

1951

Present: Basnayake J.

PANANWALA (Basnayake Nilame), Appellant, and GABRIEL
APPUHAMY *et al.*, Respondents

S. C. 103—C. R. Kandy, 5,941

Service Tenures Ordinance (Cap. 324)—Action by proprietor against tenant for neglecting to render services—Prescription—Sections 24 and 25.

There is no time limit for the recovery of damages from paraveni nilakarayas for their failure to perform the services that they are bound to render under the Service Tenures Ordinance. Such action is governed by section 25 of the Ordinance and not by section 24.

APPEAL from a judgment of the Court of Requests, Kandy.

C. Thiagalingam, K.C., with *P. Somatilakam*, for the plaintiff appellant.

H. W. Tambiah, with *V. Ratnasabapathy*, for the defendants respondents.

Cur. adv. vult.

October 9, 1951. BASNAYAKE J.—

This is an action instituted by the Basnayake Nilame of the Pattini Dewale, Kandy, against 10 persons who are the paraveni nilakarayas of the Dewale, wherein he prays for judgment in a sum of Rs. 231.32 being damages suffered by him in consequence of their failure to perform the

services that they were bound to render under the Service Tenures Ordinance as tenants of 3 panguwas of land belonging to the Dewale known as Liyanagugaha Kumtura, Delgahamulawatta, and Kahatagahamulahana. The services to be performed are as follows:—

1. One flag for ten days during Perahera days.
2. One Paliha for ten days during Perahera days.
3. One Muthu Kude for ten days during Perahera days.
4. Three festivals each continuing for three days.
5. Proceeding to Gurudeniya for the Alusal festival.
6. Panduru Mila (offerings).
7. One Dan Kada (pingo of alms) for Wesak Festival.
8. Two Penun Kadas to Basnayake Nilame.
9. Erecting circuit shed for Dewale officials.
10. Meals for the said officials.
11. Repairs to Dewale 50 days per year.
12. Seven days' extra work as ordered by the Basnayake Nilame.
13. Working Muttettuwa fields and delivering paddy to the Dewale.
14. Transporting paddy from Pilanduwa to the Warakapola Atuwa (paddy).
15. Meeting officials at Kadugannawa when on circuit and accompanying them to the villages.

The learned Commissioner while holding that the defendants have failed to perform the services prescribed in the Service Tenure Register held that the plaintiff's claim for damages was prescribed on the ground that section 24 of the Service Tenures Ordinance limits the time within which actions can be brought.

I am unable to agree with the learned Commissioner that an action for damages under the Ordinance is prescribed in one year. Section 24 reads:

“ Arrears of personal services in cases where the praveni nilakaraya shall not have commuted shall not be recoverable for any period beyond a year; arrears of commuted dues, where the praveni nilakaraya shall have commuted, shall not be recoverable for any period beyond two years. If no services shall have been rendered, and no commuted dues be paid for ten years, and no action shall have been brought therefor, the right to claim services or commuted dues shall be deemed to have been lost for ever, and the pangu shall be deemed free thereafter from any liability on the part of the nilakarayas to render services or pay commuted dues therefor:

Provided, however, that if at the time of such right of action accruing the proprietor shall not be resident within this Island, or if by reason of his minority or insanity, he shall be disabled from instituting such action, the period of prescription of such action shall begin to run, in every such case, from the time when such absence or disability shall have ceased. ”

The section contemplates two kinds of arrears—arrears of personal services and arrears of commuted dues. The former cannot be recovered for a period beyond a year, the latter cannot be recovered for a period beyond two years. The personal services referred to in the section are services which have not been commuted and the commuted

dues refer to services which have been commuted. The right to recover damages as provided in section 25 is something entirely different. That section fixes no time limit for the recovery of damages.

Mr. Thambiah, who appeared for the respondent, sought to read into section 25 the time limit fixed for the recovery of personal services in section 24. There is no justification for such a course. It was argued by Mr. Thambiah that the word " arrears " and the word " recoverable " suggests a recovery of money and not personal services. The context affords no authority for restricting the meaning of these words to the recovery of arrears of money. In a sense personal services have to be enforced or exacted. Section 13 uses the word " exacted " in connexion with the enforcement of personal services. The fact that the draftsman chose another expression for conveying the same idea cannot alter the plain meaning of the section. Not only money but also services and work can be in arrears. Arrears of services can like money be recovered. The scope of section 25 is explained in my judgment in *Udurawana v. Galagoda* ¹, and a further discussion of that section is not necessary for the purpose of this case.

I therefore uphold the contention of the appellant that the action is not barred by the operation of section 24 which has no application to it, and I order that judgment as prayed for be entered in favour of the plaintiff:

The respondents will pay the costs of this appeal and the costs of the trial.

Appeal allowed.
