

APPELLATE CIVIL

Before U San Maung, J.

SANT DEO AHIR (APPELLANT)

v.

SEOBARAN SINGH (RESPONDENT). *

H.C.
1948

Aug. 17.

Limitation Act, Articles 7 and 102 of Schedule I—Meaning of the word labourer in Article 7.

The Respondent was employed at a salary of Rs. 115 per mensem to take milk from the appellant and others and deliver the same to Tea Shops in Rangoon. He had to give statements as to the milk. A suit for Rs. 640 for wages or salary was decreed in both the lower Appellate Court and the trial Court and the contention that he was a labourer and that Article 7 of the Limitation Act was applicable was negatived.

Held: That labourer is one who performs physical labour as a service or for a livelihood.

A salesman appointed by a dealer to assist him in the sale of goods is not merely a labourer and his suit for wages is governed by Article 102. In the present case the work performed by the Respondent was not merely that of a coolie but in addition that of a salesman.

Musa Meah Sawdagar v. Shirazulla, A.I.R. (1935) Ran. 235; *Mutsaddi Lal v. Bhagwan Das*, I.L.R. (1926) 48 All. 164, referred to.

Kyaw Zan U for the appellant.

C. A. Soorma for the respondent.

U SAN MAUNG, J.—The only point which arises for decision in this second appeal is whether the respondent Seobaran Singh was a labourer employed by the appellant Sant Deo Ahir so that Article 7 of the Limitation Act would be applicable to his suit for the recovery of Rs. 640 alleged to be due to him for wages or salary. A "labourer" as defined in Murray's English Dictionary is one who performs physical

* Civil 2nd Appeal No. 56 of 1948 against the decree of the Subordinate Judge's Court of Insein in Civil Regular Suit No. 147 of 1947, dated the 9th October 1947.

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labour as a service or for a livelihood, e.g. one who does work requiring chiefly bodily strength or aptitude and little skill or training, as distinguished, e.g., from an artisan. This definition has been adopted by Ba U J. in *Musa Meah Sawdagar v. Shirazulla* (1) where he held that a person who was appointed as a salesman by a dealer to assist him in the sale of goods was not merely a labourer and that his suit for wages due to him was governed by Article 102 and not by Article 7 of the Limitation Act. In the case of *Mutsaddi Lal v. Bhagwan Das* (2) it was held that a weighman employed to work at a shop was not a household servant, nor an artisan, nor a mere labourer, because he had to count and add up and could also be asked to do other work of the shop when free.

In the present case, the respondent Seobaran Singh, who was employed at a salary of Rs. 115 per mensem had to take milk from the appellant as well as from other persons from Thamaing as instructed by him, and then deliver the milk to such of the tea shops at Rangoon as indicated by the appellant. On return he had to give his statements as to the milk received by him at Thamaing and delivered at Rangoon for the appellant to maintain an account. The tea shop owners no doubt kept their own accounts but it is clear that the appellant himself had to depend for his account on statements supplied by the respondent. Therefore, although it is true that the respondent had to carry milk himself from Thamaing to Rangoon in the manner in which a coolie might have done, he was more than a coolie. He was really a salesman employed by the appellant notwithstanding the fact that he had to carry the milk himself from Thamaing to Rangoon.

For these reasons, I hold that both the learned Subordinate Judge, Insein, and the learned Judge of

(1) A.I.R. (1935)Ran. 235.

(2) I.L.R. (1926) 48 All. 164.

the Lower Appellate Court were right in holding that the respondent was not a labourer and that his suit was governed not by Article 7 of the Limitation Act, but by Article 102 of the Act. The appeal fails and must be dismissed with costs.

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