determining the question are well-settled and the question is merely of the application of those principles, the question will not be a substantial question of law. (***Damjibhai***

***Bijibhai Vasava v Ranchod Bhai Zinabhai AIR 2000 SC 1000, (2000) 3 SCC 22, Surain Singh v Mehenga (1996) 2 SCC 624, (1996) 3 JT 52***

'Substantial question of law', referred to in S. 100 need not be a question of law of general importance. It may even be a question confined to the parties ***(Ratanlal Bansilal v Kishorilal Goenka, AIR 1993 Cal 144***). The High Court was held to have erred in not framing a substantial question of law as required by S. 100, CPC. It could not have interfered with a pure finding of fact (***Teherakhatoon (Deceased) by LRs v Salambin Mohammed (1999) 1 LRI 634***]

## VI. What is a substantial question of law?

The phrase 'substantial question of law' as mentioned in the amended S. 100 of CPC is not defined in the Code. The word substantial, as qualifying 'question of law' means something of substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with something only technical, of no consequence or substance and merely academic. Thus, where the findings of subordinate courts were perverse and not based on evidence on record and resulted from non-application of mind, it was held that substantial question of law can be said to have arisen. (***Ayithi Appalanaidu v Petla Papamma AIR 2011 AP 172, 2011 (5) Andh LD 393)***

Dealing with the expression 'substantial question of law' contained in Art. 183 (1) of the Constitution, the Supreme Court in ***Sir Chunilal Mehta & Sons Ltd v The Century Spinning and Manufacturing Co Ltd, AIR 1962 SC 1314***, whether the question involved was one as regards the interpretation of a managing agency agreement, held that a 'substantial question of law' is one which is of general public importance or which directly and substantially affects the rights of the parties and which have not been finally settled by the Supreme Court, the Privy Council or the Federal Court or which is not free from difficulty or which calls for discussion of alternative views. The Supreme Court observed that the question involved was one of construction of the agreement which was not only one of law but that it was neither simple nor free from doubt and was therefore a substantial question of law.

The Supreme Court also held that consideration of irrelevant facts and non-consideration of relevant fact would give rise to a substantial question of law. Also, reversal of a finding of fact arrived at by the first appellate court ignoring vital documents may also lead to a substantial question of law. (***Abdul Raheem v Karnataka Electricity Board AIR 2008 SC 956***) (Page 462, Mulla)

## VII. Limits on the construction of substantial question of law;

A substantial question of law must be debatable and has not been previously settled by the law of the land. A misconstruction of document or wrong application of a principle of law in construing

a document, gives rise to a question of law. (***Boodireddy Chandraiah v Arigala Laxmi, AIR 2008 SC 380, (2007) 8 SCC 155)*** (Page 462, Mulla)

The jurisdiction of the High Court in terms of S. 100 of the Code is limited. It can interfere with the concurrent findings of two courts if a substantial question of law arises. Thus, in a case where a sale deed executed by a lady was challenged as being vitiated by misrepresentation, undue influence, fraud and collusion on the part of her brother, it was held that whether the respondent, despite the fact that he was the brother of the appellant, was in a dominating position is essentially a question of fact and does not give rise to a substantial question of law. (***Bellachi (Dead) by LR v Pakeeran AIR 2009 SC 3293, (2009) 12 SCC 95)***

If the courts below fail in their duty to appreciate evidence and do not advert to vital evidence, be it oral and documentary, the same would lead to the conclusion that they have committed errors on substantial question of law. Since the first Appellate Court acted on irrelevant material i.e. horoscope, and left out of consideration material that was relevant i.e. school record, it was held that the matter involved a question of law and the second appeal cannot be dismissed on the ground that there was no substantial question of law involved. (***State of Punjab v Mohinder Singh AIR 2005 SC 1568) (Page 462, Mulla)***

## VIII. Letters Patent Appeal;

A judgment passed by one judge in second appeal under S. 100 of the Code or any other provision of a Special Act, no letters patent appeal will lie to the High Court, provided the second appeal was against a decree or order of a district judge, or a subordinate judge or any other judge subject to the superintendence of the High Court, passed in first appeal under S. 96. (***Chander Kanta Sinha v Oriental Insurance Co Ltd (2001) LRI 1251***) (Page 463, Mulla)

## IX. No second appeal lies on the ground of an erroneous finding of fact;

In Durga Chowdhrani v Jawahar Singh, (1891) 17 IA 122, (1891) ILR Cal 23 (PC) the Privy Council held that there is no jurisdiction to entertain a second appeal on the ground of erroneous findings of facts, however gross the error may seem to be, and the Supreme Court has reiterated this view. No doubt, a second appeal lies where there is a substantial error or defect in procedure [ see cl. (c) as it stood before 1976], but an erroneous finding of fact is a different thing from an error or defect in procedure. Where there is no error or defect in procedure, the finding of the first appellate court upon a question of fact is final ‘if that court had before it evidence proper for its consideration in support of the finding’ (***Raja of Pittapur v Secretary of State (1929) 56 IA 223, ILR 52 Mad 538, Ramji v Rao Kishore (1929) 56 IA 280, AIR 1929 PC 190, Ram Gopal v Shamskhaton (1893) ILR 20 Cal 93, Fazal Karim v Maula Baksh (1891) ILR 18 Cal 448. For full list, check page 464 of Mulla***)

…even though the finding is material for the determination of a question not raised in the court below but raised in second appeal. (***Thadvarthi Bapayya v Myneni Pundarikshayya (1946) ILR Mad 648, AIR 1946 Mad 198)***

In ***Ramratan Sukul v Mussanmat Nandu (1892) 19 IA 1,3, 19 Cal 249, 252, 259***, the Judicial Committee said:
"It has now been conclusively settled that the third court, which in this case was the court of the Judicial Commissioner, cannot entertain an appeal upon any question as to the soundness of findings of fact by the second court; if there is evidence to be considered, the decision of the second court, however unsatisfactory it might be if examined, must stand final."

The mere fact that the High Court would have come to a different conclusion upon the documents and evidence placed before the court of first appeal is no ground for a second appeal [***Lakshmi Ammal v Ramachandra 1960 ILR Mad 991, AIR 1960 Mad 568***] This section was enacted for the express purpose of securing some measure of finality in cases where the balance of evidence, verbal and documentary, arose for decision. (***Nafar Chandra Pal v Shukur (1918) 45 IA 183, 189, 197, (1919) ILR 46 Cal 189)***
"*Question of law and of fact are sometimes difficult to disentangle. The proper legal effect of a proved fact is necessarily a question of law. So also is the question of admissibility of evidence and the question whether any evidence has been offered, on one side or the other; but the question whether the fact has been proved, when evidence for and against has been properly admitted, is necessarily a pure question of fact*."

I. In ***Satya Gupta (Smt.) alias Madhu Gupta v. Brijesh Kumar (1998) 6 SCC 423***, in para 16, "*At the outset, we would like to point out that the findings on facts by the lower appellate court as a final court of facts, are based on appreciation of evidence and the same cannot be treated as perverse or based on no evidence. That being the position, we are of the view that the High Court, after reappreciating the evidence and without finding that the conclusions reached by the lower appellate court were not based on the evidence, reversed the conclusions on facts on the ground that the view taken by it was also a possible view on the facts. The High Court, it is well settled, while exercising jurisdiction Under Section 100 Code of Civil Procedure, cannot reverse the findings of the lower appellate court on facts merely on the ground that on the facts found by the lower appellate court another view was possible."*

**X. Question of fact;**

The High Court cannot, in second appeal, interfere with a finding of fact, given by the first appellate court, where the ground of interference is not made out by the plaintiff, either in the

plaint or in evidence (***Ramachandra Pandurang Sonar v Muralidhar Ramchandra Sonar AIR 1990 SC 973)***

A finding that the plaintiff did not make any efforts to pay sale consideration to the defendant is a finding of fact which cannot be interfered with in second appeal. (***Bismillah Begam v Rahmatullah Khan AIR 1998 SC 970)***

The language used in the amended S. 100 specifically incorporated the words 'substantial question of law' which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that the legislature never wanted second appeal to become 'third trial on facts' or 'one more dice in the gamble'. (***Gurdev Kaur v Kaki AIR 2006 SC 1975).***

The basic law pertaining to second appeal as reflected in the under mentioned case law (***Vishnu Prakash v Shella Devi AIR 2001 SC 1861, (201) 4 SCC 729, Kamti Devi v Poshi Ram AIR 2001 SC 2226, (2001) 5 SCC 311, Hamida v Md. Khalil (AIR 2001 SC 2282), Padikal Madappa v CB Kariappa AIR 2001 SC 2695, Mohan Lal v Nihal Singh, AIR 2001 SC 2942***) is that if no substantial question of law would emerge, the findings of the first Appellate Court or concurrent finding of courts below on the question of fact cannot be interfered with in second appeal. Thus in a case, where the plaintiff claimed that he purchased the suit property from one son in whose share it fell, and the defendant claimed that he purchased the same property from another son in whose share it fell, such dispute is a pure question of fact which can be decided on the basis of evidence. Hence, the finding of fact by the Appellate Court that the plaintiff failed to prove his claim, being based on evidence cannot be interfered with in second appeal. (***Christopher Barla v Basudev Naik AIR 2005 SC 1020)***

In another case, the trial court and the first Appellate Court noted that the plaintiff has not been able to produce any deed of title lending direct support to his claim of title and the defendant too has no proof of his title. Civil cases are decided by the degree of probability. Thus, when the plaintiff discharged his burden and the onus lay on the defendant and the courts below arrived at a finding of fact on appreciation of evidence, the finding of fact cannot be disturbed by the High Court by entering into evaluation of evidence afresh. (***RVE Venkatachala Gaunder v Arulmigu Vishwesaraswami & VP Temple AIR 2003 SC 4548, (2003) 8 SCC 752)***

In an appeal, where the lower courts arrived at a finding that the sale deed was without any consideration and that the power of attorney was got executed from plaintiff by the defendant fraudulently and by exercising undue influence, it was held that these being findings of fact cannot be interfered with in second appeal. (***Padma Devi v Soma Devi (Smt) AIR 2011 HP 98***)

## XI. Interference with finding of fact;

Where the lower appellate court has-

a) Not taken into account the essential terms of a document (notice to vacate), and
b) Has also failed to take into account material facts which go against the plaintiff then interference on facts is proper (***Mehrunisa v Vtsham Kumari AIR 1998 SC 427)***

In a suit for declaration of right, title and interest, the trial court disbelieved the genealogical table produced by the plaintiffs, but the lower Appellate Court reversed the finding and held that the plaintiffs has proved their title on the basis of entry in the survey records. It was held that the findings of fact arrived at the lower appellate court cannot be interfered with in the second appeal. (***Shyamlal Gundua v Gola Gundua AIR 2011 Jhar 90***)

If the question to be decided is one of fact it does not involve an issue of law merely because documents have to be construed which are not instruments of title or otherwise the direct foundation of rights but are merely historical documents. (***Midnapur Zemindari Co v Uma Charan (1923) 29 CWN 131, AIR 1923 PC 187)***

## XII. Finding without issue;

II. In a suit for permanent injunction to restrain the defendant from interfering with the plaintiff's possession, the following illegalities were committed by the first appellate court:

a) The finding that the sale deed was invalid, was given without any issue on that point
b) The finding that plaintiff was in possession, was given without evidence

It was held that the High Court was justified in interfering. (***Banarsi Das v Sukhjit Singh AIR 1998 SC 179)***

## XIII. Mixed question of fact and law;

The question whether a redemption suit was filed in respect of all the mortgaged plots or in respect of only a part thereof, is a mixed question of fact and law. An objection that the suit was only in respect of a part of the plots cannot be raised for the first time in the High Court (***Gurucharan Koeri v Biti Shamsunissa AIR 1994 SC 663)***

In a suit for permanent injunction, the questions of law formulated by the High Court in second appeal were not pure questions of law, but mixed question of law and facts. Such as whether there

was oral gift and whether the alleged oral gift was valid. There were no averments in the plaint in respect of any gift, oral or otherwise or about its validity. Therefore the defendant had no opportunity of denying the same in the written statement and consequently there was no issue in respect of them. It was held by the Supreme Court that no amount of evidence or arguments can be looked into in absence of pleadings and issues. The questions which could not have been considered in the suit, could not have been considered in second appeal. (***Anathula Sudhakar v P Buchi Reddy AIR 2008 SC 2023)***

As stated by their Lordships of the Privy Council, the proper effect of a proved fact is essentially a question of law and the High Court in entitled to interfere in second appeal (***Nafar Chandra Pal v Shukur 45 IA 183)***

Discussing the true scope of the above observation, the Supreme Court has pointed out in ***Sri Meenakshi Mills Ltd v Commissioner of Income Tax, AIR 1957 SC 49***, that there is a distinction between a pure question of fact and a mixed question of law and fact and the observation aforesaid had reference to the latter and not the former. Thus, for deciding whether the defendant in a case has acquired title by adverse possession, the court has firstly to find on an appreciation of the evidence what the facts are so far it is a question of fact. It has then to apply the principles of law regarding acquisition of title by adverse possession, and decide whether on the fact established by evidence, the requirements of law are satisfied. That is a question of law.

Summing up the result of the authorities, cited before it in the above case, the Supreme Court stated thus:

1) When the point for determination is a pure question of law such as construction of a statute or document of title, the decision of the Tribunal is open to reference to the court under S. 66 (1)
2) When the point for determination is a mixed question of law and fact, while the finding of the Tribunal on the facts found is final, its decision as to legal effects of those findings is a question of law which can be reviewed by the court.
3) A finding of fact is open to attack under S. 66 (1) as erroneous in law when there is no evidence to support it or it is perverse.
4) When the finding is one of fact, the fact that it is itself an inference from other basic facts will not alter its character as one of fact.

## XIV. Concurrent findings of fact;

Concurrent findings of fact cannot be interfered with in second appeal unless they are perverse (***Samir Kumar Chatterjee v Hirendra Nath Ghosh AIR 1992 Cal 129***)

The High Court (in second appeal) cannot reappreciate the evidence and substitute its own view of the evidence, particularly when the finding of the first appellate court is based on material on the record. (***Navneethammal v Arjun Chetty AIR 1996 SC 3521, 1996 6 SCC 166)*** The trial court and the first appellate court refused to draw an inference on the adoption of a stepson, merely because the stepfather had spent money on his maintenance. It was held that interference in second appeal was not warranted as no material evidence had been ignored. (***Ram Das v Gandibai AIR 1997 SC 1563)***

Where the finding of the first appellate court (reversing the trial court) is based on documents and is not perverse, it cannot be interfered with in second appeal. (***Lakshiram Deb Barma v Prantosh Dhar AIR 1991 Gau 82)***

## XV. Perverse finding;

The High Court may interfere in second appeal (even on a question of fact) if the finding is perverse and unsupported by any evidence on record. Thus, where the question is of the payment of rent for a particular month by money order, a decision by the lower courts that the postal receipt (produced in evidence) did not relate to a particular month would be regarded as perverse if the postal receipt is torn and almost obliterated. (***Adhir Kumar Das v Juthika Sen AIR 1995 Cal 129***)

The Calcutta High Court has held that perversity in respect of finding of a fact, or misconduct in the collection or evaluation of evidence is a legitimate ground for interference in second appeal. Thus, the High Court can interfere if the finding is based on-

a) No evidence, or
b) Surmises or conjectures (***Ratanlal Bansilal v Kishorilal Goenka AIR 1993 Cal 144)***

## XVI. Documents;

A second appeal will not be merely because some portions of the evidence might be contained in a document or documents and the first appellate court has made a mistake as to its meaning. (***Nowbat Singh v Chutter Dharee (1873) 9 WR 222 approved by the Privy Council in Wali Mohammed v Mohammed Baksh (1930) 57 IA 86, AIR 1930 PC 91, Secretary of State v Rameswaram AIR 1934 PC 112)***

It is well-settled that the misconstruction of documents which merely form part of the evidence is not a ground for second appeal (Kameswaramma v Subba Rao AIR 1963 SC 884, Raja Durga Singh v Tholu AIR 1963 SC 361). But a second appeal will lie if the documents, erroneously construed, themselves constitute the foundation of rights claimed. (***Amiruddi v Makkan Lal AIR 1930 PC 83, Jagdeo Singh v Ram Naresh AIR 1935 Oudh 217 (FB)***)

**XVII. Disregard of documents;**

Interference in second appeal, in respect of a finding of possession, is justified where the lower courts have ignored documents which evidence a compromise containing recitals of surrender of possession. (Sundra Naicka Vadiyar v Ramaswamy Ayyar AIR 1994 SC 532) The question whether a statutory presumption has been rebutted is always a question of fact (***Kumeda Prosunna v Secretary of State (1915) 19 CWN 1017, 30 IC 265)***

**XVIII. When interference permissible;**

An appeal will lie if it can be shown that the appellate court has disregarded material evidence (***Bachan Singh v Dhian Das AIR 1974 SC 708***), misdirected itself on a point of law in dealing with the evidence (***Midnapur Zemindari Co v Uma Charan case, Sumitra v Dhannu AIR 1952 Nag 193, Balmukund v Jagannath AIR 1963 Raj 212***), or if there is 'no evidence' to support the finding, or the finding is based on inadmissible evidence (***Goslo Behari De v Purnachandra De AIR 1948 Cal 219***), also where the lower appellate court did not consider the evidence. For, if the appellate court has based its finding on the failure of a party to discharge the onus of proof which has been wrongly held to be incumbent on him, the finding, through a finding of fact, is not based on positive evidence. (***Asoke Chandra Mazumdar v Chota Nagpur Banking Asso Ltd AIR 1948 Pat 247, Jogesh Chandra v Emdad Miya, AIR 1932 PC 28***)

Even when the lower appellate court revises a finding of fact given by the trial court, its decision is not open to attack in second appeal on the ground that 'the judgment of the lower appellate court was not as elaborate as that of the trial judge, or because some of the reasons given by the trial judge had not been expressly reversed by the lower appellate court.' (***Ramachandra v Ramalingam, AIR 1963 SC 302)***

While it is true that in a second appeal a finding of fact even if erroneous will generally not be disturbed, but where it is found that the findings stand vitiated on wrong test and on the basis of assumption and conjectures and resultantly there is an element of perversity involved therein, the High Court will be within its jurisdiction to deal with the issue. (***Kulwant Kaur v Gurdial Singh Mann AIR 2001 SC 1273, (2001) 4 SCC 262)***

When both the lower courts have concurrently erred in not appreciating the oral and documentary evidence properly, the High Court is at liberty to re-appreciate the evidence and record its own conclusion for recording the orders of lower courts. (***Ramlal v Phagua AIR 2006 SC 623)***

Under S. 100 of CPC, the power of the High Court to interfere with the findings of fact is limited, but it may not be limited in a case where the finding of fact had been arrived at upon taking into consideration inadmissible evidence and based on presumptions which could not have been raised. (***UR Virupakshaiah v Sarvamma, AIR 2009 SC 1481)***

If the finding of the subordinate court on facts are contrary to evidence on record and are perverse, such finding can be set aside by the High Court in appeal under S. 100. The High Court cannot shut its eyes to perverse findings of the courts below. Thus, in a case, where the findings of fact arrived at by the lower Appellate Court were contrary to evidence on record and perverse, the High Court was fully justified in setting aside the same. (***Bondar Singh v Nihal Singh AIR 2003 SC 1905)***

On the question of interference in second appeal in cases of concurrent findings the Supreme Court has observed that the general rule is that the High Court will not interfere with concurrent findings of the Courts below, but it is not an absolute rule. Some of the well recognised exceptions are where i) the courts below have ignored material evidence or acted on no evidence; ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or iii) the courts have wrongly cast the burden of proof. When courts refer to 'decision based on no evidence', it not only refers to cases where there is total dearth of evidence, but also refers to any case, where evidence, taken as a whole, is not reasonably capable of supporting the finding. (***Kashmir Singh v Harnam Singh AIR 2008 SC 1749, (2008) 12 SCC 796)***

The High Court is justified in reappraising the evidence in second appeal where the lower court has ignored the weight of evidence. (***Ajab Singh v Shital Puri AIR 1993 A11 138)***

**XIX. A second appeal will lie where question is one of proper inference in law from findings of facts;**

Though a second appeal does not lie from a finding of fact, yet where a 'legal' conclusion is drawn from the finding, a second appeal will lie under clause (a) of the section on the ground that the legal conclusion was erroneous. In ***Ram Gopal v Shamskaton, (1893) ILR 20 Cal 93***, the Lordships of the Privy Council said "The facts found (by the lower Appellate court) need not be questioned. It is the soundness of the conclusions from them that is in question, and this is a matter of law."

**XX. New case in second appeal;**

An appellant should not be allowed to set up a new case in second appeal (***Gopal v Hanumant (1882) ILR 6 Bom 107, Mahomed v Sitaramayyar (1882) ILR 15 Mad 50, Kanhia v Mahim Lal (1888) ILR 10 A11 495, Narinjan Singh v Charon Das AIR 1922 Lah 363***

**XXI. Areas of concern in second appeal;**

In certain cases, no second appeal shall lie and this is defined under Section 102 of CPC: No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees.

The second appeal also does not lie in correcting errors in jurisdiction.

**XXII. Plea not raised or abandoned;**

When the plea is abandoned in lower court, it cannot be raised either in the first appeal or in the second appeal. (***Mahesh Chand v Raj Kumari, AIR 1996 SC 869***) When the courts below came with findings on the basis of the evidence that the landlord *bona fide* required the premises, the tenant for the first time in second appeal cannot take the plea that the landlord inducted a few tenants on the ground floor of the premises immediately before the filing of the eviction suit (***Pal Singh v Sardar Singh, AIR 1989 SC 258)*** When the new question raised in second appeal is a mixed question of law and fact, the party cannot urge such plea in second appeal for the first time (***Pathan Murtaza Khan v Pathan Pir Khan AIR 1993 SC 1750***). When in the first appellate court the plea that on the death of the defendant No. 2 during the first appeal, the first appeal had abated wholly was not raised in the first appeal, the appellant in the second appeal cannot raise that plea. (***Chaya v Bapusaheb (1994) 2 SCC 41***)

**XXIII. Formulation of substantial question of law;**

Section 100 (4) CPC provides that during admission the substantial question of law has to be formulated by the High Court. So, the High Court has the duty in second appeal to formulate the substantial question of law and put the opposite party on notice and give fair and proper opportunity to the point. In the absence of such formulation of substantial question of law to be decided by the High Court in second appeal and hearing of second appeal without formulating such substantial question of law would be illegal (***Khitish v Santosh AIR 1997 SC 2517, Kanhaiyalal v Anup Kumar, (2003) 1 SCC 430)***

So it is clear that interference in second appeal should be based on the formulation of substantial question of law by High Court as required by Section 100 (4), CPC. The High Court can exercise its jurisdiction only on the basis of the substantial question of law which is to be framed at the time of admission of appeal and the second appeal has to be heard and decided only on the basis of such duly framed question of law. So the High Court acquires jurisdiction to decide the second appeal on merits only after the substantial question of law involved in the second appeal is formulated by the High Court at the time of admission of second appeal. The decision of High Court in second appeal without framing such substantial question of law must be set aside. (***Ramavilason v N SS***

***Karayagam AIR 2000 SC 2058, Ishwar Das Jain v Sohanlal AIR 2000 SC 426, Hardev v Jaidev AIR 2000 SC 2058, Gurappa v Hanumanthappa (2003) 10 SCC 281)***

**S. 107- Powers of Appellate Court (Mulla, Page 504-507);**

(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power-
   (a) To determine a case finally;
   (b) To remand a case
   (c) To frame issues and refer them for trial
   (d) To take additional evidence or to require such evidence to be taken

**Sub-section (1)**

**1.** The powers referred to in clauses (a) to (d) are limited by the Rules (Mani Mohan v Ramratan (1916) ILR 43 Cal 48). For Clause (a) see Order 41, rr 24, 33. For clause (b) see Order 41, R. 23, for clause (c) see Order 41, R. 25, for clause (d) see O. 41, rr 27-29.

**2.** Section 107 provides that the appellate court shall have the same powers as are conferred on the original court. The appellate court could determine the case finally by virtue of Clause (a) of sub-section (1) of Section 107. (***State of Punjab v Bakshish Singh (1998) 8 SCC 222)***

**3.** Similarly, the trial court is possessed of the power to inspect any property or thing concerning which any question may arise at any stage of a suit. The appellate court is also, therefore, possessed of the power of inspection of any property or thing by virtue of O. 18, R. 18 and S. 107 CPC read together. (***Rajnarain Rai v Sadhu Rai AIR 1995 A11 351***)

**Scope;**

**4.** The appellate court or the Supreme Court has the power to take suo motu judicial notice and exercise power conferred under S. 105 of the Code [***State of Punjab v Bakshish Singh (1998) 8 SCC 222, AIR 1999 SC 2626, Nani Gopal Paul v T Prasad Singh (1995) 3 SCC 579, AIR 1995 SC 1971***] the word 'prescribed' means prescribed by the rules contained in the First Schedule or made under S. 122 or S. 125 of the Code.

**5.** A High Court brushed aside findings of the trial court in appeal without giving any reason, without any appreciation of documents and without any examination of the contentions of the parties. It was held that the High Court failed to exercise its duties as an appellate court.

The matter was remanded to the High Court. (***State of Tamil Nadu v Kumaraswami AIR 1977 SC 2026)***

**6.** In a second appeal a question was formulated whether the lower Appellate Court was justified in dealing with issues other than those framed by the Trial Court and decided the same in favour of the plaintiff depriving the defendant the opportunity to counter the plaintiff's evidence. When the trial court had not framed any issue regarding adverse possession the First Appellate Court was not justified in recording any finding on that regard. The matter was remitted by the Supreme Court to High Court for fresh consideration. ***(Viswanatha Achari vs Kanakasabapathy AIR 2005 SC 3109, (2005) 6 SCC 56*** (Page 505, Mulla))

## E. CIVIL REVISION

### Section 115. Revision.

(1) 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:

2[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 other 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 proceedings.]

3[(2) 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.

4[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

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.]

**I. Scope;**

Revision means the action of revising especially critical or careful examination on perusal with a view to correcting or improving (***Shankar Ram Chandra Abhyankar v Krishnaji Dattatreya Bapat AIR 1970 SC 1***). Section 115 invests, in all High Courts, what is called revisional jurisdiction. It provides that the High Court may call for the record of any case which has been decided by any court subordinate to such High Court, where no appeal lies, to satisfy itself on three aspects that

1) The order passed by the sub-ordinate court is within its jurisdiction
2) The case is one in which the court ought to exercise jurisdiction, and
3) In exercising jurisdiction, the court has not acted illegally (***Johri Singh v Sukh Pal Singh AIR 1989 SC 2073)***

The scope of Section 115 CPC and the powers of revisional court has been clarified by the Supreme Court as under[14]:

(i) Revision u/s 115 CPC is not maintainable against interlocutory or interim orders.

(ii) Right to appeal is a substantive right but right to revision u/s 115 CPC is not a substantive right.

***(iii)*** No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change, the mode of procedure is altered, the parties are to proceed according to the altered mode without exception unless there is a different stipulation. (***Shiv Shakti Cooperative Housing Society, Nagpur vs. Swaraj Developers & others, AIR 2003 SC 2434.)***

It is only in cases where the subordinate court has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the jurisdiction of the High Court can be properly invoked. (***Manick Chandra Nandy v Debdas Nandy, AIR 1986 SC 446***)

If there is no question of jurisdiction, the decision cannot be corrected by the High Court in the exercise of revisional powers. ***(S S Khanna v FJ Dillon AIR 1964 SC 497***)

The primary object of this section is to prevent the subordinate courts from acting arbitrarily, capriciously and illegally or irregularly in the exercise of their jurisdiction. It clothes the High Court with the powers necessary to see that the proceedings of the subordinate courts are conducted in accordance with the law within the bounds of their jurisdiction and in furtherance of justice. ***(Baldevdas Shiv Lal v Filmistan Distributors (India) Pvt Ltd, AIR 1970 SC 406***)

In the exercise of its revisional powers, it is not the province of the High Court to enter into the merits of the evidence nor can it admit additional evidence. What inference is to be drawn from

[14] http://lawhelpline.in/PDFs/CIVIL_LAWS/REVISIONS_(CIVIL).pdf

the evidence on the record is not for the High Court under S. 115 to decide. (Industrial and Mining Equipment Co Pvt Ltd v NL Kanodia AIR 1986 Del 36) However, where the order is based on a misreading of the pleadings consequent thereto and the court has misdirected itself in passing an order, the court under S. 115 has the power to interfere. (***Melagiriyappa v Tumalappa & Anr, AIR 1996 Kant 150)***

There cannot be any restriction with regard to a proceeding under Articles 226 or 227 and S. 115 CPC when it relates to a proceeding arising out of the order of the Civil Court. Whatever might be the nature of the proceedings it remains a revisional jurisdiction (***Om Rice Mills, Jaspur v Banaras State Bank Ltd, AIR 2000 A11 90***). Further, while exercising revisional jurisdiction, the court can take into consideration subsequent developments specially when such developments go to the root of the litigation and the cause of action. (***Naraindas Nathudas v Tarben Kalimuddin Mulla Fakhri Society, AIR 1998 Guj 12)***

**NORMS**

**II. Nature of revisional jurisdiction;**

The revisional power conferred by this section is limited to keeping the subordinate courts within the bounds of their jurisdiction and it is concerned with jurisdiction and jurisdiction alone involving a refusal to exercise jurisdiction where one exists, exercise of jurisdiction where none exists and finally acting with illegality or material irregularity. Where the question does not relate to the exercise of jurisdiction, the decision cannot be corrected and an error of fact or of law cannot be interfered with in revision. (***SS Khanna v FJ Dillon AIR 1964 SC 497***)

The exercise of revisional jurisdiction by the High Court is discretionary and the High Court is not bound to interfere merely because the conditions laid down in the case are satisfied. An applicant invoking the revisional jurisdiction of the High Court must show not only that there is a jurisdictional error but also that the interests of justice call for interference. (***Brij Gopal Mathur v Kishan Gopal Mathur, AIR 1973 SC 1096***)

Although the High Court can, in revision, correct errors of fact (on legally permissible grounds), the High Court cannot interfere with findings of fact on issues of the credibility of witnesses. (***Bhoolechand v Ray Pee Cee Investments, AIR 1991 SC 2053***). A High Court cannot set aside a concurrent finding of fact by further re-appreciation of evidence. It can interfere with such findings if they are perverse or are marked by a non-application of the mind. (***Masjid Kacha Tank v Tuffail Mohd AIR 1991 SC 453***). A High Court in revision cannot by re-appreciating the evidence, pass an order regranting certain inam lands to one of the parties. (***Kempiaoh v Chikkaboramima AIR 1998 SC 2335)***

**III. Revision u/s 115 CPC not a substantive right**;

It is well-settled position in law that the right of appeal is a substantive right but there is no substantive right to file revision u/s 115 CPC. (***Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh, (2014) 9 SCC 78 (Five-Judge Bench) (ii) Shiv Shakti Cooperative Housing Society, Nagpur Vs. Swaraj Developers & others, AIR 2003 SC 2434***)

**IV. Revision u/s 115 CPC is not maintainable against an order which is interim in nature or which does not finally decide the lis;**

Revision u/s 115 CPC is not maintainable against an order which is interim in nature or which does not finally decide the lis. (***Gayatri Debi vs. Shashi Pal Singh, 2005 (2) AWC 1072, Shiv Shakti Coop. Housing Society Nagpur vs. M/s. Swaraj Developers, 2003 (2) ARC 1, Surya Dev Rai Vs. Ram Chander Rai, AIR 2003 SC 3044)***

**V. Revisional jurisdiction- Conditions;**

The revisional powers of the High Court under this section can only be invoked in cases in which the following conditions are satisfied:

1) A case must have been decided
2) The court which has decided the case must be a court subordinate to the High Court;
3) The order should not be appealable one; and
4) The subordinate must have: (***Mahabir Prasad Singh v Jacks Aviation Pvt Ltd, AIR 1999 SC 287, Chaube Jagdish Prasad v Ganga Prasad, AIR 1959 SC 492***)

    i. Exercised a jurisdiction not vested in it by law, or
    ii. Failed to exercise a jurisdiction vested in it by law, or
    iii. Acted in the exercise of its jurisdiction illegally or with material irregularity

The High Court has no power to interfere in revision under this section except in the three cases mentioned above. Further, in the exercise of revisional powers, it is not the province of the High Court to enter into the merits of the evidence; it has only to see whether the requirements of the law have been duly and properly obeyed by the court whose order is the subject of revision and whether the irregularity as to failure or exercise of jurisdiction is such as to justify an interference with the order (***Dinshaw Iron Works v Miakhan Adamji, AIR 1943 Bom 42***)

If the High Court finds that the external conditions of jurisdiction, of investigation and of command have been satisfied by the inferior court, it should not substitute its own appreciation of evidence

or its own judgment thereon, for the determination of the inferior court, in any matter committed by the legislature, to the discretion of the inferior court. (***Shiva Nathji v Joma (1883) ILR 7 Bom 341***). Errors having no relation to jurisdiction cannot be made a ground for revision (***DLF Housing Co v Sarup Singh AIR 1971 SC 2324)***

## VI. Grounds for revisional jurisdiction;

When can a revisional court in exercise of its powers u/s 115 CPC interfere with the order of the lower court? In the present case, executing court had passed an order deciding the question as to who was the legal representative of the deceased decree holder. High Court in exercise of its revisional power u/s 115 CPC set aside the order of the executing court. The Hon'ble Supreme Court set aside the order of the High Court by holding that in addition to the nature of proceedings to implead the legal representative to execute the decree, we find that none of the tests laid down in Section 115 of the CPC were satisfied by the High Court so as to set aside the order passed by the executing court. The Supreme Court further held that the High Court in exercise of its revisional jurisdiction u/s 115 CPC can interfere with the order of the subordinate court only when the subordinate court:

- ***(i)*** had exercised its jurisdiction not vested in it by law, or
- ***(ii)*** had failed to exercise its jurisdiction so vested, or
- ***(iii)*** had acted in exercise of jurisdiction illegally, or
- ***(iv)*** had acted with material irregularity.
- ***(v)*** The mere fact that the revisional court had a different view on the same facts would not confer jurisdiction on it to interfere with an order passed by the revisional court/executing court. Consequently, the order passed by the High Court was set aside and that of the executing court was restored by the Supreme Court. See: ***Varadarajan Versus Kanakavalli and Others, (2020) 11 SCC 598.***

## VII. Exercise by court of jurisdiction not vested in it by law;

If a court assumes jurisdiction which, by reason of the pecuniary or territorial limits of the jurisdiction of such court or by reason of the subject matter of the suit or other proceedings instituted in it, is not vested in it by law, the High Court to which such court is subordinate has the power under clause (a) to interfere in revision under this section. It will not, however, do so unless the facts from which the absence of jurisdiction may be inferred, are patent upon the face of the record. (***Mihir Ali v Muhammad Husein (1892) ILR 14 A11 413***).

Assumption of jurisdiction by a subordinate court, which it does not possess, by misconstruing statutory provisions, or by wrongly assuming existence of preliminary or collateral facts which do not exist (***Shrisht Dhawan v Shaw Boos AIR 1992 SC 1555***) are instances of the exercise of jurisdiction not vested by law. Where a civil judge exercised jurisdiction not vested in him by a statute and violated the procedure laid down by the statute and committed an illegality in the

exercise of its jurisdiction, the High Court must rectify the error by the exercise of its revisional jurisdiction (***Chandrika Singh v Raja Vishwanath Pratap Singh, (1992) 3 SCC 90***)

**VIII. Failure to exercise jurisdiction;**

Where a court having jurisdiction to act in a matter declines jurisdiction, clause (b) applies and when a court refuses to exercise jurisdiction vested in it by law under a misapprehension of the law or an erroneous construction of a statute, or misconstruction of a document, e.g. reference to arbitration, the High Court will interfere in revision. (***State of MP v Azad Bharat Finance Co AIR 1967 MP 276, Chaube Jagdish Prasad v Ganga Prasad AIR 1959 SC 492, etc. page 530, Mulla)***

The principle is that once a court rightly assumes jurisdiction, it does not exercise its jurisdiction illegally or with material irregularity simply because it decides a question of law or of fact erroneously, but if a question of jurisdiction is involved in its conclusion of fact or law, then the High Court can interfere in the event of such conclusion being erroneous, because it would amount to illegal assumption or exercise of jurisdiction. (***Kamani Devi v Sir Rameshwar Singh, AIR 1946 Pat 316, Mahadeo Gopal v Hari Woman AIR 1945 Bom 336, Jey Chand v Kamalaksha Chowdhury, AIR 1949 PC 239)***

Thus, where a court has jurisdiction:

a) To accept a plaint (***Zamiran v Fateh Ali (1905) ILR 32 Cal 1463, Badami Kaur v Dinie Rai (1888) ILR A11 8, Mukundi Lal v Elahi Abdul AIR 1934 A11 44***)
b) To accept one application (***Gunnerbinnersa v Gopendra AIR 1936 Cal 572***)
c) To execute a decree (***Sharmrao v Niloji (1886) ILR 10 Bom 200, Asiruddin v Ram Sakhi, AIR 1925 Cal 679***)
***d)*** To review its judgment (***Akbarkhan v Muhammad (1909) ILR 31 A11 610)***

But refused to do so on the ground that it has no jurisdiction, the High Court will interfere under this section.

**IX. Refusal;**

In a suit by a tenant for permanent injunction to prevent the landlord from evicting him, the trial court granted the temporary injunction. But, on appeal, the court of appeal refused to confirm it. It was held that the appellate court had refused to exercise jurisdiction and its order was subject to revision (***Shakuntala v Hira Nand Sharma AIR 1986 A11 27***)

**X. Where a court in the exercise of its jurisdiction has acted illegally or with material irregularity;**

Clause (c) of the section contemplates cases other than those referred to in clauses (a) and (b). This clause clearly excludes clause (b), for a court cannot refuse to exercise its jurisdiction and in the exercise of it, acts with material irregularity. (***Basaratulla v Reazuddin AIR 1926 Cal 773)***

The clause refers to cases where the court having jurisdiction and exercising it has acted illegally or with material irregularity in the exercise of such jurisdiction. (***Kristamma v Chapa (1894) ILR 17 Mad 410***). The words illegally and material irregularity have not been defined in the Code. However, they do not cover the conclusions recorded by a subordinate court either of law or of fact not involving jurisdiction (DLF Housing & Construction Co Pvt Ltd v Sarup Singh, AIR 1971 SC 2324) but the manner in which it is reached. (Ram Sarup v Shikhar Chand, AIR 1961 A11 221 (FB)) The errors contemplated by this provision relate to material defects of procedure. (***Kesherdeo Chamria v Radha Kissen Chamria AIR 1953 SC 23)***

Such errors may relate to the breach of some provisions of law or to material defects of procedure affecting the ultimate decision. (DLF Housing supra) The words, acted in the exercise of its jurisdiction illegally or with material irregularity, have given rise to a conflict of decisions. It is, therefore, best first to state how much is settled law, and then to deal with the various interpretations put on the words illegally and with material irregularity by the various High Courts.

An order passed by an Executing Court is revisable on limited grounds where it relates to appreciation of evidence on the basis of material brought on record. Thus, where the High Court does not find that the Executing Court committed any illegality or material irregularity in passing the order, the Supreme Court held that the High Court exceeded its jurisdiction by concluding without cogent or sufficient reasons that the finding of the Executing Court was factually incorrect (***Khazan Singh v Gurbhajan Singh, AIR 2007 SC 2941***)

## XI. What is illegality or material irregularity?

Amir Hassan Khan's case (***Amir Hassan Khan v Sheo Prakash Singh (1855) ILR 11 Cal 6***) decides what is not an illegality or material irregularity. What is it, then, which does constitute an illegality or material irregularity within the meaning of this section? The courts have taken Amir Hassan Khan's case as the key to the solution of this question; but as different judges have put different interpretations upon the case, there are many conflicting decisions as to the meaning of the words, of which the following are the leading examples:

The words acted in the exercise of its jurisdiction illegally or with material irregularity, refer only to an error of jurisdiction, and apply only to cases of the kind contemplated by clauses (a) and (b) of this section ***(Magni Ram v Jiwa Lal, (1885)7 A11 336, Badami Kaur v Dinu Rai (1886) ILR 8 A11 111, Indubala v Lakshmi Narayan 38 CWN 1146***)

The words refer to errors of procedure only as distinguished from errors of law (***Kristamma v Chapa supra***). This view proceeds mainly on the word acted.

The words apply to cases where there is a wilful disregard or conscious violation by a judge of a rule of law or procedure (***Shiva v Joma, (1883) ILR 7 Bom 341, Kristamma (supra), Motibhai v Ranchodbhai (AIR 1935 Bom 222))***

The words apply to cases where the decision complained of is vitiated by a gross and palpable error. (***Peram Kistama Nayudu v Sankarayya Nayudu, AIR 1945 Mad 278, Mohunt v Khetter Moni Dassi (1896) 1 CWN 617, Venkubai v Lakshman (1888) ILR 12 Bom 617, Gulabchand v Kabiruddin, AIR 1931 Cal 2). This view runs counter to the decisions of the Privy Council in Balakrishna v Vasudeva, (1917) ILR 40 Mad 793 and Venkatagiri v Hindu Religious Endowments Board, Madras, AIR 1949 PC 156***)

The words acted illegally do not merely imply the committing of an error of procedure such as the expression acted with material irregularity does. It indicates a breach of law standing much higher than a minor aberration.

Where the court decides a case without considering the evidence on record (***Kochrabhai Ishwarbhai Patel v Gopalbhai C Patel AIR 1975 SC 123)***, does not apply its mind to the facts and circumstances of the case (***Ajantha Transports v TK Transports AIR 1975 SC 123***), decides a case in the absence of the party or without giving an opportunity of being heard to the party whose rights are adversely affected by such decision (***Hardeva v Ismail AIR 1970 Raj 167 (FB***)), frames issues and wrongly places the burden of proof (***SS Khanna v FJ Dillon AIR 1964 SC 497***), acts in violation of the provisions of the Code by holding an Act of Parliament ultra vires (***Delhi Financial Corpn v Ram Pershad AIR 1973 Del 28***) records a finding of fact, after having ignored the material on record on illegal grounds (***AP Nagaraj v VR Krishna AIR 1996 Kant 202***) are instances of the court exercising jurisdiction illegally or with material irregularity.

Meaning of words "illegally" and "material irregularity" occurring in Section 115 CPC: The words "illegally" and "material irregularity" do not cover either errors of fact or law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law or fact after the formalities which the law prescribes have been complied with. (***Ngaitlang Dhar Versus Panna Pragati Infrastructure Private Limited and Another, (2022) 6 SCC172 (Para 34).)***

## XII. Section 115 and powers under Articles 226 and 227;

Section 115 is essentially a source of power for the High Court to supervise the subordinate courts. It does not in any way confer a right on a litigant aggrieved by any order of the subordinate court to approach the High Court. The scope of making a revision under Section 115 is not linked with a substantive right. (***Shiv Shakti Co-Op Housing Society v Swaraj Developers AIR 2003 SC 2434***)

It is the settled position of law that revision application against an interlocutory order is not maintainable. But remedy under Article 227 of the Constitution is available. Whether the court will exercise the power or not, that is within the discretion of the court. However, in a proper case where the order of the subordinate court is perverse or beyond jurisdiction, the court should

exercise jurisdiction under Article 227 of the Constitution (***Bharati Das v Ranjit Kumar Das AIR 2009 Gau 23)***

It has been held by the Supreme Court that since civil revision is not maintainable against an interlocutory order, the High Court, in appropriate cases, can permit or suo motu convert the same into an application under Article 227 of the Constitution (***Anil Kak v Municipal Corporation, Indore, AIR 2007 SC 1130)***

The powers under Section 115 of the Code and power under Article 227 of the Constitution are quite distinct and different and are not interchangeable. Thus, when there is a remedy available under Section 115 CPC, then the court should not exercise its power under Article 227 of the Constitution unless it is an exceptional case. (***Nimai Kar v Bishnupada Saha AIR 2011 Gau 1***)

**XIII. 'In which no Appeal lies';**

The High Court cannot act under this section in any case in which an appeal lies to that court. (***Niaz Ahmed v Phul Kunwar, AIR 1932 A11 336, Brown v Hanson, AIR 1933 Bom 185***) Does a revision lie where an appeal lies against the decision, not directly to the High Court, but to a subordinate court, and a second appeal lies to the High Court against the decision of that court? On this question there was a conflict of judicial opinion turning on the interpretation of the words appeal lies thereto. One view is that a revision is barred only when an appeal lies directly to the High Court, and the other view is that it would be barred even if no appeal directly lies to the High Court, if the matter can come up before it in second appeal. The controversy has now been set at rest by the decision of the Supreme Court in SS Khanna v FJ Dillon, wherein it was observed:

"If an appeal lies against the adjudication directly to the High Court, or to another Court from the decision of which an appeal lies to the High Court, it has no power to exercise its revisional jurisdiction but where the decision itself is not appealable to the High Court directly or indirectly, exercise of the revisional jurisdiction by the High Court would not be deemed excluded."

In this view, a revision would be barred when there is an appeal to the High Court whether direct and immediate or indirect or mediate.

An order against which an appeal lies, either to the High Court or any court subordinate thereto, is not revisable. (State of Tripura v Sajal Kanti Sengupta AIR 1982 Gau 76) Where an order of a trial court is annulled by the High Court and the High Court's order is allowed to become final, subsequent revision against that order is not permissible. (***S K Saldi v General Manager, UP State Sugar Corpn Ltd AIR 1997 SC 2182)***

Merely because an appeal lies from the final judgment, it cannot be said that revision does not lie against an order passed during the course of the suit. (***Mohant Som Prakash v Udasin Panchayati Akhara Bara AIR 1983 Pat 35)***

**XIV. Error of law or fact;**

An error of fact or of law cannot be interfered with in revision. (***SS Khanna v FJ Dillon AIR 1964 SC 497***) The decision of the subordinate court on all questions of fact and law not touching the jurisdiction, is final and not open to challenge in revision. (***M K Palianappa Chettiar v A Penuswami Pillai (1970) 2 SCC 290)***

However, if there is a jurisdictional error on the part of the subordinate court, the High Court has the power to interfere in revision. The relevant provision in the Code applies to jurisdiction alone and is not directed against a conclusion of law or fact in which the question of jurisdiction is not involved. However, it may be that a point of law may also give rise to a question of jurisdiction, for example, the plea of limitation or *res judicata* which have the effect of ouster of jurisdiction of the court, and an erroneous decision on such issues would be subject to the revisional jurisdiction of the High Court. (***Pandurang Dhondi Changle v Maruti Jadhav AIR 1966 SC 153)***

**XV. Finding of fact based on a wrong interpretation of the law;**

A concurrent finding of fact based on a wrong interpretation of the law can be interfered with in revision, e.g. a finding that the defendant had no sufficient ground for non-appearance (***State of West Bengal v Bimal Kumar AIR 1979 Cal 399)***

**XVI. Revisional court can interfere with the finding of fact u/s 115 CPC only when the same is perverse & arbitrary;**

U/s 115 CPC, the revisional court cannot re-appreciate the evidence and cannot set aside the findings of the court below by taking a different view of the evidence. Revisional court u/s 115 CPC cannot exercise its powers as an appellate court to re-appreciate or re-assess evidence for coming to different findings of fact. The revisional court is empowered to interfere with the findings of fact if the findings are perverse or there has been non-appreciation or non-consideration of the material evidence on record by the court below. Simply because another view of the evidence may be taken is no ground for the revisional court to interfere in its revisional jurisdiction. (***Kasthuri Radhakrishnan Vs. M. Chinniyan, AIR 2016 SC 609, S.F. Engineer Vs. Metal Box India Ltd., (2014) 6 SCC 780, Masjid Kacha Tank, Nahan vs. Tuffail Mohammed, AIR 1991 SC 455***)

**XVII. Revisional Court's approach to evidence;**

Where the question is of interference with concurrent findings of fact as to the landlord's *bona fide* requirement (in respect of premises rented out by him) the revisional court should consider and discuss the evidence. Merely stating that there was evidence to show the landlord's *bona fide* requirement is not sufficient. (***K Urmila v Ram Kumar Verma AIR 1998 SC 1188***)

Revisional court cannot re-appreciate evidence u/s 115 CPC particularly when the lower court has not committed any jurisdictional error or breach of law in appreciating the evidence on record. Where there is no legal infirmity in the findings of fact recorded by the lower court, the revisional court u/s 115 CPC cannot re-assess the evidence. (***Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh, (2014) 9 SCC 78 (Five-Judge Bench), Bhanwarlal Dugar vs. Bridhichand Pannalal, 2010 (2) ARC 730 (SC), N. Eswari vs. K. Swaraiya Lakshmi, 2009 (6) Supreme 572, P.T. Thomas vs. Thomas Job, 2005(6) SCC 478, Gurdial Singh vs. Raj Kumar Aneja, AIR 2002 SC 1003, Mudigonda Chandra Mouli Sastry vs. Bhimanepalli Bikshalu, (1999) 7 SCC 66, Sri Kempaiah vs. Smt. Chikkaboramma and others, AIR 1998 SC 3335, Ram Avtar vs. Ram Dhani, AIR 1997 SC 107, Rukmini Amma vs. Kallyani Sulochana, AIR 1993 SC 1616, Masjid Kacha Tank, Nahan vs. Tuffail Mohammed, AIR 1991 SC 455***)

Simply because another view of the evidence laid before the lower court may be taken, is no ground for the revisional court u/s 115 CPC to interfere with the findings of facts recorded by the lower court. (***Masjid Kacha Tank Nahan vs. Tuffail Mohammed, AIR 1991 SC 455***)

**XVIII. Difference between revisional and appellate jurisdiction;**

Where both expressions "appeal" and "revision" are employed in a statute, obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal" and "revision" when used in one statute conferring appellate power and revisional power is not without purpose and significance. Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and so also of a "revision". If that were so, the revisional power would become co-extensive with that of the trial court or the subordinate tribunal which is never the case. See: ***Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh, (2014) 9 SCC 78 (Five-Judge Bench).*** Revisional jurisdiction in effect and substance is an appellate jurisdiction. But it cannot be equated with a full-fledged appeal. (***G.L. Vijain vs. K. Shankar, AIR 2007 SC 1103, Narinder Mohan Arya vs. United India Insurance Co. Ltd., (2006) 4 SCC 713, Chandrika Prasad vs. Umesh Kumar Verma, (2002) 1 SCC 531)***

**XIX. Revisional Court not to pass ad interim injunction u/o 39, Rule 1 & 2 CPC;**

The power to make interim order is except where it is specifically taken away by the statute implicit in the power to make a final order. It is exercised by the authority who has to make the final order or an authority exercising appellate or revisional jurisdiction against an order granting or refusing an interim order like one u/o 39, rules 1 & 2 CPC. The exercise of the power implies that the authority seized of the proceedings in which such an order is made will eventually pass a final order, the interim order serving only as a step in the aid of such final order. The law does not permit the making of an interim order by one authority or court pending adjudication of the dispute by another. (***L.V. Ashok Kumar Lingala vs. State of Karnataka, AIR 2012 SC 53)***

**XX. Extent of powers of revisional court u/s 115 CPC while examining the impugned order**;

Where the trial court had dismissed the suit on the ground of non-payment of costs u/s 35-B CPC and on revision being filed by the plaintiff u/s 115 CPC, the High Court as revisional court held that the suit based on the claim of ownership of property by adverse possession was not maintainable, the said order of the High Court passed in revision was set aside by the Hon'ble Supreme Court and the matter was remanded to the High Court for fresh disposal by observing that the High Court as revisional court should have examined the ground of dismissal of suit by the trial court and should not have taken the view that the suit itself was not maintainable before the trial court. A revisional court should examine only the grounds/determination of issues based on which court below had passed the order impugned in revision. (***Jhau Lal Vs. Mohan Lal, (2013) 9 SCC 446.)***

**XXI. Revisional order must be speaking**;

A revisional order or any other judicial or quasi-judicial order must be reasoned and speaking. (***State of Rajasthan vs. Rohitas, 2008 (61) ACC 678, M.M. RDA, officer's Association vs. Mumbai RDA, 2005 (1) SCJ 126, Chandrika Prasad Yadav vs. State of Bihar, (2004) 6 SCC 331, Cyril Lasrado vs. Juliana Maria Lasrado, (2004) 7 SCC 431, Chairman, & M.D., UCO Bank vs. P.C. Kakkar, (2003) 4 SCC 364, Raj Kishore Jha vs. State of Bihar, 2003(47) ACC 1068, Kaushalya Devi Vohra vs. Mohinder Lal Gupta, (2000) 9 SCC 417, Harbans Sharma vs. Smt. Pritam Kaur, (1982) 3 SCC 386)***

**XXII. Areas of concern within revisional jurisdiction;**

Are the powers of the High Court in revision available for correction of the gross errors of law, if the result of those errors vitally affects the case?

The powers of the High Court in revision are not available for correction of errors of law, however gross those errors may be, and whatever may be the result of those errors on the merits of the case.

This power of the High Court is only available where the High Court could legitimately hold that the court below has exceeded its jurisdiction, or has refrained from exercising a jurisdiction vested in it, or it acted illegally or with material irregularity in the exercise of that jurisdiction, namely committed such an error of procedure a mandatory procedure and the error had resulted in failure of justice or some such thing.

The High Court at Allahabad while enunciating the above principles went to the length of holding in ***Sheo Kumar Dwiwedi v. Shri Thakur Ji Maharaj, (1957) A.L.J. 536***, that where possibly the court below committed an error in regard to its view of what was formal defect within the meaning of Rule 1 of Order 23 (relating to withdrawal of suit or abandonment of part of claim), or an error in regard to what could be deemed sufficient grounds within the meaning of rule 1 (3) (b) of Order

23 of the Code of Civil Procedure. The error was at best an error of law and not an error that in any manner affected the jurisdiction of that court to make or refuses to make an order which that Court could under the provisions of Order 23, and therefore the revisional jurisdiction could not be exercised.[15]

**XXIII. Divergent findings on fact;**

"Merely because the High Court refers to certain factual aspects in the case to raise and conclude on the question of law, the same does not mean that the factual aspect and evidence has been reappreciated."

"When such divergent findings on fact were available before the High Court in an appeal under Section 100 CPC though reappreciation of the evidence was not permissible, except when it is perverse, but it was certainly open for the High Court to take note of the case pleaded, evidence tendered, as also the findings recorded by the two courts which was at variance with each other and one of the views taken by the courts below was required to be approved." (Balasubramanian v. M. Arockiasamy, 2021 SCC OnLine SC 655)

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[15] https://www.legalserviceindia.com/legal/article-1826-revisional-jurisdiction-of-high-court-section-115-code-of-civil-procedure.html#:~:text=Section%20115%20applies%20to%20jurisdiction,an%20illegality%20or%20material%20irregularity.