ORDER

Mahajan, J.

MAHAJAN, J.—This is a petition for revision by the defendants challenging the order of the Court below allowing the plaintiff to sue in *forma pauperis*. The sole contention of the petitioner is that he made the court-fee amount available to the plaintiff before the order granting permission to sue *in forma pauperis* was passed. In my view the volition of the defendant in making the funds available would have no meaning in determining the question whether the plaintiff is or is not a pauper. It is not a case where the plaintiff has come into possession of funds not at the mercy of the defendant but in his own right. In this case certainly the Court will not grant permission to the plaintiff to sue *in forma pauperis* but this is not that type of a case. Moreover, as observed by Dalip Singh, J., in *Maratab Ali Shah* v. *Madan Lal* (1), a petitioner can have no possible grievance assuming the order to be wrong, the only person really affected is the Crown and the High Court can interfere in a proper case, but it would be slow to move at the instance of the opposite party, i.e., the defendant." I am in respectful agreement with these observations and following the decision in *Maratab Ali Shah's case*, I dismiss this petition. However, there will be no order as to costs.

Mr. Chetan Dass, who appears for the plaintiff-respondent, undertakes not to withdraw the amount deposited by the defendant in the trial Court.

B.R.T.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

BLANDA AND OTHERS,—*Appellants*

versus

DUNI CHAND *alias* BRAHMU,—*Respondent.*

Regular Second Appeal No. 1436 of 1961.

1962

Jan. 11th

Hindu Succession Act (XXX of 1956)—Section 14(2)—Whether includes oral gifts.

(1) A.I.R. 1934 Lah. 295.

Held, that the use of the term 'gift' refers to all gifts valid at law whether oral or written and the connotation of the term 'gift' cannot be deemed to have been abridged by the use, later on, of the term 'or other instrument'. The words 'any other instrument' were used not only *ex vi termini* but also *ex necessitate rei* in its disjunctive sense and not with a view to modify what is understood by gift. In this context not only the *litera legis* but also the *sententia legis* show that the expressions 'gift', 'will', 'other instrument', etc., are mutually exclusive and do not overstep each other. There is no particular reason for the legislature to have excluded oral gifts from the operation of section 14(2) of the Act.

Regular Second Appeal from the decree of the Court of Shri Badri Parshad Puri, District Judge, Hoshiarpur Division, Camp Dharmsala, dated the 23rd day of August, 1961, reversing that of Shri Rajinder Paul Gaind, Sub-Judge, IV Class, Hamirpur, dated the 16th August, 1960 and dismissing the plaintiffs' suit in toto and leaving the parties to bear their own costs throughout.

H. R. AGGARWAL, ADVOCATE, for the Appellants.

J. N. KAUSHAL, ADVOCATE, for the Respondent.

JUDGMENT

MAHAJAN, J.—In this second appeal the interpretation of section 14(2) of the Hindu Succession Act, 1956, is involved. Mahajan, J.

The land in dispute was held by Smt. Rohban at the time when the Hindu Succession Act came into force. She had got this land by gift from her father-in-law. The gift was an oral gift and its terms are recorded in the mutation (Exhibit P. 2) that followed. It is stated in this mutation that the land was given to her for her maintenance and she had no right to sell or mortgage the same. After the coming into force of the Hindu Succession Act, she gifted this land to the defendants. This led to the present suit by the collaterals of her father-in-law on the ground that she had no right to gift this property to the defendants in view of the terms of the gift because she merely held a

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limited estate in the donated property. The defence was that by reason of section 14 of the Hindu Succession Act she had become the absolute owner of the donated property and, therefore, could make a valid gift. The trial Court found for the collaterals and held that she held merely restricted estate and, therefore, decreed the suit. On appeal the learned District Judge has taken a contrary view and has reversed the decision of the trial Court and dismissed the suit. The plaintiffs have come up in second appeal to this Court.

The first question that arises for determination is as to what is the nature of the estate the lady got from her father-in-law. Did she get a full estate or a limited estate in that property? For that we have to refer to the mutation of gift wherein the terms are recorded. This gift came about when Hazari was selling the property out and out. The lady objected. There was a compromise and in that compromise she was given the suit property for her maintenance with a further rider added that she could not sell or mortgage the same. To my mind this clearly indicates that she was being given merely a limited estate and not a full estate. The estate that was given to her was given in lieu of maintenance and she was debarred from selling or mortgaging it, which she could have otherwise done in case of a valid necessity. Therefore, it must be held that she held a limited estate in the suit property before the coming into force of the Hindu Succession Act.

The next question that requires determination is as to whether the Hindu Succession Act has made any difference so far as the estate which Smt. Rohban acquired under the Act is concerned. The contention of the learned counsel for the respondents is that it has. According to the learned counsel for the respondents sub-section (2) of section 14 of the Hindu Succession Act only applies to those limited estates which are expressly created by an instrument of gift, or will, or by some other instrument. An oral gift would not be covered by this provision. He has strenuously contended that the gift in order to come within

the ambit of sub-section (2) of section 14 must be by a written instrument. For this he relies on the following passage in Hindu Law by N. R. Raghavachariar, Fourth Edition, at page 829:—

> "As already said, three things are necessary before this sub-section can apply: (1) there must be an instrument or document, (2) that instrument or document must be the source or the foundation of the right of the Hindu female to the property in question, and (3) that document or instrument must contain terms which restrict the estate taken by the Hindu female. If any of these is absent the estate taken by the women in the property shall be absolute."

I am, however, unable to agree with this contention. Sub-section (2) of section 14 of the Hindu Succession Act reads thus:—

> "14(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the gift, will or other instrument or the decree order or award prescribe a restricted estate in such property."

It will be noticed that after the word 'gift' there is a disjunctive 'or' followed by the word 'will'; and again another disjunctive 'or' before the words 'any other instrument'. According to the learned counsel the gift contemplated is a gift by an instrument. In other words, oral gift is excluded from the ambit of section 14(2) of the Act. The key to this construction, it is argued, lies in the use of the words 'any other instrument'. These words denote the intention of the legislature that only gifts effectuated by an instrument are contemplated. I am unable to agree with this contention. The

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word 'or' cannot be obliterated from the statute. I am not unmindful of the cases where 'or' has been read as 'and' but this has been done only in such cases where the intention of the Legislature was beyond reasonable doubt. See Maxwell on Interpretation of Statutes, page 238; Tenth Edition. Moreover, I can see no particular reason why the Legislature would be excluding oral gifts. No reason has been given by the learned counsel which prompted the Legislature to do so. It is significant that if the term 'any other instrument' was used as a pointer to indicate that the gift has to be by an instrument, it was redundant to repeat the same words again in the sentence following and the legislative draftsmen would have covered the purpose by expressing that sense by inserting "and where the terms of such instrument". It cannot be disputed that a writing containing gift, will, decree, order or award is an instrument. Thus it can be legitimately concluded that as each term used has a distinct and separate meaning and overlapping had to be avoided, sub-section (2) of section 14 was so framed. If the words 'other instrument' in section 14(2) furnish the key for the contention that gifts have to be by written instruments it must be held that the expression 'other instrument' is used not in its inclusive but in its exclusive sense, that is to say, other instruments apart from those specifically mentioned in the section where such instruments are necessary by the nature of things. It is well-known that the term 'instrument' is used with reference to a document or writing which gives formal expression to a legal act or agreement, for the purpose of creating, securing, modifying or terminating a right. Under various jurisdictions in this country, a gift need not be clothed in an instrument and may be oral. If it were the intention of the Legislature to exclude oral gifts from the operation of section 14(2) and to confine the provision to a gift in the form of an instrument in writing, it would have more appropriately inserted a qualifying word in relation to gift and would not have let its intention be obscured by implying a modification by the use of the expression "or any other instrument" after the word "will". The use of the term 'gift' to my

mind refers to all gifts valid at law whether oral or written and the connotation of the term 'gift' cannot be deemed to have been abridged by the use, later on, of the term 'or any other instrument'. I am, therefore, satisfied that the words 'any other instrument' were used not only *ex vi termini* but also *ex necessitate rei* in its disjunctive sense and not with a view to modify what is understood by gift. In this context not only the *litera legis* but also the *sententia legis* show that the expressions 'gift', 'will', 'other instrument', etc., are mutually exclusive and do not overstep each other.

Further support for this contention is sought to be derived from the submission that the Hindu Succession Act was an all-India measure and the Legislature wanted a uniform rule throughout India, that is why oral gift was ruled out. No oral gift is permissible in the major part of India, and, therefore, it must be concluded that oral gifts are not covered by section 14(2) of the Act. I am unable to agree with this contention. Oral gifts were known to the States where the Transfer of Property Act did not apply. So far as the State of Punjab is concerned, oral gifts were not only made but were all through recognised and accepted by Courts and there are innumerable decisions where oral gifts have been recognised, acted upon and given effect to. Therefore, when the Legislature in sub-section (2) of section 14 used the word 'gift' it must be taken to include oral as well as written gifts. It cannot be assumed that the Legislature was unaware of the fact that in certain parts of India oral gifts were recognised. The Legislature could have used the phrase 'instrument of gift' instead of the word 'gift'. That being so, I am of the view that the contention of the learned counsel on this part of the case cannot be accepted. The same is repelled.

Therefore, I have to proceed on the basis that oral gifts are covered by section 14(2). The gift in this case was in lieu of maintenance. The only restriction placed was regarding sale and mortgage by the donee. It is nowhere stated that the donee will only hold a life estate and on her death it will

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go back to the heirs of the donor. This takes me to section 14(1) of the Act which is in these terms:—

> "14(1) Any property possessed by a female Hindu whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.
>
> *Explanation*:—In this sub-section 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *stridhana* immediately before the commencement of this Act."

It is not disputed that Smt. Rohban was in possession of the suit land when the Hindu Succession Act came into force. It also cannot be disputed that she got this property in lieu of maintenance. The only restriction placed on her rights was that she could not sell or mortgage the same. Can it be said that this restriction takes away her power to gift the property which power came to vest in her under section 14(1) of the Act? Before the Act, no female had the power to gift or will away the property acquired by her from her husband otherwise than as free and absolute gift. For the first time all females in possession of property in lieu of maintenance became absolute owners thereof subject of course to sub-section (2) of section 14. Thus one must go back to the terms of the gift under which Smt. Rohban got the suit property. As already stated the gift merely forbade her to sell or mortgage the same but placed no embargo so far as gift is concerned. The learned counsel for the appellant contends that such a restriction on her right to make a gift should be implied. In

view of the clear provisions of section 14(2) this cannot be done. The restriction must be spelt out of the grant and it cannot be implied.

For the reasons given above, the appeal is rejected with no order as to costs.

R.S.

CIVIL MISCELLANEOUS

Before Inder Dev Dua, J.

CANTONMENT BOARD, AMBALA CANTONMENT,—

Petitioner

versus

MESSRS LACHHMAN DAS-HARI RAM AND ANOTHER,—
Respondents.

Civil Writ No. 648 of 1960

1962

Jan. 19th

Cantonments Act (II of 1924)—Section 84—District Magistrate—Whether includes Additional District Magistrate—Constitution of India—Articles 226 and 227—Delay in filing petition under—Effect of—Whether fatal or to be considered as a circumstance in granting relief.

Held, that the expression 'District Magistrate' has not been defined in the Cantonments Act, but keeping in view the context in which this expression has been used in section 84, a Magistrate on whom all the powers of District Magistrate have been conferred would fall within the contemplation of the above section. The power which is conferred on the officer mentioned in section 84 is judicial power of a District Magistrate and the Additional District Magistrate who exercises the judicial powers of a District Magistrate can reasonably and without any serious legal impediment be considerd to be included in the expression 'District Magistrate'.

Held, that delay as such has seldom been considered to be an absolute bar in granting relief to a suitor under either article 226 or article 227 of the Constitution of India, It is only one of the circumstances to be taken into