

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Mantrige Hector Lorence Dias,
K C Enterprises,
No. 35,
Arambakade,
Kurulugama.

Plaintiff

**S.C. (C.H.C.) Appeal No. 15/2007
C.H.C. Case No. 168/2000 (1)**

Vs.

1. Bartleet Financial Services Limited,
2nd Floor,
Bartleet House,
No. 65, Braybrooke Place,
Colombo 02.
2. Dodanduwa Hewavitharanage Saman
Pushpakumara De Silva,
No. 24, Bentotagagewatte,
Hittetiya,
Matara.

Defendants

AND NOW BETWEEN

Orient Finance PLC
(Formerly known as,
Bartleet Finance PLC, Bartleet Finance
Limited and Bartleet Financial Services
Ltd)
Presently at,
No. 2, Deal Place,
Colombo 03.
(New Registration No: PB1079PQ)

1st Defendant – Appellant

Vs.

Mantrige Hector Lorence Dias,
K C Enterprises,
No. 35,
Arambakade,
Kurulugama.

Plaintiff – Respondent

Dodanduwa Hewavitharanage Saman
Pushpakumara De Silva,
No. 24, Bentotagagewatte,
Hittetiya,
Matara.

2nd Defendant – Respondent

Before: Hon. P. Padman Surasena, C.J.

Hon. Janak De Silva, J.

Hon. Achala Wengappuli, J.

Counsels: S. R. De Livera with Yashoda Silva and Vihanga Dissanayake for the 1st
Defendant – Appellant

Gamini Hettiarachchi for the Plaintiff – Respondent

Written Submissions: 18.10.2012 and 10.09.2024 by Plaintiff – Respondent

17.09.2012, 23.09.2020 by 09.07.2024 by 1st Defendant –
Appellant

Argued on: 11.06.2024

Decided on: 23.09.2025

Janak De Silva, J.

The Plaintiff-Respondent (Respondent) instituted this action against the 1st Defendant-Appellant (Appellant) and the 2nd Defendant-Respondent (2nd Respondent) on two causes of action.

The factual context to the two causes of action is a leasing transaction involving a van between the Appellant and 2nd Respondent. The seller of the van is the Respondent.

According to the Respondent, the van was delivered to the 2nd Respondent upon a confirmed purchase order issued by the Appellant. The two causes of action are based on the failure on the part of the Appellant to pay the purchase price to the Respondent as agreed.

Factual Matrix

On 16.12.1998, the Respondent submitted an invoice indicating willingness to sell a Toyota HiAce van to the 2nd Respondent for a sum of Rs. 7,75,500/=. A valuation report dated the same date, i.e. 16.12.1998 was provided to the Appellant which indicated the current value of the van as Rs. 8,25,000/=.

On 22.12.1998, the Appellant issued a confirmed purchase order to the Respondent for a Toyota HiAce van for the purchase price of Rs. 7,75,000/=. This was to be delivered to the 2nd Respondent. It required the Respondent to return the second copy duly signed in confirmation of its acceptance which was done by the Respondent.

It contained several terms and conditions which included that title to the property to be vested in the Appellant free from any liens and encumbrances and a leasing agreement to be properly entered into between the 2nd Respondent and Appellant.

On the same day, i.e. 22.12.1998 the 2nd Respondent issued a Sales Certificate to the Respondent acknowledging the receipt of the said van.

The Registrar of Motor Vehicles issued a document dated 29.12.1998 confirming that the 2nd Respondent is the registered owner of the vehicle and that the Appellant is registered as the absolute owner.

Nevertheless, the Appellant failed to pay the Respondent the purchase price. The defense of the Appellant is that the valuation report does not describe the vehicle fully and as such the Respondent was informed by letter dated 23.12.1998 that the Appellant will not hold themselves responsible for any action taken by the Respondent to register the vehicle in either their name or in the name of the 2nd Respondent.

Time of Repudiation

During the trial, the Respondent produced the envelope in which the letter dated 23.12.1998 sent by the Appellant was received by the Respondent. The seal of the Post Office on it showed 31.12.1998.

Hence the learned trial judge correctly concluded that the letter dated 23.12.1998 was sent after the van had been received by the 2nd Respondent and after its registration in the name of the 2nd Respondent. According to the evidence of the Respondent, he received it on 04.01.1999.

Accordingly, the learned trial judge entered judgment in favour of the Respondent for a sum of Rs. 7,75,000/= and legal interest from 22.12.1998 to 21.02.2007, the date of the judgment.

Undisclosed Principal

The principal ground urged by the Appellant in this appeal is that the Respondent was acting as agent for an undisclosed principal and as such is not entitled to sue.

The Appellant correctly submitted that the Respondent came to Court as the owner of the vehicle. This is reflected in paragraph 3 of the plaint. The Appellant contends that the Respondent sought to present a materially different case during his cross-examination by leading evidence of an undisclosed principal, Kuwick International, as the registered owner of the vehicle. It was submitted that this is contrary to explanation 2 to Section 150 of the Civil Procedure Code which reads as follows:

“The case enunciated must reasonably accord with the party's pleading, i.e., plaint or answer, as the case may be. And no party can be allowed to make at the trial a case materially different from that which he has placed on record, and which his opponent is prepared to meet. And the facts proposed to be established must in the whole amount to so much of the material part of his case as is not admitted in his opponent's pleadings.”

It was further submitted that in view of the evidence given by the Registrar of Motor Vehicles, the Respondent is merely an agent of Kuwick International. Accordingly, the Appellant submitted that it is not bound to pay the Respondent.

I observe that it is the learned counsel for the Appellant who, during his cross-examination, challenged the Respondent to produce any documentation establishing that Kuwick International had handed over the possession of the vehicle to the Respondent. It is at that point of time, that document P10 was tendered in evidence. It is an invoice dated 25.11.1998 issued by Kuwick International to the Respondent as the Manger of K.C. Enterprises. This invoice identifies K.C. Enterprises as the prospective purchaser of the vehicle. The evidence of the Respondent is that he got the vehicle from Kuwick International on credit basis on an oral agreement with a view to reselling the vehicle.

I fail to see the relevance of any of these grounds for the Appellant to resist the claim of the Respondent. It was not the position of the Appellant that the Respondent had induced the Appellant to enter into an agreement by misrepresentation. On the contrary, the only

ground on which the Appellant sought to repudiate the contract was that the vehicle which the 2nd Respondent wanted from the Respondent was a Toyota Hiace van but the vehicle which was provided by the Respondent was a totally different vehicle.

Moreover, the rights and liabilities of the Appellant, Respondent and Kuwick International on the question of agency, is governed by English law. Where the principal is undisclosed at the time of contracting, the contract is made with the agent, and he is personally liable and entitled on it [Bowstead & Reynolds on Agency, 17th Ed., Sweet & Maxwell (2001), 467]. It is an established principle in English law that an agent can sue on a contract entered into on behalf of an undisclosed principal and even recover the principal's loss by way of damages [supra. 343].

Hence, even if the contention of the Appellant is examined, the Respondent is entitled to maintain this action. However, it must be noted that the learned trial judge entered judgment only for the purchase price agreed to by the Appellant and not the damages claimed by the Respondent.

Failure to Lead Evidence

Although the Respondent led evidence and marked several documents in support of his case, the Appellant did not lead any evidence at the trial.

In ***Edrick De Silva v. Chandradasa De Silva (70 NLR 169)*** it was held that where the petitioner has led evidence sufficient in law to prove his status, i.e., a factum probandum, the failure of the respondent to adduce evidence which contradicts it adds a new factor in favour of the petitioner. There is then an additional "matter before the Court", which the definition in section 3 of the Evidence Ordinance requires the Court to take into account, namely, that the evidence led by the petitioner is uncontradicted.

The Appellant failed to lead any evidence in rebuttal of the case presented by the Respondent. No doubt, the Respondent was cross-examined and evidence so elicited

must also be considered as evidence led by the Appellant in rebuttal of the case of the Respondent. Nevertheless, such evidence has failed to impinge on the case established by the Respondent on a balance of probability against the Appellant.

For all the foregoing reasons, I affirm the judgment of the High Court of Civil Appeal of the Western Province holden in Colombo dated 21.02.2007 and dismiss this appeal with costs fixed at Rs. 1,00,000/=.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

P. Padman Surasena, C.J.

I agree.

CHIEF JUSTICE

Achala Wengappuli, J.

I agree.

JUDGE OF THE SUPREME COURT