

For the reasons stated above and also for those discussed in the judgement of my brother, P.C. Pandit, J., I feel satisfied, that the contention of the defendant, does not deserve to prevail and *ad valorem* court-fee has to be paid by him, in accordance with the provisions of Article I of Schedule I of the Court-Fees Act.

Mansha Ram  
and others  
v.  
Tej Bhan  
Tek Chand, J.

B.R.T.

APPELLATE CIVIL.

Before I. D. Dua and P. C. Pandit, JJ

GULZARA SINGH,—Appellant

versus

TEJ KAUR,—Respondent.

Regular First Appeal No. 238 of 1959

*Hindu Adoption and Maintenance Act (LXXVIII of 1956)—Sections 22, 23 and 28—Duty to maintain the dependants of the deceased—On whom devolves—Heir—Meaning of—Whether includes a person, who gets the estate of a deceased under a will—Interpretation of statutes—Harmonious construction rule—Applicability of—Practice—Oral testimony—Appreciation of, by trial court—When can be interfered with by appellate court—Burden to show judgment appealed from wrong—On whom lies when discharged.*

*Held*, that during the lifetime of her husband, the Hindu wife is entitled to be maintained by him and after his death the law has imposed a positive obligation on her husband's heirs to maintain the widow of the deceased out of his estate inherited by them. Indeed, this obligation extends to the maintenance of all dependants of the deceased, which, as is clear, include his parents, sons, unmarried daughters and widowed daughters, etc.; and the liability of the estate to maintain the dependants is not negated and the estate is not relieved of this liability merely because it has devolved by means of a Will. The dominant idea which clearly manifests itself in sections 22 and 23 of the Hindu Adoption and Maintenance Act 1956,

1960

Oct., 26th

is that whosoever gets the estate of the deceased or a part of it must in proportion get, along with it, a corresponding obligation or the burden of maintaining the dependants of the deceased. This liability is in no way affected by the circumstance that the estate has devolved in whole or in part by means of a will. That this is the real object, purpose and scheme of the provisions relating to the maintenance of the dependants as contained in the Hindu Adoption and Maintenance Act, is also indicated by the language and terms of section 28 which ensures the right of maintenance of the dependants even against the transferees of the estate or part thereof, who are not transferees for consideration and without notice of the right of maintenance. As a matter of fact, this section re-inforces the above view and supplies a further insight into the legislative intent in enacting truly effective provisions for the maintenance of the dependants in this statute.

*Held*, that generally speaking, 'heirs' are those persons whom the law declares to be entitled to the estate of a deceased person, and in common legal parlance the word 'heir' like the expression 'heir-at-law' undoubtedly connotes and is suggestive of a person, who succeeds to the estate in case of intestacy under the statutes of succession. But in common speech, this word is also not infrequently used to indicate those, who come in any manner to the ownership of any property by reason of the death of the owner or persons upon whom property devolves on the death of another either by law or by will. In other words, it is indicative of a person entitled by will or otherwise to share the estate of the deceased. It is thus true that technically the word 'heir' may be distinguishable from the word 'legatee' but it is also at times used in its more general and comprehensive sense as indicating a person upon whom the property devolves on the death of another and hence when the intent is clear the word 'heir' may well be treated as equivalent to 'legatee' or 'devisee'. The true scope, effect and significance of this word is, therefore, in all cases a question of intention which has to be determined principally on a consideration of the object and purpose of the statute in which it is used.

*Held*, that the word 'heir' in section 22 of the Hindu Adoption and Maintenance Act, 1956, must be construed in a broad and general sense so as to include all those on whom

the estate of the deceased devolves whether on intestacy or by means of a testamentary instrument like a will. This interpretation is in accord with the cardinal legislative idea or purpose to end or at least to remedy the evil of neglect of Hindu women by their husbands and after their husband's death by those, who may succeed to or inherit their husbands' estate. A statute is passed as a whole and not in sections and it may well be assumed to be animated by one general purpose and intent. It is thus not safe to adopt the process of etymological dissection and after taking words out of their context and applying definitions given by lexicographers to proceed to construe the statute on the basis of such definitions. Parliamentary enactments must be construed as a whole and their meaning attributed to words should, as a general rule, be inspired by the context and the nature and object of the subject-matter, for, the words may be enlarged or restricted to harmonise with the provisions of the statute.

*Held*, that in case of conflict of oral testimony, unless there is some special feature about the evidence of some particular witness which has escaped the Court's notice, or unless there is a reasonably sufficient balance of improbability to displace the opinion of the trial Judge, the Court of Appeal is, normally speaking, slow to interfere with the findings of the Court of first instance on matters of fact.

*Held*, that on an appeal, it is incumbent upon the appellant to show some reason why the judgment appealed against should be disturbed and when after considering all the circumstances the appellant can only show some nicely-balanced calculations which lead to the equal possibility of the judgment on either side being correct, he cannot be held to have discharged the burden.

*Regular First Appeal from the decree of the Court of Shri Nathu Ram Aggarwal, Sub-Judge, 1st Class, Jagraon, dated the 17th day of August, 1959, dismissing the plaintiff's suit regarding the possession of the land, houses and declaration, but granting her (Plaintiff) a decree with costs in the alternative regarding maintenance allowance of Rs. 30 per month from the 8th October, 1958 and further*

ordering that as the suit was filed in forma pauperis information be sent to the collector for the realization of court fee.

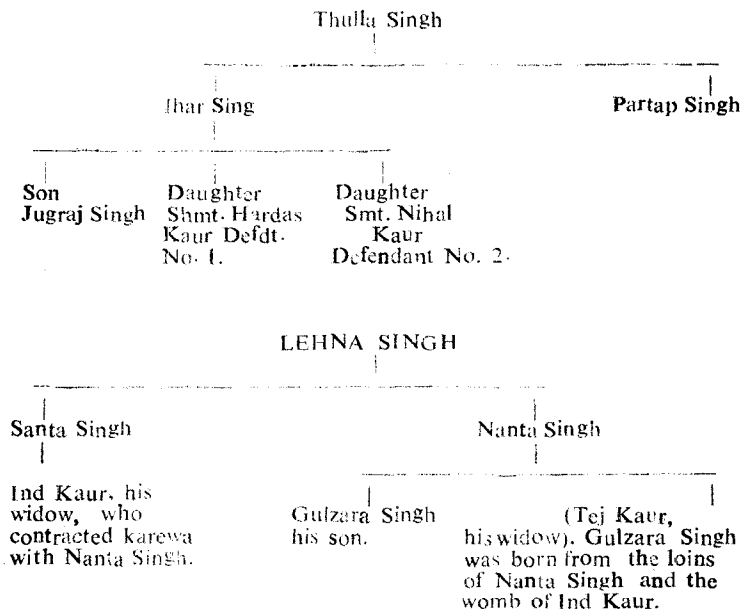
H. S. GUJRAL AND DALIP SINGH, ADVOCATES, for the Appellant.

M. R. SHARMA AND SURJIT SINGH, ADVOCATES, for the Respondent.

### JUDGMENT

Dua, J.

DUA, J.—In order to understand the precise dispute, it is desirable to set out the pedigree-table of the parties :



Nanta Singh died on the 16th September, 1955, and on his death Gulzara Singh, defendant got the entire land belonging to the deceased mutated in his own name. The plaintiff claiming to be entitled to half the property left by Nanta Singh, instituted

the present suit for possession of half share of the land and the houses in dispute. She further prayed for a declaration that she was also entitled to a sum of Rs. 5,000 lying deposited in the State Bank of India, Ludhiana, and the Post Office Saving Bank, Ludhiana. A declaration was also claimed to the effect that the order dated 28th February, 1958, granting succession certificate to the defendant was null and void as against the plaintiff. In the alternative, maintenance allowance was claimed at the rate of Rs. 100 per month and a decree for the recovery of Rs. 3,000 on account of past maintenance was also prayed for.

Gulzara Singh  
v.  
Tej Kaur  
Dua, J.

The defendant resisted the plaintiff's claim and even went to the length of denying the plaintiff's marriage or *karewa* with Nanta Singh. It was also pleaded that the houses in question had been acquired and owned by the defendant himself and were not a part of the estate of Nanta Singh, deceased. A Will dated 27th September, 1950, purporting to have been executed by Nanta Singh in favour of the defendant was also relied upon and it was further pleaded that a probate of the said Will had already been obtained by him from the Supreme Court of British Columbia with the result that the plaintiff had no claim over the property left by Nanta Singh.

On the pleadings of the parties, the following issues were framed :—

- (1) Is the plaintiff, widow of Nanta Singh, deceased ?
- (2) If issue No. 1 is proved, is the plaintiff not entitled to get possession of the land in suit ?
- (3) Are the houses in suit part of the estate left by Nanta Singh, deceased ?

Gulzara Singh  
v.  
Tej Kaur  

---

Dua, J.

- (4) If issue No. 2 is decided against the defendant and issue No. 3 decided in favour of the defendant, is the plaintiff entitled to claim maintenance from the defendant? If so, at what rate and from what date?
- (5) Has the deceased made any Will in regard to his entire estate in favour of the defendant?

The trial Court, while disposing of issue No. 1, described the plaintiff's witnesses to be respectable and the evidence led by the defendant not to be so reliable as that of the plaintiff. Non-production of Smt. Ind Kaur, the real mother of the defendant who was stated to be alive, also weighed with the Court below and this according to the learned Judge gave rise to a strong presumption in favour of the plaintiff and against the defendant. Holding the plaintiff's evidence to be much more weighty than that led by the defendant, the Court unhesitatingly and without the least doubt found the plaintiff to be the widow of Nanta Singh deceased. Issue No. 5 was, however, decided in favour of the defendant with the result that the plaintiff was held disentitled to get possession of the land in suit. Under issue No. 3, the houses in question were held not to have been proved to be a part of the estate left by the deceased. Issue No. 4, as is obvious from the judgment of the Court below, was not seriously contested by the plaintiff with the result that as widow of Nanta Singh, deceased the plaintiff was held fully entitled to maintenance. Keeping in view that Smt. Ind Kaur, another widow of the deceased and mother of Gulzara Singh, and Gulzara Singh's family had also to be supported out of the estate left by the deceased, the Court below considered it just and proper to allow maintenance to the plaintiff at the rate of Rs. 30

per month. This maintenance was allowed with effect from the 8th October, 1958. The defendant was, however, ordered to bear the costs of the suit.

Gulzara Singh  
v.  
Tej Kaur  
Dua, J.

Feeling aggrieved by the judgment and decree of the Court below, Gulzara Singh has come up to this Court on appeal and his learned counsel has sought to agitate three points before us. In so far as the question of Smt. Tej Kaur being the widow of Nanta Singh is concerned, the counsel in a very half-hearted manner contended that the evidence on the record does not justify the finding that the plaintiff was ever married to the deceased. He, however, did not care to take us through the evidence and except for the bare assertion that the plaintiff has not discharged the onus of issue No. 1 by reliable evidence, did not seriously pursue the attack. He merely submitted, and that too quite faintly, that the witnesses have not stated the precise date of the alleged marriage between the plaintiff and the deceased. In my opinion, the discrepancies, if any, with respect to the date of the marriage between Tej Kaur and Nanta Singh are not unnatural and they are clearly an indication of *bona fides* and not a badge of falsehood or perjury, as has been contended on behalf of the appellant. Smt. Tej Kaur has come in the witness-box and has sworn that she was married to Nanta Singh about 30 or 35 years ago. In the cross-examination, nothing was elicited which in any way discredited her testimony. In July, 1959, when she gave her evidence, she was about 50 years old and she expressly stated that since she had not borne any child to her husband Nanta Singh, he contracted *karewa* with Smt. Ind Kaur, the widow of his brother Santa Singh. Gulzara Singh, defendant, was then born to Nanta Singh from the womb of Smt. Ind Kaur. This evidence seems to me to be worthy

Gulzara Singh  
 v.  
 Tej Kaur  
 —————  
 Dua, J.

of credence and no reason has been shown by the appellant as to why it should not be believed. But this apart, it is well settled that in case of conflict of oral testimony, unless there is some special feature about the evidence of some particular witness which has escaped the Court's notice, or unless there is a reasonably sufficient balance of improbability to displace the opinion of the trial Judge, the Court of Appeal is, normally speaking, slow to interfere with the findings of the Court of first instance on matters of fact. It is equally well-settled that on an appeal, it is incumbent upon the appellant to show some reason why the judgment appealed against should be disturbed and when after considering all the circumstances the appellant can only show some nicely balanced calculations which lead to the equal possibility of the judgment on either side being correct, he cannot be held to have discharged the burden. I would, therefore, unhesitatingly hold that the plaintiff-respondent has been rightly held to be the widow of Nanta Singh, deceased.

It is then contended that Gulzara Singh is not bound to maintain Smt. Tej Kaur out of the estate of the deceased inherited by him although it is admitted that she was the dependant of Nanta Singh. The argument is that a person, who gets the estate of a deceased Hindu under a Will cannot be considered to be his heir within the scope of section 22(1) of the Hindu Adoptions and Maintenance Act LXXVIII of 1956. The learned counsel has, however, not been able to draw our attention to any statute, principle or precedent in support of his contention. Section 22 of the Act is in the following terms :—

“22. (1) Subject to the provisions of sub-section (2), the heirs of a deceased Hindu are bound to maintain the dependants



of the deceased out of the estate inherited by them from the deceased.

Gulzara Singh

v.

Tej Kaur

Dua, J.

- (2) Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.
- (3) The liability of each of the persons who take the estate shall be in proportion to the value of the share or part of the estate taken by him or her.
- (4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part the value of which, is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act."

The word 'heir' has not been defined in this Act; nor has any other definition of the word 'heir' contained in any other provision of law in *pari materia* been relied upon or referred to. Section 8 of the Hindu Succession Act, to which only a passing reference has been made by the counsel, is of no assistance in the decision of this case and, therefore, need not detain us.

Generally speaking, 'heirs' are those persons whom the law declares to be entitled to the estate of a deceased person, and in common legal parlance

Gulzara Singh  
 v.  
 Tej Kaur  
 —————  
 Dua, J.

the word 'heir' like the expression 'heir-at-law' undoubtedly connotes and is suggestive of a person who succeeds to the estate in case of intestacy under the statutes of succession. But in common speech, this word is also not infrequently used to indicate those who come in any manner to the ownership of any property by reason of the death of the owner or persons upon whom property devolves on the death of another, either by law or by Will. In other words, it is indicative of persons entitled by Will or otherwise to share the estate of the deceased. It is thus true that technically the word 'heir' may be distinguishable from the word 'legatee' but it is also at times used in its more general and comprehensive sense as indicating a person upon whom the property devolves on the death of another and hence when the intent is clear the word 'heir' may well be treated as equivalent to 'legatee' or 'devisee'. The true scope, effect and significance of this word is, therefore, in all cases a question of intention which has to be determined principally on a consideration of the object and purpose of the statute in which it is used.

Before considering and attempting to discover the exact and precise meaning and effect of section 22 as intended by the Parliament, I may state that this section has to be construed with reference to the leading or predominant idea or general purpose of the whole enactment. A statute is passed as a whole and not in sections and it may well be assumed to be animated by one general purpose and intent. It is thus not safe to adopt the process of etymological dissection and after taking words out of their context and applying definitions given by lexicographers to proceed to construe the statute on the basis of such definitions. Parliamentary enactments must be construed as a whole and their

meaning attributed to words should, as a general rule, be inspired by the context and the nature and object of the subject-matter, for, the words may be enlarged or restricted to harmonise with the provisions of the statute.

Gulzara Singh  
v.  
Tej Kaur  
Dua, J.

Coming now to the scheme and purpose of the relevant provisions of the Hindu Adoptions and Maintenance Act LXXVIII of 1956, a Hindu wife is entitled to be maintained by her husband during her lifetime (see section 18), and a widow is included in the list of 'dependants' as given in section 21. Then comes section 22 which has already been reproduced in this judgment, and which at this stage may be analysed. Sub-section (1) of this section imposes the obligation to maintain the dependants of the deceased on his heirs, whereas sub-section (2) confers on the dependants, in certain circumstances, a right to maintenance from those who take the estate; sub-section (3) fixes the proportion of liability of those who share the estate of the deceased and sub-section (4) limits and regulates the liability of the dependants to contribute towards the maintenance of other dependants. Sub-section (2), as I read it, clearly envisages the possibility of a dependant obtaining a share in the estate of the deceased by means of a testamentary instrument like a Will and sub-section (4), similarly postulates the liability of a dependant legatee to contribute towards the maintenance of other dependants but it safeguards in express terms the right to maintenance of such dependant-legatee under this Act.

Next comes section 23 which regulates the discretion of the Court in determining the amount of maintenance awardable under the Act. In determining the amount of maintenance to be awarded to a dependant under this section, regard is to be had to the provisions, if any, made under a

Gulzara Singh Will of the deceased in respect of the dependant in  
 v. question (section 23(3)(b)). Like section 22, this  
 Tej Kaur section also suggests that the Parliament was not  
 ----- unaware of the possibility of the devolution of the  
 Dua, J. estate of the deceased—in whole or in part—by  
 Will and that such a testamentary provision has  
 been considered to be merely a circumstance to be  
 taken into account in determining the amount of  
 maintenance of the dependants concerned.

It is manifest from the above provisions that during the lifetime of her husband, the Hindu wife is entitled to be maintained by him and after his death the law has imposed a positive obligation on her husband's heirs to maintain the widow of the deceased out of his estate inherited by them. Indeed, this obligation extends to the maintenance of all dependants of the deceased, which, as is clear, include his parents, sons, etc., unmarried daughters and widow daughters, etc; and the liability of the estate to maintain the dependants is not negatived and the estate is not relieved of this liability merely because it has devolved by means of a Will. The dominant idea which, in my opinion, clearly manifests itself in sections 22 and 23 is that whosoever gets the estate of the deceased or a part of it must in proportion get, along with it, a corresponding obligation or the burden of maintaining the dependants of the deceased. This liability is in no way affected by the circumstance that the estate has devolved in whole or in part by means of a Will. That this is the real object, purpose and scheme of the provisions relating to maintenance of dependants as contained in the Hindu Adoptions and Maintenance Act, is also indicated by the language and terms of section 28 which ensures the right of maintenance of the dependants even against the transferees of the estate or part thereof, who are not transferees for

consideration and without notice of the right of maintenance. As a matter of fact, this section re-inforces the above view and supplies a further insight into the legislative intent in enacting truly effective provisions for the maintenance of the dependants in this statute.

Gulzara Singh  
v.  
Tej Kaur  

---

Dua, J.

Interpreting section 22 in the light of the foregoing discussion, the word 'heir' must, in my opinion, be construed in a broad and general sense so as to include all those on whom the estate of the deceased devolves whether on intestacy or by means of a testamentary instrument like a Will. This interpretation, which is fully supportable by a reference to all the sections of Chapter III of the Act read together, is also calculated to promote and effectuate the cardinal legislative idea or purpose to end or at least to remedy the evil of neglect of Hindu women by their husbands and after their husbands' death by those who may succeed to or inherit their husbands' estate, whereas by adopt-the rival interpretation suggested on behalf of the appellant it would not only result in defeating the above purpose but would also come into conflict with the rule that all the provisions of an Act should be read and construed as a whole so that all the cognate provisions are harmonised; and as a matter of fact this rival interpretation would also tend to give rise to certain anomalies which, in my opinion, cannot easily be attributed to the Parliament.

At this stage, it would not be out of place to state that issue No. 4, which deals with the plaintiff's right to claim maintenance from the defendant, and which has been debated before us, was not seriously contested in the Court below. This circumstance itself suggests that even the appellant in the lower Court did not consider the plaintiff to be disentitled to claim maintenance.

Gulzara Singh  
 v.  
 Tej Kaur  
 —————  
 Dua, J.

The counsel lastly contended that the Court below was wrong in burdening the defendant with the costs of the suit. Apart from his bare assertion, the counsel did not rely in his support on any statute or precedent; nor did he advance any sound and cogent reason for our interference with the order as to costs. In the circumstances of the case and on the present record, I do not find any good reason for holding that the order with respect to costs passed by the Court below is contrary to law or otherwise opposed to any sound principle. This contention is, therefore, also rejected. For the reasons given above, this appeal fails and is hereby dismissed with costs.

P. C. Pandit, J.

PREM CHAND PANDIT, J.—I agree.

R.S.

APPELLATE CIVIL.

Before P. C. Pandit, J.

DEEPO,—Appellant.

*versus*

KEHAR SINGH,—Respondent.

F. A. O. 170(M) of 1958

*Hindu Marriage Act (XXV of 1955)—Section 9(2)—Application for restitution of conjugal rights—Grounds available in answer thereto—Sections 13(2)(i) and 23(1)(2)—Effect of—Second wife—Whether can plead the presence of first wife by way of defence to such application—Principle of condonation—Whether applicable.*

1960

Oct., 26th

Held, that under sub-section (2) of section 9 of the Hindu Marriage Act, 1955, a wife, in answer to the petition, cannot plead anything which is not a ground for judicial separation or for nullity of marriage or for divorce. It is enough for her to show that the ground that she has pleaded in answer to the petition is a ground for divorce as given in the Act. It is not necessary for her to show that she would have positively succeeded in getting a