appeal and grant the plaintiff a decree for Rs. 60,172-15-9 against the second defendant, namely, the State of Punjab.

About costs, I gather from the judgments that the learned Judges of the Division Bench were agreed that there should be no order as to costs, and whatever, therefore, my own view might be about this matter, I am not called upon to decide it.

B. R. T.

APPELLATE CIVIL

Before Inder Dev Dua and Prem Chand Pandit, JJ.

JAL KAUR,—*Appellant*

versus

PALA SINGH,— *Respondent*

Regular First Appeal No. 258 of 1958

1960

Nov. 18th

Hindu Adoption and Maintenance Act (LXXVIII of 1956)—Section 19—Right of widowed daughter-in-law to get maintenance from the ancestral property of her husband—Such ancestral property, whether can be burdened with the maintenance of other members of the family of father-in-law in the presence of his self-acquired property—Proviso (a) to section 19—Widowed daughter-in-law being maintained by her parents—Whether can claim maintenance from her father-in-law—Indian Limitation Act (IX of 1908)—Article 170—Whether applicable to appeal as a pauper.

Held, that no doubt the widowed daughter-in-law can only look to the ancestral property for her maintenance but it is nowhere laid down that the income from the ancestral property must also be burdened with the maintenance of other members of the family of the father-in-law for whose maintenance self-acquired property is available.

Held, that in order to disentitle a Hindu widow of her right to claim maintenance from her father-in-law as provided in section 19(1) of the Hindu Adoption and Maintenance Act, it must be established affirmatively that she is

able as of right to obtain maintenance either from the estate of her husband or from her father or mother. The word 'estate' has in law a diversity of meaning and variety of signification. It may mean the property of living man or that of a deceased person which passes to his administrator. Generally speaking this word may mean the property of every character but ordinarily it is applied to the property of a deceased person or a ward or a lunatic or a bankrupt, etc., according to which meaning it conveys an idea of property which is administered by administrators or executors or in Courts. The construction of the word "estate" in this sense is more in consonance with the legislative intent as manifested in the cognate legislative measures and it must be held that inability on the part of a Hindu widow to obtain maintenance from the estate of her father and mother, as contemplated in proviso (a) to section 19(1) has a reference to the estate of a deceased person and not to their estate during their lifetime. Moreover the use of the word 'obtain' in the proviso is very significant and means that there must be a legal right in the widowed daughter to demand maintenance from her father or mother or from their estate, as the case may be, and she must, in assertion of that right, be able to obtain maintenance. It is only then that the operation of the proviso can be attracted.

Held, that merely because Article 170 of the Indian Limitation Act prescribes the period of 30 days for an application for leave to file an appeal as a pauper, the period of limitation for appeals as a pauper is not reduced from 90 days to 30 days.

Regular First appeal from the decree of the Court of Shri R. S. Bindra, Senior Sub-Judge, Ferozepur, dated the 11th day of February, 1957 granting the plaintiff a decree for Rs. 175 for past maintenance upto 30th June, 1956, and a decree for future maintenance at the rate of Rs. 7 per mensem and also granting a decree for possession of the movable properties, namely, a waltohi, a parat, a dona, a *glass, and a locked box and if she failed to get the possession of these articles from the defendant either out of the court or through the court, then she would move that court for assessing the value of those articles and in that event she would be entitled to claim that value from the defen-*

dant and she would also get 1/6th of the costs of the suit from the defendant and would be bound to pay 5/6th of the court fee and the balance would be paid by the defendant and the Collector would be informed.'

M. R. CHIBBAR, ADVOCATE, for the Petitioner.
NARINDER SING., ADVOCATE, for the Respondent.

JUDGMENT

DUA, J.—This judgment will dispose of Regular First Appeal No. 258 of 1958 and Regular Second Appeal No. 934 of 1958, both of them having arisen out of the judgment of the learned Senior Subordinate Judge, Ferozepur, dated 11th of February, 1957, which disposed of two suits together. Dua, J.

The short question, which calls for decision in the present controversy, relates to the right of widowed daughter-in-law and her minor daughter to claim maintenance from the former's father-in-law. It is common ground that Jal Kaur, plaintiff-appellant, in suit No. 356, had been married to Sadhu Singh, son of the defendant Pala Singh some time in the year, 1940. Sadhu Singh died in 1949 leaving behind his widow Jal Kaur and a minor daughter Surjit Kaur. Surjit Kaur was the plaintiff in suit No. 357 and is the appellant in Regular Second Appeal No. 934 of 1958. It is Jal Kaur's case that Pala Singh, her father-in-law, treated her very badly after the death of her husband and finally in 1954 turned her out of his house. Thereafter she has been living with her parents in the District of Bhatinda. She claimed maintenance, both past and future, at the rate of Rs. 50 per mensem the period for the past maintenance being from 1st of June, 1954 to 30th of June, 1956.

Surjit Kaur, the minor daughter of Sadhu Singh deceased, has claimed maintenance at the rate of Rs. 30 per mensem both past and future,

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for the like period as has been claimed by her mother, although in the Court below Jal Kaur had also claimed the return of certain articles which were lying with the defendant or in the alternative for a sum of Rs. 2,080 representing their price. In the present appeal, this matter is not being canvassed at the Bar with the result that we are not concerned with that claim.

The defendant resisted the claim of maintenance by both the plaintiffs, and the trial Court, relying on a decision of the Bombay High Court in *Kalu* V. *Laxmibai* (1), held that the plaintiffs in the two cases before us have legal right to compel the defendant to pay them subsistence from out of the produce of the ancestral property in his hands. The trial Court, relying on the contents of the written statement, filed in Jal Kaur's suit also came to the finding that 6 *ghumaons* of land in the possession of Pala Singh were admittedly ancestral. Keeping in view the extraordinary rise in the prices of the agricultural produce, the Court below came to the further conclusion that 6 *ghumaons* of land could easily fetch a net income of Rs. 300 per annum and observing that the defendant had also lately married a second wife, the two plaintiffs were held to be entitled to claim 2/5th share of the income, the remaining 3/5th being the share of Pala Singh and his two wives. According to this calculation, Jal Kaur was held entitled to Rs. 7 per mensem and her infant daughter Surjit Kaur, Rs. 5 per mensem. Past maintenance was also decreed at this rate.

Feeling aggrieved by the judgment and decree of the first Court, Surjit Kaur, minor daughter of Sadhu Singh, deceased, took an appeal to the Court of District Judge, but the learned Additional District Judge, Ferozepore, affirmed the view of the

(1) I.L.R. 7 Bom. 127.

Court of first instance and dismissed her appeal. Now both Jal Kaur and Surjit Kaur have appealed to this Court, the former by means of Regular first Appeal No. 258 of 1958 and the latter by means of Regular Second Appeal No. 934 of 1958 and Mr. M. R. Chibbar has addressed us on behalf of both the appellants. We have also heard Mr. Narinder Singh on behalf of the respondent in both the appeals.

Before proceeding with the merits of the case, I may notice a preliminary objection raised on behalf of the respondent with respect to Surjit Kaur's appeal. It is contended that this appeal is barred by time and in support of this plea, the learned counsel submits that the judgment of the learned District Judge is dated 23rd of May, 1957, and an application for certified copies of the Judgment and decree was filed on 18th June, 1957. The copies were completed on 27th June, 1957, and were taken delivery of on 3rd of July, 1957. The Second Appeal was filed in this Court on 6th of August, 1957. It is contended that the appeal was sought to be filed by Surjit Kaur in this Court as a pauper with the result that the limitation for such appeal would be 30 days. The appeal having clearly been filed beyond the prescribed period, the counsel contends that it must be dismissed as barred by time.

I do not find it possible to sustain this contention. Article 170 of the Indian Limitation Act prescribes the period of 30 days for an application for leave to appeal as a pauper and the *terminus a quo* is the date of the decree appealed from. In the present case, it is conceded by Mr. Narindar Singh that on the application for leave to appeal as a pauper presented by Surjit Kaur under Order 44, Rule 1, Code of Civil Procedure, a

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notice was duly issue to the respondent who appeared in response to such notice and it was in the presence of the counsel for both the parties that a Division Bench of this Court (Falshaw and Dulat, JJ.) on 6th August, 1958, allowed the application for leave to appeal in *forma pauperis*. Mr. Narindar Singh, counsel for Pala Singh, who has raised the objection now, also represented Pala Singh in the application filed in this Court by both Jal Kaur and Surjit Kaur, minor for leave to appeal as paupers, but no objection that the applications were barred by limitation under Article 170 of the Indian Limitation Act were raised by him. In my opinion, in face of he judgment of the Division Bench, dated 6th of August, 1958, it is no more open to the counsel now to raise the objection that the application for leave to appeal in *forma pauperis* filed by Surjit Kaur minor daughter of Sadhu Singh was barred by limitation, and should, therefore, not have been allowed. The bar of *res judicata* is clearly attracted on these facts.

The counsel, however, contends that Article 170 of the Limitation Act must also be deemed to provide limitation for purposes of appeal as a pauper. Except for the bare contention of the learned counsel, no authority has been cited in its support and on principle I cannot see how it is possible to sustain this contention. Article 170 occurs in Third Division of the First Schedule of the Indian Limitation Act and is headed as 'Applications'. It is not denied that the period of limitation for appeals to the High Court is 90 days and the *terminus a quo* is the date of the decree appealed from. It is also not disputed that the appeal in this Court was filed well within 90 days from the decree of the learned District Judge. The contention that merely because the Limitation Act prescribes the period of 30 days for an application for leave to

file an appeal as a pauper, therefore, the period of limitation for appeals as a pauper must also be deemed to have been reduced from 90 days to 30 days, has merely to be stated to be rejected. No provision of law nor any precedent or even principle has been brought to our notice by the learned counsel in support of what *prima facie* seems to be an extraordinary contention, which, being wholly without merit, must be rejected.

The established general rules of statutory construction have to be applied to the statutes of limitation and the determination of the question whether a particular Article of the Limitation Act is a bar to an appeal is not to be influenced by any extension of the Article, but by its clear language as manifesting the legislative intent. It is true that the Law of Limitation considered as a statute of repose and affording security against stale claims may not be so construed as to evade its effect, but at the same time I find it exceedingly difficult to persuade myself to deny relief to suitors by placing strained construction on it.

Coming to the merits of the case, the learned counsel for the appellant, has placed reliance on section 19 of the Hindu Adoption and Maintenance Act No. 78 of 1956, which is in the following terms :—

> "19. Maintenance of widowed daughter-in-law—(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

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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 coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law".

It is contended that in the present case, Smt. Jal Kaur is entitled to be maintained by her father-in-law and this obligation is enforceable against the ancestral property in the possession of Pala Singh. The learned counsel has, in this connection, drawn our attention to the written statement filed by Pala Singh in which he has admitted, in addition to 6 *ghumaons* of ancestral property, to own 44 *ghumaons,* which he claims to be his self-acquired property. The contention on behalf of the appellant is that the trial Court was wrong in completely ignoring 44 *ghumaons* of the self-acquired land and in dividing the income from 6 *ghumaons* of ancestral land amongst the five members claiming to be entitled to be maintained by Pala Singh. In my view, the contention is not without substance. The widowed daughter-in-law can only look to the ancestral property for her maintenance; but it is nowhere laid down that the income from the ancestral property must also be burdened with the maintenance of other members of the family of the

father-in-law or whose maintenance self-acquired property is available. Pala Singh in the present case is free to maintain himself and his two wives out of the income from 44 *ghumaons* of his self-acquired property and indeed his two wives can easily and legitimately claim to be supported and maintained from his self-acquired property as well. The widowed daughter-in-law, whose claim under the law is only confined to 6 *ghumaons* of ancestral land, should, therefore, in the circumstances of the case, be entitled to claim from the ancestral land reasonable maintenance, though such maintenance cannot exceed the income from the said ancestral property, and the quantum of her maintenance should not be suffered to be curtailed by burdening the ancestral property with the maintenance of Pala Singh and his two wives.

On behalf of the respondent, various technical objections were raised in resisting the plaintiff's claim, but only one of them relating to limitation with respect to Surjit Kaur's appeal was seriously pressed before us, and this has already been disposed of by me.

On the merits it has been contended that under proviso (a) to section 19 of the Hindu Adoptions and Maintenance Act, the daughter-in-law can claim maintenance from her father-in-law only if she is unable to obtain maintenance from her father or mother. It is argued that Smt. Jal Kaur is actually being maintained by her parents and this *prima facie* means that she is obtaining maintenance from them. Except for the language of this section, the counsel has not been able to cite any precedent or principle in support of his contention. Though on surface this argument may appear to be plausible, on deeper probe I think the Parliament could not have intended that merely

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because the parents of a widowed daughter are somehow managing to keep her with them in their own house she should on this ground alone be disentitled from claiming maintenance from her father-in-law under section 19. According to proviso (a) to section 19, she can be disentitled to claim maintenance from her father-in-law only if she is able to obtain maintenance either from the estate of her husband or her father or mother. Mr. Narindar Singh has contended that construing clause (a) of the proviso according to the strict rules of grammar, the expression 'from the estate' refers only to the words "her husband" and not to "her father or mother". On this basis, it is argued that the proviso postulates a situation when a widowed daughter obtains maintenance from her parents during their lifetime.

The word 'estate' has in law undoubtedly a variety of meaning; it may mean the property of a living man, as also of a deceased person which passes to his administrators or heirs. But in section 19(a) proviso the expression 'estate of her husband' clearly denotes the estate of a deceased person. The question, therefore, arises whether the proviso also postulates the ability of the widowed daughter-in-law to obtain maintenance from the estate of her father or mother in the same sense as it does from the estate of her deceased husband. It is in this context that Shri Narindar Singh has argued that the word 'estate' refers only to the husband of the widowed daughter-in-law and not to her father or mother. I am not quite sure if the learned counsel is right in his submission, but even if his contention were well-founded, "statutes", as observed by a Bench of this Court in *Piara Singh* v. *State* (1), "are not mere exercises in literary composition, but being instruments of

(1) A.I.R. 1960 Punj. 538.

Government, while construing them the general purpose underlying the enactment is of more important aid to their meaning than any rule which grammar or formal logic may suggest. More so, because the purpose is generally embedded in words which are not always pedantically expressed. In this sense statutory meaning is more to be felt than to be demonstrated".

In order, therefore, to understand and appreciate the true meaning and scope of section 19 of the Hindu Adoptions and Maintenance Act, the section must, in my opinion, be construed and interpreted in the background and light of the legislative scheme or pattern which is discernible and which emerges from a reading together of the recent progressive legislative measures on similar or cognate subjects, e.g., statute like The Hindu Succession Act No. XXX of 1956. The Hindu Adoption and Maintenance Act No. LXXVIII of 1956 and the Hindu Women's Rights to Property Act No. XVIII of 1937, as amended later, and other enactments which have conferred on Hindu women rights with respect to property which they were considered not to possess under the original texts of Hindu Law. All these 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, in my opinion, 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 Hindu Adoptions and Maintenance Act, in response to the needs and demands of a progressive society.

These legislative measures appear to me clearly to reflect the modern liberal tendency of the

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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, in my opinion, been finally discarded by the Parliament in the clearest possible terms. In view of these objectives, I would be inclined to place a liberal interpretation favouring Hindu women on the provisions of the Hindu Adoptions and Maintenance Act.

Examining section 19 in the background and light of the foregoing observations, in my opinion in order to disentitled Hindu widow of her right to claim maintenance from her father-in-law as provided in section 19(1) of the Hindu Adoptions and Maintenance Act. it must be established affirmatively that she is able as of right to obtain maintenance either from the estate of her husband or from her father or mother. Under section 21, widowed daughter is dependant only when, and to the extent that, she is unable to obtain maintenance from the estate of her husband or from her son or daughter if any, or his or her estate; or from her father-in-law or his father or the estate of either of them. If the widowed daughter can obtain maintenance from the sources mentioned above, she would not be considered to be a dependant of her father within the contemplation of section 21. It is true that a Hindu is bound during his or her lifetime to maintain his or her ligitimate or illegitimate children, but it is also clear that on the marriage of a Hindu daughter, she becomes a member of her husband's family and acquires a right to be maintained by her husband during her lifetime. Under section 8 of the Hindu Succession Act, a daughter is an heir to her father with the result that on her father's death she would be entitled to succeed to his estate in accordance with

the provisions of the said Act. She is also apparently entitled to succeed to her mother's Stridhan. Keeping these provisions of law in view, it may be open to contend with some justification that proviso (a) to section 19(1) of the Hindu Adoptions and Maintenance Act contemplates and envisages the ability on the part of a Hindu widow to obtain maintenance from the estate of her father or mother. The word 'estate' has undoubtedly, as already observed earlier, in law a diversity of meaning and a variety of signification. It may mean the property of a living man or that of a deceased person which passes to his administrator. Generally speaking, this word may mean the property of every character, but ordinarily it is applied to the property of a deceased person or a ward or a lunatic or a bankrupt, etc., according to which meaning it conveys an idea of property which is administered by administrators or executors or in Courts. Construing the word 'estate' in this sense, I am inclined, as at present advised, to consider it to be more in consonance with the legislative intent as manifested in the cognate legislative measures, to hold that inability on the part of the Hindu wife to obtain maintenance from the estate of her father or mother, as contemplated in proviso (a) to section 19(1) has a reference to the estate of deceased persons and not to their estate during their lifetime.

But this apart, the word 'obtain' as used in the proviso is also, in my opinion, significant. It does not merely mean that the widow is somehow managing to live with or is being maintained by her father or mother or that her father or mother are somehow managing to save their widowed daughter from starvation, for if this were to be the meaning placed on the word 'obtain', then,

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apparently, the basic and main purpose and object of the Hindu Adoptions and Maintenance Act would be thwarted rather than advanced. There must, therefore, in my view, be a legal right in the widowed daughter to demand maintenance from her father or mother or from their estate, as the case may be, and she must in assertion of that right be able to so obtain maintenance. It is only when she can obtain maintenance in pursuance of lawful right that the operation of the proviso can be said to be attracted. This clearly is not the case before us.

In view of the above discussion, in my opinion, the Court below was clearly in error in granting to Smt. Jal Kaur a maintenance at the rate of Rs. 7 per mensem on the ground that Pala Singh had to support two of his wives as well, and in imposing the burden of their maintenance also on the 6 *ghumaons* of land which are admittedly ancestral. The contention on behalf of the appellant that the income from 44 *ghumaons* of self-acquired land should also be taken into account for the purposes of determining the amount of maintenance, appears to me, however, to be misconceived because under sub-section (2) of section 19, the obligation under sub-section (1) can be enforced only if the father-in-law possesses the means to do so from coparcenary property in his possession out of which the daughter-in-law has not obtained any share. This provision would obviously permit or entitle the father-in-law to exclude his self-acquired property, but the appellant is certainly entitled to have a reasonable rate of maintenance out of the 6 *ghumaons* of ancestral land.

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.

In so far as Surjit Kaur is concerned, the learned counsel for the respondent did not address any arguments in justification of the grant of Rs. 5 per mensem only, by way of maintenance, on any ground other than the one found in the judgment of the Court below. Having held that the burden of maintenance of Pala Singh and his two wives could not be placed on the 6 *ghumaons* of ancestral land would also demolish the basis of the decision of the lower Court with respect to Surjit Kaur's case. But this apart, the liability to support a son's daughter would, in my opinion, exist independently of the existence of any ancestral property, and indeed nothing was urged against this position on behalf of the respondent. In view of the foregoing discussion in my opinion, the entire income of the 6 *ghumaons* of land is liable to be utilized for the maintenance of Smt. Jal Kaur and Surjit Kaur; the 44 *ghumaons* of self-acquired land being there for the maintenance of Pala Singh and his two wives.

For the reasons given above, I modify the decree of the court below and instead of a decree for Rs. 7 per mensem and Rs. 5 per mensem in favour of Smt. Jal Kaur and Surjit Kaur, respectively, I would grant a decree for Rs. 15 per mensem in favour of Jal Kaur and Rs. 10 per mensem in favour of Surjit Kaur. The decree for past maintenance are also proportionately enhanced, the decree in favour of Smt. Jal Kaur being now for a sum of Rs. 375 and in favour of Surjit Kaur for a sum of Rs. 250. The appellants are entitled to the costs of these appeals as also to proportionate costs

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of the Court below. The respondent will, however, pay the whole of the Court fee chargeable.

Pandit J.

PREM CHAND PANDIT, J.—I agree.

K. S. K.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

LAKHPAT RAI SHARMA,—*Appellant*

versus

ATMA SINGH,—*Respondent.*

Execution First Appeal No. 108 of 1960

1960

Dec., 9th.

Code of Civil Procedure (V of 1908)—Section 44-A—Whether independent or controlled by Sections 38 and 39—Alternatives open to decree-holder who has obtained a decree from a reciprocating territory for its execution in India—Judgment-debtor having been adjudged insolvent in the country in which decree passed—Effect of—Decree-holder, whether can execute decree in India or must prove his debt before the Official Assignee—Foreign decree—Execution of—Law of Limitation applicable—Whether of India.

Held, that section 44-A of the Code of Civil Procedure, 1908, is an independent section and it is not controlled by the provisions of any other section. The moment a certified copy of a decree of any of the superior Courts of any reciprocating territory and a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted, are produced in a District Court in India, then the decree may be executed in India as if it had been passed by the District Court. It is not necessary that the decree should have been transferred to the Court for execution by the Court which passed the decree.

Held, that two alternatives have been given to a decree-holder who has obtained a decree from a superior Court in a reciprocating territory for execution of his decree in