FULL BENCH

*Before Mehar Singh, Prem Chand Pandit and P. D. Sharma, JJ.*

GURDIP KAUR,—*Appellant.*

*versus*

GHAMAND SINGH,—*Respondent.*

**Regular First Appeal No. 176 of 1961.**

1964

July, 28th.

*Hindu Adoptions and Maintenance Act (LXXVIII of 1956)—S. 19 (2)—"Coparcenary property"—Meaning of.*

*Held*, by majority (per Pandit and Sharma, JJ.)—

That the term "co-parcenary property" occurring in section 19(2) of the Hindu Adoptions and Maintenance Act, 1956, means the property which consists of ancestral property, or joint acquisitions, or thrown into the common stock and accretions to such property.

*Held*, (per Mehar Singh, J.)—

The expression "co-parcenary property" in sub-section (2) of section 19 of the Hindu Adoptions and Maintenance Act, 1956, has the meaning and scope as that expression is used in Mitakshara and that it only extends to 'ancestral property', which is coparcenary property on account of its being ancestral according to the Mitakshara,

and it does not apply to 'ancestral property' as the expression is understood in Punjab Customary Law.

*Case referred by a Division Bench consisting of the Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice H. R. Khanna on 9th December, 1963, to a Full Bench for decision on account of an important question of law involved in the case. The Full Bench consisting of the Hon'ble Mr. Justice Mehar Singh, the Hon'ble Mr. Justice P. C. Pandit and the Hon'ble Mr. Justice P. D. Sharma, after deciding the question of law referred to them, returned the case to the Division Bench, on 28th July, 1964.*

*Regular First Appeal from the decree of the Court of Shri Aftab Singh Bakshi, Sub-Judge, 1st Class, Faridkot, dated 5th April, 1961, dismissing the suit of the plaintiff and leaving the parties to bear their own costs.*

K. C. PURI, J. K. SHARMA, ADVOCATES, for the Appellant.

D. S. NEHRA, S. P. GOYAL AND K. S. NEHRA, ADVOCATES, for the Respondent.

ORDER OF THE FULL BENCH

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P. C. PANDIT J.—The question of law referred to the Full Bench for decision is—

> "Whether the expression 'co-parcenary property' in section 19(2) of Act 78 of 1956 applies to ancestral property as that expression is understood under custom as it is followed by the tribe of the parties, that is to say, Jats in this State?"

During the course of arguments, however, it was agreed that the question should be re-framed as under—

> "What is the meaning of the term 'Co-parcenary property' occurring in section 19(2) of the Hindu Adoptions and Maintenance Act, 1956 ?"

This reference has arisen in the following circumstances:—

Smt. Gurdip Kaur filed a suit against her father-in-law, Ghumand Singh, for maintenance at the rate of Rs. 100 per mensem. Admittedly, she is the widow of a

pre-deceased son (Harnek Singh) of Ghumand Singh and the claim was being made as the widowed daughter-in-law. She also claimed Rs. 4,350 as arrears of maintenance. Her allegations were that Ghumand Singh possessed both ancestral property of considerable value and after the death of her husband she was paid maintenance allowance at the rate of Rs. 100 per mensem for some period and then this allowance was stopped.

The case of Ghumand Singh on the other hand, was that he had no ancestral land with him and Smt. Gurdip Kaur was not entitled to any maintenance allowance. According to the agricultural custom, which governed the parties, she should live in his house as his daughter-in-law and he was ready to support her like other members of the family.

On the pleadings of the parties, the trial Court framed the following issues:—

(1) Whether the applicant is unable to maintain herself ?

(2) If issue 1 is proved, is she not entitled to maintenance for reasons stated in paragraph 8 of the written statement (a paragraph in which the respondent has stated that the appellant, according to the Agricultural custom, should live in his house as his daughter-in-law and maintain herhelf) ?

(3) Relief and against what property ?

The learned Judge came to the conclusion that there was nothing on the record to show that she had any property or any other independent source of income out of which she could maintain herself. On issue No. 2, the learned Judge found that the plaintiff had not pleaded any custom for the grant of maintenance by the father-in-law and her claim was under section 19 of the Hindu Adoptions and Maintenance Act (78 of 1956) (hereinafter referred to as the Act). According to the provisions of this section, the father-in-law could be burdened with the maintenance of her widowed-daughter-in-law, only if there was in his

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possession any co-parcenary property from which he had sufficient means to maintain her and the daughter-in-law had not obtained any share out of this property. The learned Judge further found that the defendant was not possessed of any co-parcenary property, which, according to him, was quite distinct from ancestral property as known to Customary Law, by which the parties were governed. Under these circumstances, the plaintiff was not entitled to any maintenance out of the ancestral property in the hands of the defendant and the learned Judge, accordingly, dismissed her suit.

Aggrieved by this decision, Smt. Gurdip Kaur came in appeal to this Court. Her appeal was heard by Mehar Singh and Khanna, JJ., who doubted a Bench decision of this Court in *Angat Singh* v. *Smt. Dhan Kaur*. Regular First Appeal No. 16 of 1961, decided by Dua and Jindra Lal, JJ., on 9th October, 1963, where while interpreting the word "co-parcenary property" in section 19 of the Act, it was held that it included ancestral property as that term was understood in the Punjab Customary Law. This led to the above-mentioned reference.

It is conceded that after the enforcement of the Hindu Adoptions and Maintenance Act, 1956, the maintenance suit of such a kind can be brought only under the provisions of section 19 of this Act. It is also conceded, as is clear from the provision of this Act as well, that the same applies to the Hindus, Buddhists, Jains, Sikhs, etc. By virtue of the provision of section 4 of this Act, any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act. It is, therefore, clear that when a case for maintenance is now brought in Courts and provision for such maintenance has been made in this Act, then we are not to look to the fact whether the parties are governed by Hindu law or custom, because the provisions of this Act override the old Hindu law and custom, as the case may be. Section 19 runs thus—

"S.19 (1) A Hindu wife, whether married before or after the commencement of this Act, shall be

entitled to be maintained after the death of her husband by her father-in-law ;

Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance—

(a) from the estate of her husband or her father or mother, or

(b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from any co-parcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the remarriage of the daughter-in-law."

According to the provisions of sub-section (2) of this section, a father-in-law is bound to maintain her widowed-daughter-in-law, if he has got any co-parcenary property in his possession, out of which the daughter-in-law has not obtained any share. The question, therefore, arises as to what is the meaning of the expression "co-parcenary property" occurring in this sub-section. It is common ground that this term has not been defined in the Act or in the General Clauses Act. In the absence of that, we have to find out as to what was the intention of the Legislature while using this expression. At the time of the passing of the Act, the Legislature fully knew the meaning of the expression 'co-parcenary property', which is a technical term and occurred very frequently in the Hindu Law. There are two Schools of Hindu Law—Mitakshra and Dayabhaga. According to the former, co-parcenary property is synonymous with joint family property. The Joint family property may be divided according to the source from which it comes, into — (1) ancestral property and (2) separate property of co-parceners thrown into the common co-parcenary stock. Property jointly acquired by the members of a joint family with the aid of ancestral property

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is joint family property. Property jointly acquired by the members of a joint family without the aid of ancestral property may or may not be joint family property, whether it is so or not is a question of fact in each case (*vide* Para 220 of Principles of Hindu Law by D. F. Mulla, 12th Edition). As under the Mitakshra Law, so under the Dayabhaga law, co-parcenary property consists of ancestral property, or of joint acquisitions or of property thrown into common stock and accretions to such property,—(*vide* Para 278 of the Principles of Hindu Law by D. F. Mulla, 12th Edition). It would thus be seen that the definition of 'co-parcenary property' is the same under both the Schools of Hindu Law, even though their incidents are somewhat different. In view of the fact that this expression, which has become a term of art, existed in the Hindu law and has been defined there in unequivocal and clear terms, there is no necessity of taking recourse to its dictionary meaning. Even the counsel for both parties have not argued that the dictionary meaning should be imported. Applying the definition as given in Hindu law, it means that the 'co-parcenary property' consists of (1) ancestral property, (2) joint acquisition, (3) property thrown into the common stock and (4) accretions to such property. The intention of the Legislature while using the term 'co-parcenary property' in section 19(2) of the Act was also to the same effect, because their object was to give maintenance to the widowed daughter-in-law out of such property. This term cannot be limited to the 'ancestral property' alone, because in a case where the father-in-law has no ancestral property, but is in possession of the property which was jointly acquired by him and his pre-deceased son, the widowed daughter-in-law cannot be deprived of her maintenance and she should get the same out of the joint property. Even otherwise it is the moral obligation of the father-in-law to maintain her widowed daughter-in-law, who cannot maintain herself. This moral obligation has now been turned into a legal obligation. There is no manner of doubt that this Act had been framed with a view to confer much larger rights on women than they had hitherto been enjoying. Certain other Acts, e.g., the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, were also

framed with this very object in view. Under these circumstances, a liberal interpretation in favour of the women should be given while construing the provisions of these Acts. An argument was raised that in cases governed by Dayabhaga School of Hindu Law, a 'co-parcenary' never came into existence between a father and his sons till the death of the former and the ancestral property in the hands of the father could never be called co-parcenary property, because he could dispose it of in any manner be liked. There is a fallacy in this argument, because the incidents of the Dayabhaga and Mitakshra Schools of Hindu Law are not to be imported while construing the provisions of section 19 of the Act. It is only the definition of co-parcenary property which has been brought in in order to find out the intention of the Legislature. The moment certain property answers this description and is in possession of the father-in-law, he is liable for the maintenance of his widowed daughter-in-law, provided of course, she has not obtained any share out of the same. Another argument canvassed by the learned counsel for the respondent was that "joint Hindu family co-parcenary" was unknown to parties governed by the Customary law and that being so there could never be any co-parcenary property in the possession of the father-in-law, who was governed by custom and that the 'ancestral property' as understood under the Customary law was quite distinct from the one under the Hindu Law. This argument, again suffers from an infirmity, namely, that it ignores the fact that after the coming into force of this Act, custom ceased to exist so far as this particular matter was concerned. The definition of "co-parcenary property" as given above, fully applies to the parties who are governed by custom as well. "Ancestral property" has been defined in Hindu law as the property inherited from the father, father's father or father's father's father,—(*vide* Paras 223 and 276 of the Principles of Hindu law by D.F. Mulla, 12th Edition). In order to determine whether a particular property in possession of the father-in-law is ancestral or not, we have only to find out if the same was inherited by him from his father, or father's father or father's father's father. It was not necessary to find as to whether the same was ancestral *qua* the plaintiff as is generally done under the

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Customary law. The Courts have only to ascertain as to how the father-in-law came into possession of the same. If it answers the description of the "ancestral property" as given above, then he would be bound to give maintenance to the widowed-daughter-in-law.

Now, coming to the cases cited at the Bar on this subject, the first one is *Jal Kaur* v. *Pala Singh* (1), decided by Dua J. and myself. In this case, where the parties were presumably Jats, no doubt it was held that the widowed-daughter-in-law was entitled to maintenance out of the ancestral property, but there the question as to what was meant by the term "co-parcenary property" was not raised and discussed. On the other hand, the arguments at the Bar proceeded on the assumption that the ancestral property constituted co-parcenary property within the ambit and contemplation of section 19(2) of the Act. This judgment, as rightly pointed out by Mehar Singh J. in the referring order, is not helpful in determining the point involved in the present case. The other one is an unreported case *Angat Singh* v. *Smt. Dhan Kaur,* Regular First Appeal No. 16 1961, decided by Dua and Jindra Lal JJ., on 9th October, 1963. In this case, where the parties were Jats and governed by custom, the precise point arose for decision and the learned Judges observed thus—

> "We agree, therefore, that in the context the word 'co-parcenary property' cannot mean coparcenary property as understood in Mitakshara law because that would nullify, to a great extent, the very purpose of the statute and as the word 'co-parcenary property' in this context is not a word of art, we are of the view that Parliament was using this word to give it the ordinary meaning, that is the property which has been inherited from a common ancestor. In our opinion, the expression 'co-parcenary property' contained in section 19, sub-section (2), of the Hindu Adoptions and Maintenance Act, 1956, is included to mean property in which the deceased

(1) I.L.R. (1961) 2 Punj. 151=A.I.R. 1961 Punj. 391.

husband had an interest as a joint owner during his life time. It may be remembered that in Hindu law the term 'joint family property' is used as synonymous with 'co-parcenary property'. The term 'co-parcenary property', therefore, in our view, includes 'ancestral property' as that term is understood in the Punjab Customary Law. So understood it would effectuate the legislative intent and advance the purpose of the Hindu Adoptions and Maintenance Act of 1956."

While making the above observations, the learned Judges, if I may say so with great respect, have not given any reason for their finding that if the word "co-parcenary property" was limited to the expression property as understood under the Mitakshara law, then the purpose of the Act to a very great extent would be nullified. As I have already discussed above, the object of the Act was to give maintenance to the widowed daughter-in-law and the term "co-parcenary property" as understood under the Mitakshra and Dayabhaga School of Hindu law was the same, though their incidents were different. This definition was fully applicable to the parties governed by Customary law as well. Therefore, if this definition was adopted, there was no question of the purpose of the Act being nullified. Further, the observation of the learned Judges that the word "co-parcenary property" was not a term of art and was being used in the Act in its ordinary meaning, that is the property inherited from a common ancestor, is, in my opinion, with due deference to the learned Judges, not sound. The word "co-parcenary property" was a very well-known expression under Hindu law since ages and had, thus, become a term of art. The legislature fully knew its meaning at the time of the passing of the Act. When this meaning can be applied to all cases, as already held above, there is no necessity to give this word the ordinary meaning, which in the opinion of the learned Judges, meant the property inherited from a common ancestor. Even the ordinary meaning suggested by the learned Judges, with great respect to them, is not, in my view, correct, because this definition is being imported only from the Customary law. By virtue of the provisions

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of section 4 of the Act, rules of custom with regard to any matter for which provision has been made in this Act, have been abrogated. The ordinary dictionary meaning of "ancestral property" is "property which has been inherited from the ancestors." This meaning is also in consonance with the one given to it under the Hindu law, that is, the property which has been inherited from a father, father's father or father's father's father. Since ancestral property forms a part of the co-parcenary property, as already discussed above, therefore, in the context ancestral property has to be given the meaning assigned to it under the Hindu Law.

The answer to the question, referred to the Full Bench, therefore, in my opinion, is that the term "co-parcenary property" occurring in section 19(2) of the Act means the property which consists of ancestral property, or joint acquisitions, or property thrown into the common stock and accretions to such property.

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MEHAR SINGH J.—I have had the benefit of reading the judgment of Pandit, J., and as I have not been able to persuade myself to the same view, it is necessary to go into the details of this case to some considerable extent, though in the referring order that I have made on December 9, 1963, the facts are stated in sufficient detail, except one fact to which reference will later on be made. The reference order will be read as part of this opinion.

The appellant, Gurdip Kaur, is the daughter-in-law of Ghumand Singh, respondent, being the widow of his pre-deceased son. She made an application on July 17, 1959, claiming maintenance from the respondent at the rate of Rs. 100 per mensem and also claimed certain amount as arrears of maintenance. In the heading of her application she describes her caste and that of the respondent as 'Jat' and in her statement as P.W. 8 she says that they are Sidhu Jats. The statement of the respondent is to the same effect. She further says that the respondent depends upon agriculture, meaning that his main livelihood is agriculture. In paragraph 3 of her application she says that her marriage with the son of the respondent, whose name was Harnek Singh, 'was solemnized according to the

agricultural custom.' Then in the following paragraph she says that the respondent is in possession of ancestral and non-ancestral, movable and immovable property, including certain area of land given by her, and also other property of considerable value. Her position has been that the respondent first maintained her and then has refused to do so. She claims maintenance against him as explained and further says that to safeguard her right of maintenance 'the charge of her maintenance allowance be declared to be on the property mentioned in the heading of the petition of plaint.' There was an amendment of the plaint and the amended plaint was filed on May 20, 1960, but that also restates the same averments as above. In his writen statement the respondent takes the position that it is wrong that the property is ancestral *qua* him, that the appellant went away from his house in March, 1959, and that she 'is not at all entitled to get maintenance allowance. I, the defendant, am ready to keep the plaintiff in my house with other members and to support her like them. According to the agricultural custom the plaintiff shoud live in my house as my daughter-in-law and maintain herself. I, the defendant, had also gone with the Panchayat to the plaintiff that she should come to my house and live there, but she did not agree to it.' This is stated by him in paragraph 8 of his written statement.

The learned trial Judge settled these issues on the pleadings of the parties:—

"(1) Whether the applicant is unable to maintain herself ?

(2) If issue No. 1 is proved, is she not entitled to maintenance for reasons stated in paragraph 8 of the written statement ?

(3) Relief and against what property?".

The pleadings of the parties are unsatisfactory, for they do not disclose the basis of the claim made by the appellant. However, the form of issue No. 3 indicates that the learned trial Judge was conscious that the appellant was making her claim according to section 19 of the Hindu

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Adoptions and Maintenance Act, 1956 (Act 78 of 1956) (to be hereinafter referred to as 'the Act'), for otherwise the question of 'against what property' would not have been present to his mind. Section 19 of the Act reads—

[His Lordship read Section 19 and continued.].

It is immediately apparent that under sub-section (1) of this section there is a statutory liability of a father-in-law to maintain the widow of his predeceased son, subject of course to the terms of the section, but sub-section (2) of this section places a limitation on that liability, and the limitation is that the obligation under sub-section (1) is not 'enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, * * * * *.' It is in the wake of this provision that the learned trial judge settled issue No. 3 in the form in which it is. However, he did not have the pleadings of the parties clarified in this respect. He could have asked the appellant to amend her application and to bring it in conformity with section 19 of the Act. If he did not wish to do so, he should have at least proceeded to follow the procedure provided by sub-rule (5) of rule 1 of Order 14 of the Code of Civil Procedure, which sub-rule reads—

> "At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend."

This is a salutary provision and the object of it is to clinch the material propositions on which the parties are at variance and that are to be tried. It appears that these days the trial Courts proceed to frame issues in a mechanical way without much applying themselves to the pleadings and without obtaining clarification of the same from the parties by taking their statements

according to this sub-rule. If the learned trial Judge had applied himself to the pleadings of the parties and taken the statements of the parties according to this sub-rule, the propositions on which the parties were at variance would have become clear and it would have become clear also that the appellant was making her claim under section 19 of the Act. In that event the shape of the issues would have been somewhat different. One very important issue, which has not been settled and would then have been settled, must have taken the form—"Whether the respondent has the means to provide maintenance to the appellant 'from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share'?" The absence of such an issue has created some very considerable difficulty in the handling of this case. The difficulty will become apparent as arguments in the case are considered.

In any case, after the parties had led evidence and the learned trial Judge came to consider the case, it was then that he realised what actually was the nature of the dispute between the parties. On issue No. 1 he has found that the appellant is not able to maintain herself. When considering issue No. 2, he refers to section 19 of the Act and then says that there should be in the possession of the father-in-law coparcenary property from which he has sufficient means to maintain his predeceased son's widow and from such property she has not obtained any share. Having said this he goes on to say that "the material question for determination is as to whether the defendant in the instant case is possessed of any coparcenary property or not?" He then proceeds to say—

> "The word 'coparcenary' is a creature of Hindu law and a Hindu coparcenary body is a much narrower body than the joint family. It includes only those persons who acquire by birth an interest in the joint or coparcenary property. Another important incidence of the coparcenary property is that it devolves by survivorship and not by succession (subject of course to the provisions of sections 6 and 30 of the Hindu Succession Act). The parties in the instant case have been

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governed by customary law of Punjab and there is no such thing known as coparcenary property under that custom. The only distinction known under custom was that of ancestral property and non-ancestral property. There is also some distinction between the ancestral property as it is known under Hindu law and its notion under customary law. Under customary law the property held by a common ancestor alone could be termed as ancestral property and all other property which cannot be proved as having been held by a common ancestor is non-ancestral. On the other hand, under Hindu law the property inherited by a male Hindu from his father or father's father or father's father's father is ancestral. The essential feature of the ancestral property according to the Mitakshra law is that the sons, grandsons and great-grandsons of the person, who inherits it acquire an interest in it by birth. On the other hand, under the custom no such interest attaches to the ancestral property at the time of birth of a son, grandson or a great-grandson. The property remains the exclusively owned property for the time being in the hands of the persons holding it with the entire body of coparceners having a right, howsoever remote, to take inheritance at the death of the holder and also to check all alienations made by him without legal necessity. The learned counsel for the plaintiff argued that the coparcenary property mentioned in section 19 of the Act was the same thing as the ancestral property under custom, but he could not support his contention by any cogent reasons or any law or authority."

The learned trial Judge came to the conclusion that there was absolutely no proof that the respondent is possessed of any coparcenary property. He, therefore, dismissed the claim of the appellant, leaving the parties to their own costs. This was on April 5, 1961.

In the grounds of appeal in this Court the position taken on behalf of the appellant is that the learned trial

Judge has misinterpreted section 19(2) of the Act, that 498 *kanals* and 5 *marlas* land mentioned in the application of the appellant is ancestral and coparcenary property of the respondent, that the words 'coparcenary property' used in section 19(2) of the Act should not have been narrowly interpreted by the trial Court, that the trial Court has wrongly held that these words mean no more than coparcenary property as understood in Mitakshra school of Hindu law and that interpretation, *inter alia,* ignores the existence of coparcenary under Dayabhaga school of Hindu law, that the expression 'coparcenary property' not having been defined in the Act, it has been used in the broadest sense as meaning property other than self-acquired property, and thus ancestral property is coparcenary property, and that the trial Court has wrongly assumed that the parties are governed by rules of customary law, and the parties should have been held to have been governed by Hindu law. Now, these grounds of appeal raise questions which really are not within the scope of the issues as settled by the learned trial judge. They raise the questions—

(a) Whether the parties are governed by custom or Hindu law (and that obviously must mean whether they are governed by either system in the matter of character and nature of property in the hands of the respondent as father-in-law of the appellant) ?

(b) Whether the land in the hands of the respondent is ancestral property as understood in customary law ? and

(c) Whether the property in the hands of the respondent is coparcenary property as that expression has been used in section 19 of the Act ?

Had the learned trial Judge settled the issues with clarity after having examined the parties under sub-rule (5) of rule 1 of Order 14 of the Code of Civil Procedure, much of the difficulty that now arises would have been obviated, because the parties would then have led evidence on proper issues and it should have been easier to decide the real matter of controversy between the parties.

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The appeal was first heard by Khanna, J., and myself, and in spite of the shape of the grounds of appeal, as has substantially been reproduced, the argument proceeded on assumptions that the parties are governed by custom in the matter of character and nature of land held by the respondent and that that land is according to the conceptions in customary law ancestral *qua* him and obviously *qua* his deceased son, of whom the appellant is the widow. It was in such circumstances that this case was considered by us. In the order of reference I have referred to the cases that were cited before us bearing on the question involved in the present appeal, that is, on the question, what is the meaning of the expression 'coparcenary property' as in section 19(2) of the Act having regard to the facts of the present case on the assumptions to which reference has just now been made. The first case that was cited before us was *Jal Kaur* v. *Pala Singh*, (1). That case was an appeal from the decree of the Senior Subordinate Judge of Ferozepore. Although the judgment does not make it clear, it seems probable that it was a case of Jats. In any case, there was the question of ancestral property that came for consideration before the learned Judges. At page 395 of the report, in paragraph 19, it was observed—"I may at this stage note that arguments at the bar proceeded on the assumption that 6 *ghumaons* of ancestral land constituted coparcenary property within the ambit and contemplation of section 19(2); we have thus adjudicated upon the rights of the parties before us on this assumption." As I have pointed out in the referring order also, this case is by reason of this observation of the learned judges not in the least helpful, because the learned judges proceed on the assumption that the ancestral land in that case constituted coparcenary property within the ambit and contemplation of section 19(2) of the Act. The question again arose before Dua and Jindra Lal, JJ., in *Angat Singh* v. *Dhan Kaur*, Regular First Appeal No. 16 of 1961, decided on October 9, 1963. The description of the parties of this case does not show that they were Jats, but before the learned Judges an argument was addressed that among Jats there is no such thing as 'coparcenary property,' and it appears from this that in *Angat Singh's case* the parties were Jats. The learned Judge first came to the conclusion that it was

never the case of the father-in-law in the trial Court that the parties being Jats and the conception of 'coparcenary property' not being known to them, there was no such property in his possession from which the daughter-in-law could claim maintenance. However, the learned Judges proceeded further to examine the meaning and scope of the expression 'coparcenary property' as used in section 19(2) of the Act. They rejected the meaning of the expression in Mitakshra on the ground that if the meaning was so confined that would lead to nullification of the greater part of the object of the Act. They pointed out that the word 'Hindu' in section 2 of the Act brings within its scope almost everybody in the country, excepting those excepted, and were of the opinion that if the meaning of the expression was limited to Mitakshra, the benefit of section 19 of the Act would accordingly be limited in spite of the Act applying to almost the whole of the country. They, therefore, proceeded on the basis that the meaning of the expression is not that as in Mitakshra and further that the expression is not that as in Mitakshra and further so, the learned Judges proceeded to consider the dictionary meaning of the expression. I have already adverted to this aspect of *Angat Singh's case* in the reference order. Briefly the dictionary meanings are 'joint share in inheritance; joint heirship; co-partnership; joint ownership; or co-sharership'. The learned Judges on the basis of this conception of the expression proceeded to hold that ancestral property, as understood in the Punjab Customary Law, is included within the scope of the expression 'coparcenary property' when that expression is given the dictionary meaning as already explained. I have pointed out in the reference order the difficulty created by the approach of the learned Judges because a son is never any of the things as the dictionary meaning of the word 'coparcenary' as given by the learned Judges in their judgment, for he is never a co-heir with his father, nor a co-owner or a co-sharer. In fact during the lifetime of the father he has absolutely no right, title or interest in the land in the hands of the father, even though that land is ancestral according to such characterisations as are understood in the Punjab Customary Law, except to have a control over the alienations by the father *qua* ancestral

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property, and that too only on the question of want of necessity. So that to the conception of ancestral property in the Punjab Customary Law the conception of co-heirship, co-ownership, co-sharership, co-partnership and the like expressions, giving an idea of joint-tenancy or tenancy-in-common between father and son can never be applied and has never been applied. It is this difficulty which led us to refer this question to a larger Bench—

> "Whether the expression 'coparcenary property' in section 19(2) of Act 78 of 1956 applies to ancestral property as that expression is understood under custom as it is followed by the tribe of parties, that is to say, Jats in this State?"

At the hearing before this Full Bench some doubt arose whether the question as posed is appropriately worded in view of the pleadings of the parties and the provisions of section 19(2) of the Act, and the consideration of the reference proceeded on this that the question may be taken to be "what is the meaning of the expression 'coparcenary property' in section 19(2) of Act 78 of 1956 ?" However, there is a practical difficulty in answering an abstract question in this form without reference to the facts and circumstances of the particular case under consideration. Obviously this Court does not answer abstract questions for academic interest. It only answers questions of law, even on a reference to a Division Bench or a Full Bench, when such questions arise out of the facts and circumstances of a particular case. If they do not arise out of the facts and circumstances of a particular case, then such questions are not decided but are left to be decided if and when the same arise in an appropriate case. Any answer to any question, even of law, which does not arise out of the facts and circumstances of a given case, is always *obiter* and binding on nobody. So that there is this practical difficulty in answering the question as proposed in the abstract form without reference to the facts and circumstances of this particular case.

While going through the record I came upon the statement of Patwari Lachhman Singh, P. W. 7, who had prepared an excerpt (Exhibit P.W. 7/A) with regard to

the land with the respondent. The appellant has said that the respondent is possessed of ancestral property and so have her two witnesses, Bakhtawar Singh P.W. 4 and Hira Singh P.W. 5. The excerpt was produced to support them. In the cross-examination of the Patwari I found this statement—"Previously the land was held in the capacity of *adna malik* (inferior owner). According to the recent *jamabandi, Ghumand Singh* has been shown to be the proprietor." This set me thinking in regard to the nature and character of the land with the respondent. When I looked at the revenue papers on the record, I found copy of the *Jamabandi* (Exhibit P.W. 7/F) of the year 2002-03 Bk. (1945-46 A.D.) which shows that the respondent was full owner of the land in those years, which means that in or about 1945 or 1946 he somehow acquired the *ala malkiyat* rights in the land which rights in those days vested in the Ruler of former Faridkot State, in the territory of which this land is situate. This created some doubt in regard to the nature and character of the land with the respondent for, even if previous to 1945-46 the land of *adna malkiyat* rights was ancestral in his hands, and thereafter he acquired the *ala malkiyat* rights (superior proprietorship rights), a question immediately arose whether thereby the character of the land had not changed from ancestral to non-ancestral ? However, to ascertain the correctness of Exhibit P.W. 7/F, though the same was not questioned at the trial when the witness appeared to give evidence, I asked the counsel for the appellant to obtain a copy of the *Jamabandi of* 2002-03 Bk. and produce it. He has obtained a copy from the local Patwari and produced it which, curiously enough, shows in the years 1945-46 the Ruler of Faridkot as the *ala malik* and the respondent as *malik* or proprietor. This again is somewhat unsatisfactory because if the respondent was *malik* or owner in the years 1945-46, the Ruler of Faridkot could not possibly then have been *ala malik* above him. The respondent had to be an *adna malik* of the land for the Ruler of Faridkot to be an *ala malik*. So that this copy which is produced is again rather unsatisfactory. But it might well be that in the years 1945-46 the respondent still remained an *adna malik* (inferior proprietor) of the land. In any case, after the formation of Pepsu State in 1948, in which the former Faridkot State also merged, the *ala malkiyat*

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rights of such land as ceased to be the personal property of His Highness the Raja of Faridkot came to the former Pepsu State. On September 7, 1949, the former Pepsu State issued a notification which is in these terms—

> "It is notified for the information of all concerned that out of the following lands situate in erstwhile Faridkot State:—
>
> (1) Brijindra estate, 3806 *ghumaons* 18 *marlas*;
>
> (2) Harindra estate, 4704 *ghumaons* 7 *kanals* and 14 *marlas*;
>
> (3) Harmindra estate, 6851 *ghumaons* 2 *kanals* and 10 *marlas*;
>
> (4) Land in other villages, 3481 *ghumaons* 3 *kanals* and 4 *marlas*,
>
> only 12,000 *ghumaons* of land, which are in His Highness the Raja Sahib of Faridkot's possession inside the State, have been allotted to His Highness the Raja Sahib, subject to any third party's rights over these lands: the *ala malkiyat* rights of His Highness the Raja Sahib of Faridkot in any land out of the erstwhile Faridkot State have been extinguished and the landowners will not hereafter have to pay any dues in respect of the said rights."

It means that on and from September 7, 1949, the former Pepsu State extinguished the *ala malkiyat* rights (Superior proprietorship rights) of all lands other than those that remained with His Highness the Raja of Faridkot. So, on September 7, 1949, at least the respondent became full proprietor of the land with him. Subsequently there has been the Pepsu Abolition of *Ala Malkiyat* Rights Act, 1954 (Pepsu Act 17 of 1954), but that Act does not relate to such of the *ala malkiyat* (superior proprietorship) rights as devolved upon the former Pepsu State in consequence of the formation of the Pepsu State. That Act concerns *ala malkiyat* (superior proprietorship) rights with persons

other than the Pepsu State itself. In *Luddarmani* v. *The Raja of Guler* (2), Bhide, J., at pages 539 and 540, observes—

> "It has been pointed out in *Hira* v. *Chhahnnu* (3), that the *ala maliks*, usually found in this province, belong to one or the other of two categories, viz., (1) where the *ala maliks* so called are merely *talukdars* whose ancestors have been farmers of revenue or conquerers who have been content to leave all management, etc., to the conquered peasantry and take quit rents and (2) when the *ala maliks* were originally the sole proprietors of the soil of the village and have called outsiders and settled them on some or all of the lands. It is usually in the case of the latter class that the *ala malik* is entitled to the right of reversion on the death of an *adna malik* without natural heirs. In the present instance, it has been found by the Courts below, as already stated, that the Raja of Guler, the *ala malik*, has higher rights than those of a *talukdar*, and the right of reversion is given to him by the *wajib-ul-arz*. It was, therefore, urged that the Raja must be taken to belong to the second class of *ala maliks* referred to above and must have been originally the sole proprietor of the land held by the *adna maliks*. There is no evidence on the record to show precisely the manner in which the *adna malkiyat* rights arose in the present case. But, even assuming the inference to be correct, the point does not appear to be so material; for what we are concerned with is not the historical origin but the present position as regards the respective rights of the Raja and the *adna maliks*. These rights have not to be decided merely on the basis of some legal theory or inferences to be drawn from the probable historical origin of the *adna malkiyat* rights. Fortunately, we have in this case a statement of the respective rights of the *ala* and the *adna maliks* in the *wajib-ul-arz*

(2) I.L.R. (1935) 16 Lah. 533.
(3) 129 P.L.R. 1912.

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of the village and it is obviously on the basis of this *wajib-ul-arz*, which is binding on both the parties, that the question referred to the Full Bench must be decided."

If His Highness the Raja of Faridkot was just a *talukdar*, probably relinquishment of such *talukdari* rights—whether in the years 1945-46 by His Highness or later in 1949 by the former Pepsu State—would not affect the nature and character of the land in the hands of the respondent, but I consider that if the *ala malkiyat* (superior proprietorship) rights with His Highness the Raja of Faridkot were of the second class as referred to in the case just cited with a right of reversion to the *ala malik* on the death, without an heir, of the *adna malik*, then the acquisition of such *ala malkiyat* (superior proprietorship) rights would alter the nature and character of the land. The reason for this is that by such acquisition the holder of the land, which was previously ancestral in his hands as *adna malik*, acquires new rights in it, and having become its full proprietor, it then becomes his self-acquisition in the circumstances. If my impression of the former Faridkot State serves me right, I think His Highness the Raja of Faridkot had the right of reversion. In the case of an *adna malik* succession in the former Faridkot State was governed by the rules in the *dastur-ul-amal* of 1893 as appears clear from *Gurbinder Singh and others* v. *Lal Singh and others* (4), at P. 535; a Division Bench of this Court has held so in that case. According to the rules in the *dastur-ul-amal* in Chapter II, rule 14 says that the Ruler of Faridkot State was the *ala malik* of all the villages in that State and the rule then fixes *'haq talukdari'* or *talukdari* dues. But in Chapter I of the same, rule 1 deals with the question of succession and after giving the list of heirs entitled to succeed, it is stated that in case of absence of such heirs the property would pass to the *'sarkar'*, which in the days of the former Faridkot State obviously meant the Ruler of Faridkot State. So that my impression is correct that in the former Faridkot State there was a right of reversion, in the event of failure of heirs of an *adna malik*, to the *ala malik*, the Ruler of former Faridkot State. This was a right of reversion

(4) I.L.R. 1958 Punj. 2258=1958 P.L.R. 528.

somewhat different from a right of escheat, though as both vested in the Ruler of former Faridkot State, there might seem to be some measure of similarity between the two. But as there was the *ala malik*, who was also the Ruler of the State, and on failure of heirs provided in the *dastur-ul-amal*, the property rights of the *adna malik* reverted to him, there really could not arise a question of escheat. Acquisition of *ala malkiyat* rights by an *adna malik* before the formation of the Pepsu State would alter the nature and character of the land in the hands of an *adna malik*. Although an *adna malik* held the land as ancestral, he having acquired the *ala malkiyat* rights and become full proprietor of the land would cease to hold the land as ancestral, it then becoming his non-ancestral or self-acquired land.

The difficulty that has thus arisen in this appeal is due to the fact that there was no issue in regard to the character of the land or the property of the respondent in the trial Court. It seems, however, that the parties had this matter in mind while the evidence was being led, because two witnesses of the plaintiff (P.Ws. 4 and 5) say that the respondent is possessed of 60 *ghumaons* of ancestral land and Patwari Lachhman Singh as P.W. 7 produced the excerpt (Exhibit P.W. 7/A) of the land and also the *jamabandis* (Exhibits P.W. 7/B to 0). It is in the wake of this evidence that the learned trial Judge appears to have proceeded on the assumption that the land in the hands of the respondent is ancestral *qua* him and his deceased son, of whom the appellant is the widow. When this appeal was heard by the Division Bench, the correctness of this assumption was really not questioned on the side of the respondent. It is only because from the statement of Patwari Lachhman Singh P.W. 7, I have found that the respondent acquired *ala malkiyat* rights and thus improved his rights in the land that the difficulty in this respect arises. At one time I was of the opinion that in this respect and in the other respects, in regard to which the learned trial Judge did not settle the issues between the parties, issues should be settled, and upon evidence report on those issues should be obtained from the trial Court. But there does not appear to have been persistent opposition, in respect to this question as to the nature and character of the land with the respondent, from his side.

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In the circumstances, I am just as well content to leave this matter here and proceed on the basis that the land in his hands is ancestral *qua* him and his deceased son, the husband of the appellant. It is this fact that I had in mind when I said in the beginning of the judgment that there is difficulty about one fact. After some doubt arose in my mind on this matter, I brought it to the notice of my learned brothers and we had a discussion over it.

There is then another difficulty, which also arises because of the non-attention in the trial Court to the pleadings of the parties and the settling of the real questions of controversy between the parties. This second difficult question to which reference is now being made is whether the parties are governed by custom in regard to the nature and character of the land in the hands of the respondent? I have already pointed out that both the parties say that they are Sidhu Jats and both the parties agree that the respondent is professionally an agriculturist. In her application the appellant stated that she was married to the son of the respondent according to custom. In his written statement the respondent says that the appellant can come back and live in his house and will be maintained by him according to custom. The ancestral character of the land, to which two of the plaintiff's witnesses make reference and about which assumption has been made on the basis of the revenue excerpt also, proceeds on the consideration that the land in the hands of the respondent is ancestral as that expression is understood in the customary law of Punjab. There is then the statement of the Assistant Record-keeper Munshi Tara Singh D.W. 1, who appeared in the Court of the learned trial Judge with the *riwaj-i-am*, register of Faridkot, which register had been prepared in 1946 Bk. (1890 A.D.). The witness says that the members of the Sidhu Jat community gave answers to the questions in the *riwaj-i-am* and the *riwaj-i-am* is attested by the members of the Sidhu community of Mauza Hari Nau at the end. There was no cross-examination of the witness. It is obvious that the parties were further conscious that being Sidhu Jats they are governed by custom in the matter of character and nature of the land in the hands of the respondent. This I infer from the manner in which the parties have led evidence and as it appears on the record.

No doubt, this matter would have become much more clear if there had been a direct issue, but on the record, even as it is, I consider that this inference is strongly available.

I have already stated that it was in this state of the facts and circumstances that the question as framed in the Division Bench has been referred to a larger Bench. The question thus has relation to this particular case, and although the answer to it will answer the question of law, but that will be within the four corners of the facts of the case. The question as suggested in an abstract form would still, if it has to be appropriately answered, have to be answered in the very facts of this particular case. It cannot possibly be divorced from the same. If this approach on my part is correct—and I consider that it is the correct approach—there is really no substantial difference whether it is one form of question that is adopted for answer or the other.

The main and the chief question for consideration is the meaning and scope of the expression 'coparcenary property' as in sub-section (2) of section 19 of the Act in relation to the facts and circumstances of the present case. I have already pointed out that in *Angat Singh's case* the learned Judges held that the meaning and scope of the expression cannot be obtained from the Mitakshra school of Hindu law, and, consequently, they proceeded on the dictionary meaning of the expression, and I have further expressed the opinion, both above and in the reference order, that if the present parties are governed by rules of custom in matters of nature and character of land, the dictionary meaning of the word 'coparcenary' is impossible of application, because among those, who are governed by the rules of Punjab Customary Law in regard to ancestral property, there never is coheirship, co-ownership, co-sharership, co-partnership, tenancy-in-common, or joint-tenancy between father and son. The undenied and settled position is that the father holds the ancestral property or land as full owner with all rights of disposition; which rights alone are controlled by his sons and other reversioners, *qua* whom the property or land is ancestral, but on specified grounds, the chief ground of which is want of legal necessity. The son or the reversioner has

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no present right, title or interest in the ancestral land in the hands of the father. It is well settled and it has been the position for at least last one Century that the application of the dictionary meaning of the word 'coparcenary' is inapplicable to ancestral land in the hands of a father among those, who are governed by rules of Punjab Customary Law. It is in this wake that Pandit, J., also differs from the conclusion of the learned Judges *in Angat Singh's case* and is of the opinion that the dictionary meaning of the word 'coparcenary' cannot be applied to a situation of this type. So the dictionary meaning of the word may be dropped from consideration and it follows that *Angat Singh's case* is not helpful in this respect.

Once the dictionary meaning of the expression 'coparcenary property' is dropped from consideration, the question arises from where are the meaning and scope of this expression to be found ? It is not an expression that has not been known to law, the law Courts, or the lawyers. It has been known in Hindu law for a few centuries. It has also been known for a considerable period to the legislature. It cannot, therefore, be said that when the Parliament chose to use the expression 'coparcenary property' in section 19(2) of the Act, it was intending to use it not in its known—indeed too well known—meaning among the Courts, the lawyers and the legislators, and that it was using this expression giving it a different meaning or a novel meaning, and yet refraining to give a definition of the expression. The facts that this expression has been well known and well understood in Hindu law for a very considerable period and the Parliament not having defined it in the Act are in my opinion the clearest indication of the intention of the Parliament that it has used the expression in the Act with no other meaning and scope than that it has under the Hindu law, as it has been understood for centuries past. Even Pandit, J., agrees that the meaning of this expression is to be taken from Hindu law. Once this aspect of the matter is clear that there is no other place from where the meaning of this expression is to be found but the Hindu law, the rest to my mind should be rather simple of comprehension. What I mean is that the meaning of the expression should be taken from the Hindu law with all its incidences, implications and

connotations. There are two main schools of Hindu law, the Mitkshra and the Dayabhaga. The meaning and the scope of the expression may be considered with reference to the conception of it in either school, along with the person or persons who came to possess or hold such property, the circumstances in which they come to do so, and the rights that they acquire in it or that devolve upon them. This is what Mulla in his Hindu Law, 12th edition, page 322, section 220, has to say about coparcenary property in Mitakshara—

> "Joint family property may be divided, according to the source from which it comes, into—
>
> (1) ancestral property; and
>
> (2) separate property of coparceners thrown into the common coparcenary stock.
>
> Property jointly acquired by the members of a joint family with the aid of ancestral property is joint family property. Property jointly acquired by the members of a joint family without the aid of ancestral property may or may not be joint family property; whether it is so or not is a question of fact in each case.
>
> The term 'joint family property' is synonymous with 'coparcenary property.'
>
> 'Separate' property includes 'self-acquired' property."

In regard to Dayabhaga the same author at page 421, section 278, says—

> "As under the Mitakshara law, so under the Dayabhaga law, coparcenary property may consist of ancestral property, or of joint acquisitions, or of property thrown into the common stock, and accretions to such property."

The learned counsel for the appellant has contended that the meaning and conception of 'coparcenary property' in both the schools is the same and as ancestral property is coparcenary property, so in the present case the ancestral property in the hands of the respondent be held to be

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coparcenary property in his possession. It has been suggested that how the coparcenary property comes into being under either school, who has rights in such property, actual nature of such rights, or the incidence of such property should be entirely ignored when finding the meaning of the expression 'coparcenary property' as in section 19(2) of the Act with the aid of the meaning and conception of the same expression in either school. This, if I understand right, has found favour with my learned brother Pandit, J. But sub-section (2) of section 19 of the Act only makes the obligation against the father-in-law to maintain his predeceased son's widow if he has any coparcenary property in his possession. How can, in view of this statutory provision, it be ignored in what manner and under what circumstances a person comes in possession of or holds coparcenary property? Immediately as it is necessary to see whether a person does or does not possess or hold coparcenary property, it just cannot be forgotten how he does so or whether what he is said to hold is in his possession co-parcenary property or not.

If the suggestion as above was to be accepted, somewhat most extraordinary result follows under Dayabhaga. Mulla in section 277, at page 419, of his Hindu law, 12th edition, says this in regard to coparceners according to Dayabhaga law—

> "According to the Mitakshara law the foundation of a coparcenary is first laid *on the birth of a son.* The son's birth is the starting point of a coparcenary according to that law. Thus if a Hindu governed by the Mitakshara law has a son born to him, the father and the son at once become coparceners.
>
> According to the Dayabhaga law, the foundation of a coparcenary is first laid *on the death of the father.* So long as the father is alive, there is no coparcenary in the strict sense of the word between him and his male issue. It is only on his death leaving two or more male issues that a coparcenary is first formed. ****".

Raghavachariar in his Hindu Law, 1960 edition, at page 340, on this subject says—

> "Under the Dayabhaga there can be no coparcenary between a father and his son. So long as the

father is alive, the son does not take any interest in the ancestral property in the father's hands, and the right of birth in the said property accorded to the son under the Mitakshara does not exist under the Dayabhaga. * * * * * * * * * * * * * * *

What is known as the coparcenary under the Dayabhaga springs up only on *the death of the father* while the Mitakshara coparcenary is founded *on the birth of a son.* The Dayabhaga coparceners are in the position of tenants-in-common, with the result that on the death of any of them, his own heirs, even though they be females, step into the shoes of the deceased and become coparceners with his surviving coparceners. * * * * * In short, on the death of the coparcener, his interest will descend to his own heirs, though they be his widows or daughters, and will not survive to the other coparceners, the reason being that, though the coparceners under the Dayabhaga have unity of possession as distinguished from the unity of ownership existing as between coparceners under the Mitakshara, each coparcener takes a defined share in the coparcenary property and can transmit it to his own heirs."

Mayne on Hindu Law and Usage, Eleventh Edition, at page 363, says—

"When we turn to the joint family under the Dayabhaga law, we find that, its bases are, in important respects, different from those of a Mitakshara joint family. The Mitakshara conception of the son's right by birth is altogether alien to it. Jimutavahana and his school do not recognise the distinction between unobstructed and obstructed heritage. There is, therefore, no right of survivorship; on the death of the father, the sons take his estate strictly by inheritance. As a consequence, the sons have no right, during the lifetime of their father, to claim a partition even in respect of the ancestral property. Where property is held by a father as

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head of an undivided family, his male issues have no legal claim upon him or the property, except for maintenance. The father can dispose of the property whether ancestral or self-acquired as he pleases. Consequently, they can neither control, nor call for an account of his management. It follows, therefore that under the Dayabhaga law, a father and his sons do not form a joint family in the technical sense having coparcenary property."

The same author at page 55 points out that the Dayabhaga treats the father as the absolute owner of the property, and authorises him to dispose of it at his pleasure. Gour in his Hindu Code, Fourth Edition, at page 358, says—

"* * * * * * the right of the Mitakshara coparcener arises on his birth, while the right of the Dayabhag coparcener arises on the death of his father, leading to far-reaching results as regards the right of the father. Under the Mitakshara law, he is merely a manager of the joint estate and his rights are limited by those of his son and other coparceners, whereas under the Dayabhag, the father is the absolute owner of all his estate, whether self-acquired or ancestral, and he can deal with it in any manner he likes irrespective of the consent of his sons. * * * *

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while the share of the Mitakshare coparcener is neither fixed nor defined, that of the Dayabhag coparcener is both. On the death of the father the right in the one case passes to the son by survivorship, in the other case by inheritance or devise. On the death of the father the sons may call for a partition or remain joint. In that case the coparcenary will be subject to the rules applicable to the Mitakshara coparcenary as regards its management and the rights of the manager and the coparceners, *inter se*, with

this difference that while the right of the Mitakshara coparcener to alienate his share for value is not universally conceded, and his right to alienate otherwise is universally denied, the Dayabhag coparcener, having his share fixed, is free to devise or transfer it for or without consideration."

The authors on Hindu law are thus agreed (1) that a Dayabhaga father is the absolute owner of the property in his hands, whether ancestral or self-acquired, (2) that coparcenary does not come into existence under the Dayabhaga until the death of the father when the sons hold the property as tenants-in-common, (3) that in case the sons, after the death of the father, decide to continue to remain joint, then only, and not before, does coparcenary property come about with such a coparcenary or joint Hindu family with somewhat similar incidences as pertain to the coparcenary property of the Mitakshara, and (4) that during the lifetime of the father, he does not hold any property, whether ancestral or otherwise, as coparcenary property. On these considerations, it would seem to be rather extraordinary to hold that a Dayabhaga father, who is the absolute owner of the property in his hands and no property in his hands is coparcenary property, is still obligated to maintain his predeceased son's widow under sub-section (2) of section 19 of the Act, because the expression 'coparcenary property' in that provision has to be read as 'ancestral property' in his hands. Every author is agreed that a Dayabhaga father holds and possesses no coparcenary property, and that in that school coparcenary does not come into existance with coparcenary property, until after the death of the father. There thus seems to be an apparent inconsistency with the settled state of Dayabhaga law and the suggestion that has been made that though a Dayabhaga father has no 'coparcenary property' with him, and it does not come into existence until after his death, he still is to be held in possession of 'coparcenary property' for the purpose of sub-section (2) of section 19 of the Act. One of the requirements of that provision is that the father-in-law has to be possessed of 'coparcenary property' before the obligation can be enforced against him. But if during his lifetime he has no occasion to have 'coparcenary property', how will he become possessed of

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any such property? It has been said that this aspect of the matter be ignored, the incidence of coparcenary property be ignored, the rights of the coparceners in such property be ignored, but, because such property includes ancestral property, so whoever is possessed of ancestral property no matter whether it is 'coparcenary property' as understood either in Dayabhaga or Mitakshara, he is within the scope of that expression in sub-section (2) of section 19 of the Act. The approach overlooks the fact that it is not ancestral property in possession of the father-in-law which is the basis of the statutory obligation, but 'coparcenary property'. The expression 'ancestral property' has been as well known and understood, and for as long a time past, as the expression 'coparcenary property', and if the intention of the Parliament was that the latter expression is to be read as the former expression, both expressions having been well known and well understood, there was no reason why the Parliament did not employ the expression 'ancestral property' instead of 'coparcenary property'. But as has been shown, 'coparcenary property' consists of more than merely 'ancestral property'. It may include property thrown into the common hotch-potch and may also include accretions from the income of the coparcenary property nucleus. So that limitation of this expression to 'ancestral property' would not be justified. I have already said that neither the incidence of 'coparcenary property', nor the rights of the coparceners in it can possibly be ignored while understanding the meaning, scope and import of this expression; for if those aspects are left out, the property would cease to be 'coparcenary property'. If there are no coparceners, there would be no meaning in any coparcenary property, if the circumstances in which it comes into existence and the rights that spring up are to be ignored, there would be no property that will be 'coparcenary property'. The very fact that sub-section (2) of section 19 of the Act emphasises possession of coparcenary property by the father-in-law has direct bearing on incidence of such property and rights in such property. If there is coparcenary and it has coparcenary property, ancestral property as constituent of coparcenary property may be equated with it. But if there is no coparcenary, and it follows that in such a case there cannot be a 'coparcenary property', ancestral property obviously will not be coparcenary

property. This is exactly the position of the father in the Dayabhaga. He, in his lifetime, holds or possesses no coparcenary property, and it would be contrary to Dayabhaga law to say that he does so even for the purpose of sub-section (2) of section 19 of the Act. It is, in my opinion, obvious that the father in Dayabhaga has no obligation under sub-section (2) of section 19 of the Act to maintain a widow of his predeceased son for the simple reason that he has no 'coparcenary property' in his possession. To my mind this conclusion follows from the state of that law as a matter of course.

The position among the tribes such as the tribe of the parties in the Punjab Customary Law is somewhat exactly the same. The father is the absolute owner of the immovable property with him, ancestral or otherwise, subject only to the right of the son or other reversioner to impugn his alienation of ancestral property on the ground of want of legal necessity. Apart from this the son has no right in the property with the father, even if ancestral, just as in Dayabhaga he has no such right. If my conclusion that sub-section (2) of section 19 of the Act is not attracted to a Dayabhaga father who is in his lifetime never possessed of 'coparcenary property', it is equally true of a father governed by Punjab Customary Law in matters of nature and character of immovable property with him. I have already pointed out that there is ample evidence on the record that the parties are governed by custom in matters of nature and character of land and that for the present purpose the consideration proceeds on the assumption that the land with the respondent is ancestral land *qua* him and his deceased son, the husband of the appellant, as that expression is understood in Punjab Customary Law. The learned trial Judge has pointed out the difference in conception of ancestral property in Hindu law and in Punjab Customary Law. There is a certain amount of similarity as well but the expression does not mean the same thing in both systems. While in Hindu law ancestral property becomes coparcenary property with the coparcenary and only the members of the coparcenary have rights in and in relation to it, in Punjab Customary Law nobody has any rights in relation to ancestral property but the present holder except that his reversioners, who may extend beyond three degrees, may

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be able to impugn his alienation of the same on the ground of want of legal necessity. Such reversioners will go far beyond the confinements of members of the ordinary coparceners in Hindu law. The learned counsel for the appellant has urged that an expression such as 'ancestral property' and the expression such as 'coparcenary property' in Hindu law may not be much adverted to in this respect, but that the meaning of the expression 'coparcenary property' in sub-section (2) of section 19 of the Act be taken as 'family property', but this expression which the learned counsel for the appellant has used is so vague as to convey no precise meaning. If the other argument on behalf of the appellant was accepted, that the incidence of the expression 'coparcenary property' in Hindu law and of rights in and connected with such property as described by that law are to be ignored, it would mean using the text books on Hindu law as a dictionary for finding the meaning and scope of the expression 'coparcenary property' and tearing it out of the context without the least reference to the circumstances in which it comes into existence and the rights that arise out of it and in relation to it in those whose property it is. Without such incidence and the statement of rights it will be an empty expression of no meaning whatever. So, as I have said, the position of the father in this context in the tribes governed by Punjab Customary Law in the matter of nature and character of immovable property is somewhat exactly the same as the position of Dayabhaga father with the property in his hands or possession, that is to say, neither has or is possessed of 'coparcenary property'.

In this view, the meaning and scope of the expression 'coparcenary property' in sub-section (2) of section 19 of the Act come to be confined only to Mitakshara, and then the expression is clearly understandable in its full meaning and scope. The sons and coparceners in Mitakshara coparcenary have rights in the coparcenary property from birth, and unless a son or a coparcener separates, on his death the father will be in possession of coparcenary property as that expression is used in sub-section (2) of section 19 of the Act.

As I have already pointed out there has been some controversy whether the parties are or are not governed

by custom in regard to nature and character of the land with the respondent, but here, although I have come to a different conclusion above in this respect, I will proceed on the assumption that the parties are not governed by the Punjab Customary Law in this respect. The result will be that according to section 5 of the Punjab Laws Act, 1872, they will fall back on their personal law, that is to say, Hindu Law, but when parties as those of the present litigation belonging to tribes of the same type in the Punjab so fall back ultimately on Hindu law, it has even then been never understood that they have been imputed, even by fiction, to have even known what is a coparcenary as that is understood in Hindu law, what is a joint family as it is understood in that law, or what is coparcenary or joint family property as those expressions are understood in the same law. I have consulted Rattigan's Digest of Customary Law, 1938 edition, and also subsequent edition by Om Prakash Aggarwala, in 1953, and not one case has been found in which it has ever been suggested, let alone held, by any Court that when Jats, as the present parties are, fall back on Hindu law because of the provisions of section 5 of the Punjab Laws Act of 1872, they are by some fiction, in any circumstances, to be deemed to ever form a coparcenary or a joint Hindu family, or to be taken as possessed of coparcenary or joint family property. Assistance can be obtained to meet the particular situation of a particular litigation between such parties from the broad principles of Hindu law, but the concrete conceptions of joint family or coparcenary, or of joint family property or coparcenary property, have never been known to or understood by such people, nor has any Court applied the same to them to this day. At the Bar the learned counsel were unable to refer to one single case of this type and surely in the last century there must have at least been one occasion when a situation arose that the Courts had an opportunity to say some such thing. I think it may be taken as settled and undisputed that the Jats in the Punjab know nothing of the conception of a joint family or coparcenary or of the conception of coparcenary property or joint family property. So, in any event, the conception of 'coparcenary property' cannot possibly be applied to them, unless on the view that this expression in sub-section (2) of section 19 of the Act is to be equated with 'ancestral property', but

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then that can only be done in Mitakshara where it is basis of coparcenary property, and not under Punjab Customary Law, because the present holder of ancestral property in the latter law holds it in his own right, as the father in Dayabhaga, and not as member of a coparcenary.

Two arguments with reference to the provisions of the Hindu Succession Act, 1956 (Act No. 30 of 1956), may now be considered. It has first been suggested that while dealing with the subject of 'intestate succession' in Chapter II of that Act, section 6, the expression used is 'Mitakshara coparcenary property', and that if the expression, 'coparcenary property' was limited to the Mitakshara Coparcenary, similar expression would have been used in the Act as in Act 30 of 1956. Section 6 of the latter Act deals with devolution of interest in 'Mitakshara coparcenary property', and with the rule of survivorship in Mitakshara applying to a Mitakshara coparcenary. It was to avoid confusion in the application of the rule in section 6 to any other coparcenary property such as in Dayabhaga that the expression used in section 6 is 'Mitakshara coparcenary property'. But it appears that it was not necessary to use the same expression in the Act as has been used in section 6 of Act 30 of 1956 and, in any case, this will not justify giving some novel meaning to the expression 'coparcenary property' in sub-section (2) of section 19 of the Act than the state of the law permits and when the Parliament could itself have defined this expression if it was intended to give it a different meaning than that to be found in Hindu Law. So that this consideration does not advance the case on the side of the appellant. It has next been pointed out that in sub-section (2) of section 19 of the Act, a daughter-in-law is only entitled to maintenance if she has not obtained any share in the coparcenary property in the possession of her father-in-law, and that such a situation can hardly ever arise in view of the proviso and explanation 1 to section 6 of Act 30 of 1956, according to which, on the death of a coparcener in a Mitakshara coparcenary leaving a female, such as a widow, his share in the 'Mitakshara coparcenary property' devolves by testamentary or intestate succession, as the case may be, according to the provisions of Act 30 of 1956 and for this purpose the date of the death of such coparcener is to be taken to be the

date of partition of the property by such coparcener. This means that on the death of a coparcener in a Mitakshara coparcenary his widow inherits his share in that coparcenary as if on the date of his death he was a separated member of such a coparcenary. It has been said that if the expression 'coparcenary property' in sub-section (2) of section 19 of the Act was limited to Mitakshara, in every case according to section 6 of Act 30 of 1956 such a widow will inherit to her deceased husband, and obviously will thus not ever come to have any claim under sub-section (2) of section 19 of the Act. And it is pointed out that this would mean that sub-section (2) of section 19 of the Act is redundant whereas Legislature never enacts a redundant provision. This last proposition is correct, but it does not unoften happen that the Legislature enacts a provision out of abundant caution to meet a situation that may very rarely and in extreme circumstances arise, and it appears to me that this is what the Parliament has done in enacting sub-section (2) of section 19 of the Act in spite of the provisions of section 6 of Act 30 of 1956. It has to be remembered that from various sources a daughter-in-law can have maintenance, the father-in-law, is the last source, and it appears clear that the Parliament enacted this provision, in spite of the existence of section 6 (proviso and explanation 1) of Act 30 of 1956, out of abundant caution. So that this consideration does not advance the case of the appellant either.

There are two cases which are cited in the reference order as well and upon which reliance has been placed at the hearing on the side of the appellant. The first case is *Sirdar Bahadur Sirdar Indra Singh* v. *Commissioner of Income-tax, Bihar and Orissa* (5), and the second case is *Raghbir Singh Sandhawalia* v. *The Commissioner of Income-tax, Punjab and others* (6), both of which are cases under the Indian Income Tax Act, 1922, in which the argument was that the assessee was a member of a Hindu undivided family as that expression is or rather was understood in that Act. There was nobody there to contest any such stand as the same is contested between parties to a litigation arising out of the same family or

(5) A.I.R. 1943 Patna 169.
(6) I.L.R. 1958 Punj. 318=A.I.R. 1958 Punj. 250.

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the tribe. In the first case, the finding of the learned Judges was that the income was that of the assessee alone and consequently the question of the income being of a Hindu undivided family did not arise. So that any observation of the learned Judges with regard to the family status of the assessee in that case is obviously obiter. In the second case without more the learned Judges just proceeded on the assumption that the assessee was a member of a Hindu undivided family. There was no material for that purpose. It seems that the Commissioner of Income Tax in neither case challenged this as a fact and these two are not cases decided according to Punjab Customary Law. There is no reference to this matter in these cases. To my mind, these cases are not at all relevant so far as the facts and circumstances of the present case and the question arising in it are concerned.

In my view, the expression 'coparcenary property' in sub-section (2) of section 19 of the Act has the meaning and scope as that expression is used in Mitakshara and that it only extends to 'ancestral property,' which is coparcenary property on account of its being ancestral according to the Mitakshara, and it does not apply to 'ancestral property' as the expression is understood in Punjab Customary Law, rules of which govern the parties to this case in regard to nature and character of immovable property or land. This is my answer to the question before the Full Bench, whether the question is taken in its original form or in its suggested amended form, though I have already pointed out that answer to an abstract question is not possible without reference to facts and circumstances of a particular case. In this approach the judgment and decree of the learned trial Judge are not open to exception and I would, therefore, affirm the same, leaving the parties to their own costs in this appeal in peculiar circumstances of this case.

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P. D. SHARMA, J.—I have had the advantage of reading the judgments prepared by my learned brothers Mehar Singh and Pandit, JJ. in this case. I agree with Pandit J. and wish to add a few words of my own.

The material facts of the case which have given rise to this reference may briefly be stated. Shrimati Gurdip Kaur applicant-appellant is the widow of Harnek Singh,

who died a few years back. He was a son of Ghumand Singh, respondent. In 1959, the appellant instituted the present suit claiming future maintenance and arrears of maintenance for the last three years and seven and a half months at the rate of Rs. 100 per mensem from her father-in-law, the respondent. She alleged that the respondent was in possession of entire ancestral, non-ancestral, movable and immovable properties including 498 *kanals* 5 *marlas* of land, a tractor, a corn-threshing machine, and cattle, all worth Rs. 2,00,000, which brought him a monthly income of Rs. 2,000. She further averred that her mother had died and father had contracted a second marriage 13 years back severing his connection with her, and that she had no other means of livelihood. She went on to urge that the respondent after the death of her husband continued paying her Rs. 100 per mensem as maintenance allowance for a period of one year and that he discontinued doing so for the last about three year and seven and a half months. She admitted that the respondent had other sons, who were all earning hands and daughters excepting one had been married.

The respondent resisted her claim and in doing so pleaded that the property in his hands was non-ancestral, that the appellant was earning as a seamstress about Rs. 2 to Rs. 3 per day and that according to the agricultural custom prevalent amongst them she should live in his house as his daughter-in-law and he would maintain her. He denied having paid Rs. 100 per mensem as maintenance allowance to her for one year after the death of his son Harnek Singh. According to him she left his house after the death of his son and at the time carried with her ornaments of the value of Rs. 2,000 which had been given to her by him on the occasion of her marriage.

The trial Judge framed the following issues:—

(1) Whether the applicant is unable to maintain herself ?

(2) If issue No. 1 is proved, is she not entitled to maintenance for reasons stated in paragraph 8 of the written statement?

(3) Relief and against what property ?

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Issue No. 1 was decided in favour of the applicant. As regards issues Nos. 2 and 3, he observed that the applicant had not pleaded any custom for the grant of maintenance by the father-in-law and her claim was under section 19 of the Hindu Adoptions and Maintenance Act (No. 78 of 1956) (hereinafter referred to as the Act), and further that the term 'coparcenary property' as used therein did not include ancestral property of a father-in-law governed by custom and on this score he disallowed the applicant's claim for maintenance against the respondent. She felt aggrieved from the above and filed the present appeal which came up for hearing before a Division Bench of this Court.

The learned counsel for the appellant before the Division Bench while arguing amongst other things also urged that the expression 'coparcenary property' as used in the Act includes ancestral property of a person, who was governed by custom and in support thereof relied on (1) *Jal Kaur* v. *Pala Singh* (1), and (2) *Angat Singh* v. *Dhan Kaur* (Regular First Appeal No. 16 of 1961) decided on 9th October, 1963. Both these cases tend to lay down that the term 'coparcenary property' did include ancestral property of the type alluded to above. The learned Judges, however, thought that these two decisions did not enunciate the law correctly and referred the following question for an authoritative pronouncement to a Full Bench:—

> "Whether the expression 'coparcenary property' in section 19(2) of Act 78 of 1956 applies to ancestral property as that expression is undestood under custom as it is followed by the tribe of the parties, that is to say, Jats in this State ?"

The learned counsel for the appellant contended that the words, "custom as it is followed by the tribe of the parties, that is to say, Jats in the State," occurring in the reference indicated that it had been taken for granted that the parties followed custom and not personal law. He went on to urge that it would be wrong to make such an assumption since the parties nowhere alleged in their pleadings that they followed custom in such matters and the trial Court also omitted to frame any issue on this point and in the circumstances the presumption was that

the parties followed their personal law,—*vide* section 5 of the Punjab Laws Act (Punjab Act No. IV of 1872). In view of his objection and by common consent the reference is to read as, "What is the meaning of the expression 'coparcenary property' used in section 19(2) of the Hindu Adoptions and Maintenance Act (No. 78 of 1956)".

The learned counsel for the appellant further argued the expression 'coparcenary property' used in section 19(2) of the Act did not and could not mean coparcenary property of the Mitakshara coparcenary comprising amongst others of a father and his deceased son whose widow claimed maintenance under this provision of law as the plain language of the section did not warrant it and such a stretched interpretation would lead to untenable results which the framers of the Act could never have meant. He pressed for an interpretation which would cover cases of all Hindu widowed daughters-in-law against their fathers-in-law in possession of coparcenary property meaning thereby ancestral property, accretions thereto and the property thrown into common stock by members of the joint family, provided they fulfilled the other conditions laid down in section 19 of the Act. The learned counsel for the respondent, however, maintained that the expression 'coparcenary property' could mean nothing but property of the Mitakshara coparcenary in the strict sense consisting of the appellant's father-in-law and her deceased husband in the hands of the former. Section 19 of the Act runs as:

[His Lordship read section 19 and continued:]

There is no doubt that the expressions 'coparcenary property' and 'ancestral property' have been used in the earliest commentaries on Hindu law, subsequent legislations on this part of law, and the pronouncements of the High Courts in India, the Privy Council and the Supreme Court. In these circumstances I agree with the learned counsel for both the parties that it would not be proper to give dictionary meanings to these terms. If we interpret the expression 'coparcenary property' as property of the coparcenary comprising of the father-in-law, his deceased son and others as strictly understood in Mitakshara law, then no daughter-in-law would be able to

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successfully lay her claim for maintenance against her father-in-law except those whose husbands had died before coming into force of the Hindu Succession Act (No. 30 of 1956). Because sub-section (2) of section 19 of the Act provides that the daughter-in-law would not be entitled to claim maintenance from her father-in-law if she had obtained any share in the coparcenary property. Section 6 of the Hindu Succession Act lays down:

> "6. When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:
>
> Provided that if the deceased had left him surviving a female relative specified in class I of the Schedule (which includes daughter-in-law) or a male relative specified in that class, who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.
>
> *Explanation* 1.—For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.
>
> *Explanation* 2.—Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein."

The widowed daughter-in-law under the above provision of law after its coming into operation in all eventualities

will obtain a share in a Mitakshara coparcenary property in the hands of her father-in-law on the death of her husband. Therefore, it will not be possible for her to claim maintenance under section 19 of the Act. It is a settled proposition of law that under Dayabagha law and Customary law as followed in the Punjab a son does not constitute a coparcenary with his father in the strict sense as the term 'coparcenary' is understood and interpreted in Mitakshara law. Section 19 of the Act cannot be understood to cover only the cases of widowed daughters-in-law whose husbands had died before the Hindu Succession Act came into force because the language thereof does not justify such an interpretation. It *inter alia* provides, "Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from *any coparcenary property* in his possession out of which the daughter-in-law has not obtained any share", . . . . This has no reference to the extent of the interest of the deceased son in the Mitakshara coparcenary property but talks of any *coparcenary property*. Further, as I shall presently show, a widowed daughter-in-law prior to the coming into force of the Act could claim maintenance as of right from her father-in-law out of the Mitakshara coparcenary property in which her deceased husband had interest which was not restricted in the manner now provided in the Act. If section 19 had been enacted to cover the case of such a widowed daughter-in-law only, her rights would not have been whittled down. It was to provide uniform law for the claims of all widowed daughters-in-law in certain conditions against their deceased hubsands' fathers. If the expression 'coparcenary property' is given the restricted meaning as suggested by the learned counsel for the respondent, section 19 of the Act will be rendered nugatory. The Courts are required to give purposeful meaning to the expression 'coparcenary property' so that this benevolent provision of law should not be reduced to sordid insignificance. Lord Denning in *Seaford Court Estates, Limited* v. *Asher* (7), at page 164 observed:

> "Whenever a statute comes up for consideration it must be remembered that it is not within human

(7) (1949) 2 A.E.R. 155.

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powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges' trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature."

The same principle was reiterated by our own High Court in cases (1) *Hardawari Lal* v. *Moti Ram* (8), (2) *Piara Singh and others* v. *The State* (9), and (3) *Jal Kaur* v. *Pala Singh* (1). The Supreme Court in *Workmen of Dimakuchi Tea Estate* v. *Management of Dimakuchi Tea Estate* (10), observed :

"The words of a statute, when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is

(8) A.I.R. 1952 Punj. 416.
(9) I.L.R. (1960) 2 Punj. 814=A.I.R. 1960 Punj. 538.
(10) A.I.R. 1958 S.C. 353.

found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained."

The Supreme Court again emphasised this wholesome canon of interpretation of statutes in case, *State of Uttar Pradesh* v. *C. Tobit and others* (11). Dua, J. while examining the scheme of the Act in *Jal Kaur's case* remarked:—

"All the recent enactments which have, as their fundamental purpose, the removal of Hindu women's disabilities and conferment on them of better rights for maintenance and property may be legitimately and with advantage referred to and harmoniously construed for the purpose of ascertaining the real manifest intention and the underlying cardinal purpose of the Parliament in enacting the Hindu Adoptions and Maintenance Act, in response to the needs and demands of a progressive society.

These legislative measures clearly reflect the modern liberal tendency of the Hindu society to confer on Hindu women much larger rights than they had heretofore been enjoying. The medieval conservative theory of treating women as inferior beings has been finally discarded by the Parliament in the clearest possible terms. In view of these objectives one must place a liberal interpretation favouring Hindu women on the provisions of the Hindu Adoptions and Maintenance Act."

I am in respectful agreement with these observations. Keeping in view that the Act has to be liberally interpreted in favour of the widowed daughter-in-law and also that purposeful meanings have to be given to the expression 'any coparcenary property', and at the same time

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(11) A.I.R. 1958 S.C. 414.

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faithfully applying the canons of interpretation of statutes as expounded in the above authorities I feel that sole emphasis has to be laid on the source and type of the property and not as to who else, if any, was or is a co-parcener with the father-in-law in whose possession the coparcenary property is accountable towards the claim of maintenance of the widowed daughter-in-law. Because a plain reading of section 19 of the Act will unmistakably reveal that the right of a Hindu widowed daughter-in-law to claim maintenance from her father-in-law is in no way linked with these incidents except that she should not have obtained a share in such a property. It was suggested that this could have been more readily accomplished by the use of the term 'ancestral property' but this is not a correct view of the matter. The framers of the Act believed and, if I may say so, rightly that basically the claim of a Hindu widowed daughter-in-law for maintenance against accretions to the ancestral property and the property thrown into the common stock under defined circumstances, rested on the same footing as against the ancestral property in the possession of her father-in-law and so they in their wisdom preferred to use a more comprehensive term 'coparcenary property' as the same stood defined in its abstract form in Hindu law by Mulla and other treatise on this subject by eminent commentators like Mayne, Gour and Raghavachariar. The terms 'coparcenary property' and 'separate property' have been defined in para 220 at page 321 of the Principles of Hindu Law by D.F. Mulla (Twelfth Edition) as:

> "220. Property, according to the Hindu law, may be divided into two classes, namely, (1) joint family property, and (2) separte property.
>
> Joint family property may be divided, according to the source from which it comes, into—
>
> (1) ancestral property; and
>
> (2) separate property of coparceners thrown into the common coparcenary stock.
>
> Property jointly acquired by the members of a joint family with the aid of ancestral property

is joint family property. Property jointly acquired by the members of a joint family without the aid of ancestral property may or may not be joint family property; whether it is so or not is a question of fact in each case.

The term "joint family property" is synonymous with "coparcenary property."

"Separate" property includes "self-acquired, property."

Again ancestral property has been defined in para 223 *ibid* as:

"223. All property inherited by a male Hindu from his father, father's father, or father's father's father, is ancestral property ....."

This definition of coparcenary property and ancestral property is common to both Mitakshara and Dayabhaga law. The property inherited by a male owner in the Punjab, who is governed by custom, from his father, father's father, or father's father's father is also styled as ancestral property. Therefore, the expression 'coparcenary property' as used in sub-section (2) of section 19 of the Act also includes ancestral property as defined heretofore.

The foregoing interpretation is also borne out by the scheme of the Act and the history of the law governing right of maintenance of Hindu widowed daughters-in-law in the country. Section 18 of the Act provides for maintenance of wife for which her husband in his life time is solely responsible. Section 19 gives right to the Hindu widowed daughter-in-law to claim maintenance from her father-in-law as of right if he has means to do so from any coparcenary property (ancestral property, accretions thereto and property thrown into the common stock) in his possession out of which the widowed daughter-in-law has not obtained any share. This right is qualified by so many other considerations, such as, that the claimant should be unable to maintain herself out of her own earnings or other property or where she has no property of her own, is unable to obtain maintenance from the estate

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of her husband or her father or mother, or from her son or daughter, or his or her estate. Section 20 provides for maintenance of children and aged parents. Section 21 gives a list of the dependents of a Hindu male or female. Section 22 provides that a dependent of a male or female Hindu deceased, who has not obtained any share in the estate of the deceased, is entitled to claim maintenance from those, who take the estate. A Hindu is morally bound to maintain his dependents including the widowed daughter-in-law as defined in section 21. If the widowed daughter-in-law had only a moral claim for maintenance against her father-in-law, in all eventualities section 19 of the Act would have never been enacted. She can claim maintenance as of right from her father-in-law in cases when he is in possession of ancestral property, accretions thereto and the property thrown into common stock. In other cases it remains only a moral obligation on his part. Before the coming into force of the Hindu Succession Act, 1956, a father-in-law in possession of Mitakshara coparcenary property was legally bound to maintain his widowed daughter-in-law. This legal obligation was not circumscribed by any limitation prescribed in section 19 of the Act. In this connection reference may be made to *Bhagwan Singh and others* v. *Mst. Kewal Kaur and others* (12), where a Division Bench of the Lahore High Court laid down:

> "The manager of a joint Mitakshara family is under a legal obligation to maintain all male members of the family, their wives and their children, and on the death of one of the male members he is bound to maintain his widow and his children."

Similarly in *Ladha* v. *Musammat Karmbibi* (13), the Punjab Chief Court ruled:

> "The widow of a grandson is entitled to be maintained by her husband's grandfather so long as

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(12) I.L.R. (1927) 8 Lahore 360.
(13) 20 I.C. 297.

> she remains unmarried and lives in the house where she lived with her deceased husband".

The learned counsel for the respondent was not able to cite any authority in support of the fact that in the Punjab a father-in-law, who was governed by custom, was not even morally bound to maintain his widowed daughter-in-law out of the ancestral property. The respondent in the instant case in paragraph 8 of his writen statement frankly conceded, "According to the agricultural custom the applicant should live in my house as my daughter-in-law and maintain herself," while in the witness box as D.W. 2 he in the cross-examination admitted, "According to our custom, daughter-in-law is entitled to maintenance." It will, therefore, be iniquitous to interpret section 19 of the Act in the manner that the appellant loses even that by way of maintenance from her father-in-law which she could claim under the custom of the family. The rights of a widowed daughter-in-law under the Dayabhaga School have been defined by the Privy Council in *Rajani Kant Pal and Sajani Sundari Dassya* (14) as;

> "Although a Hindu governed by the Bengal School is under only a moral liability to maintain the widow of his deceased son, the liability when transmited on his death to his surviving sons becomes in their persons a legal liability, the measure of which, however, is restricted to the amount of the estate to which they have succeeded from their father."

The State of law before the Act was that the widowed daughter-in-law could claim maintenance as of right from her father-in-law out of the property belonging to the Mitakshara coparcenary constituted by him with her deceased husband and this legal obligation was not circumsribed by any considerations now incorporated in section 19 of the Act. The widowed daughter-in-law under Dayabhaga School and custom as followed in the Punjab by certain tribes at least had a moral right for maintenance against her father-in-law out of the ances-

(14) 51 I.A. 29.

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tral property, Section 19 of the Act whittled down unhampered rights of a widowed daughter-in-law for maintenance against her father-in-law governed by Mitakshara School out of the property in which her deceased husband had an interest as a coparcener and converted the moral rights into legal rights of the widowed daughter-in-law to maintenance against her father-in-law in possession of ancestral property in other cases. These rights of maintenance in the latter class of widowed daughter-in-law were made legal in consonance with the policy followed in the enactment of the Hindu Marriage Act, 1955, the Hndu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956. It follows that the expression 'any coparcenary property' means ancestral property, accretions thereto and the property thrown into common stock. It cannot be interpreted in the manner suggested by the learned counsel for the respondent as the same will lead to gross incongruities. I repeat that the sole stress is on the source/type and not on incidents of such a property. The expression 'coparcenary property' indeed has been used in contradistinction to the term 'separate' or 'self-acquired property.' For this and the above, my answer to the reference is the same as propounded by my learned brother Pandit J.

I would like to add further that the Division Bench before which the first appeal came up for hearing referred only the question alluded to above and not the whole case to the Full Bench. The learned counsel for the parties confined their arguments before us to the referred question and made no comments on any other aspect of the first appeal which should go back to the Division Bench for final disposal on merits.

ORDER OF THE COURT

In view of the majority opinion, the answer to the question referred to the Full Bench is that the term "co-parcenary property" occurring in section 19(2) of the Hindu Adoptions and Maintenance Act, 1956, means the property which consists of ancestral property, or joint acquisitions, or property thrown into the common stock and accretions to such property. The regular first appeal would now go back to the Division Bench for final disposal on merits.

*B.R.T.*