

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

1. Sri Lanka Coconut Producers' Co-
operative Societies' Union Limited,
No.127, Grandpass Road, Colombo 14.

2. H.A.D. Jayalath,
Sri Lanka Coconut Producers' Co-
operative Societies' Union Limited,
No.127, Grandpass Road, Colombo 14.
Plaintiffs

SC/APPEAL/155/2015

WP/HCCA/COL/APPEAL/38/2009(F)

DC COLOMBO 42408/MR

Vs.

Stassen Exports Limited,
No.883, Sirimavo Bandaranaike
Mawatha, Colombo 14.

Defendant

AND

Stassen Exports Limited,
No.883, Srimavo Bandaranaike
Mawatha, Colombo 14.

Defendant-Appellant

Vs.

1. Sri Lanka Coconut Producers' Co-
operative Societies' Union Limited,
No.127, Grandpass Road, Colombo 14.

2. H.A.D. Jayalath,
Sri Lanka Coconut Producers' Co-
operative Societies' Union Limited,
No. 127, Grandpass Road, Colombo 14.
Plaintiff-Respondents

AND NOW BETWEEN

1. Sri Lanka Coconut Producers' Co-
operative Societies' Union Limited,
No. 127, Grandpass Road, Colombo 14.

2. H.A.D. Jayalath,
Sri Lanka Coconut Producers' Co-
operative Societies' Union Limited,
No.127, Grandpass Road, Colombo 14.
Plaintiff-Respondent-Appellants

Vs.

Stassen Exports Limited,
No.883, Srimavo Bandaranaike
Mawatha, Colombo 14.
Defendant-Appellant-Respondent

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice K. Priyantha Fernando
Hon. Justice Sampath B. Abayakoon

Counsel: Sanjeewa Dassanayake with Nithil Fernandopulle,
Asanka Lowe for the Plaintiff-Respondent-Appellant.
Nihal Fernando, P.C., with Harshula Seneviratne for
Defendant-Appellant-Respondent.

Argued on: 03.09.2025

Written submissions:

By the Plaintiff-Respondent-Appellant 17.10.2025

By the Defendant-Appellant-Respondent 17.10.2025

Decided on: 05.02.2026

Samayawardhena, J.

The plaintiffs, the Sri Lanka Coconut Producers Co-operative Societies Union and its broker, instituted this action against the defendant, Stassen Export Limited, twenty-two years ago, in the year 2004, seeking to recover a relatively modest sum of Rs. 192,500 with interest, together with a further sum of Rs. 10 million as damages.

The defendant filed answer seeking the dismissal of the action on the basis that, being an agent of a disclosed principal, namely the Kammalpattu Coconut Producers' Co-operative Society Limited, the plaintiffs were not entitled to institute the action against the defendant.

After trial, the District Court entered judgment in favour of the plaintiffs, save in respect of the claim for damages. On appeal, the High Court of Civil Appeal accepted the aforesaid defence of the defendant and set aside the judgment of the District Court.

This appeal by the plaintiffs is against the said judgment of the High Court.

A previous Bench of this Court granted leave to appeal against the judgment of the High Court on several questions of law. However, when the matter came up for argument before this Bench, the Court was invited to answer only the following question of law: *Can a broker or agent maintain an action for the sale proceeds against the buyer where the principal is disclosed?*

The facts are briefly as follows. The 1st plaintiff, the Sri Lanka Coconut Producers Co-operative Societies Union, acted as a broker in the sale of

desiccated coconut produced by one of its member societies, namely the Kammalpattu Coconut Producers' Co-operative Society Limited. The 2nd plaintiff, a natural person, functioned as the representative of the 1st plaintiff in the said business transactions.

The plaintiffs entered into the sale agreement dated 06.06.2003 (P5 and P6), with the defendant for the sale of 5,000 kg of desiccated coconut produced by the Kammalpattu Coconut Producers' Co-operative Society Limited at a price of Rs. 335,000 (P7). In terms of the said written agreement, the defendant shall make the payment to the 1st plaintiff.

There is no dispute that, out of the total sum of Rs. 335,000, the defendant paid a sum of Rs. 142,440 to the 1st plaintiff (P13). However, the defendant refused to pay the balance sum of Rs. 192,560 on the basis that a quantity of desiccated coconut supplied by the Kammalpattu Coconut Producers' Co-operative Society Limited to the defendant on a previous occasion was of inferior quality, and on that basis claimed to have set off the alleged loss arising therefrom against the amount due under the present transaction.

The plaintiffs informed the defendant that they had no connection with the earlier transaction, which had been concluded under a separate written agreement through a different broker, namely Raymond & Co, and that they bore no responsibility in respect thereof. Notwithstanding this position, the defendant declined to settle the outstanding balance on a technical objection grounded in the law of agency.

At this juncture, let me pause to recall the words of wisdom of Abrahams C.J. in *Vellupillai v. The Chairman, Urban District Council* (1936) 39 NLR 464 at 465, made nearly nine decades ago: "*This is a Court of Justice; it is not an Academy of Law.*"

The defendant has refused to make payment of the outstanding balance relying on *Bowstead & Reynolds on Agency* (17th Edition) at page 459, which states that "*there is no doubt whatever as to the general rule as*

regards an agent, that where a person contracts as an agent for a principal, the contract is the contract of the principal and not that of the agent; and prima facie, at common law the only person who may sue is the principal and the only person who can be sued is the principal.”

Undoubtedly, this statement reflects the general rule. However, it is not an absolute rule devoid of exceptions. Like any other principle of law, it admits of exceptions, the applicability of which must be assessed in the light of the particular facts and circumstances of each case. One such exception is where the principal has either expressly or impliedly authorised the agent to sue on behalf of the principal.

It is well established that agency is fundamentally a contractual relationship. It creates obligations between the principal and the agent, under which each acquires against the other certain rights and liabilities, and also gives rise to contractual relations between the principal and third parties.

In *Horace Brenton Kelly v. Margot Cooper and another* [1993] 1 AC 205 at 213–214, Lord Browne-Wilkinson observed that agency is a contract between principal and agent, and that, like every other contract, the rights and duties of the principal and agent depend upon the express or implied terms of the contract between them.

Consistent with this approach, the Courts have held that the question whether an agent is personally liable on, or entitled to enforce, a contract depends upon the intention of the parties as objectively ascertained. In *Bridges and Salmon Ltd v. The “Swan” (Owners)* [1968] 1 Lloyd’s Rep 5 at 12, Brandon J. articulated the principle in the following terms:

Where A contracts with B on behalf of a disclosed principal C, the question whether both A and C are liable on the contract or only C depends on the intention of the parties. That intention is to be gathered from (1) the nature of the contract, (2) its terms and (3) the surrounding circumstances: see Bowstead on Agency, (12th ed.)

(1959), at pp 257 and 258, par. 113, and the authorities there cited. The intention for which the Court looks is not the subjective intention of A or of B. Their subjective intentions may differ. The intention for which the Court looks is an objective intention of both parties, based on what two reasonable businessmen making a contract of that nature, in those terms and in those surrounding circumstances, must be taken to have intended.

This principle was also recognised in *Maritime Stores Ltd v. H.P. Marshall & Co Ltd* [1963] 1 Lloyd's Rep 602, where Roskill J. held that the question whether an agent can sue or be sued on a contract is ultimately a question of fact.

In *Montgomerie v. United Kingdom Mutual Steamship Association Ltd* [1891] 1 QB 370 at 371, Wright J. stated the general rule in the following terms:

There is no doubt whatever as to the general rule as regards an agent, that where a person contracts as agent for a principal the contract is the contract of the principal, and not that of the agent; and, prima facie, at common law the only person who may sue is the principal, and the only person who can be sued is the principal. To that rule there are, of course, many exceptions.

Elaborating on those exceptions, His Lordship further observed at page 372:

Also, and this is very important, in all cases the parties can by their express contract provide that the agent shall be the person liable either concurrently with or to the exclusion of the principal, or that the agent shall be the party to sue either concurrently with or to the exclusion of the principal.

This means, the parties can agree that the agent may sue and be sued on the contract, either together with the principal or instead of the principal.

This principle was reaffirmed and applied in *Fact 2006 Pte Ltd v. First Alverstone Capital Ltd and another* [2015] SGHCR 5, where the Singapore High Court held that the general rule that an agent cannot sue on a contract is only a *prima facie* position and may be displaced by express agreement. The Court affirmed that parties are free by contract to provide that an agent shall be the person liable or entitled to sue, either concurrently with or to the exclusion of the principal, as recognised in *Montgomerie v. United Kingdom Mutual Steamship Association Ltd* (supra). On the facts of that case, although the plaintiff was described as an “agent”, it was expressly named as a party to the agreement and entitled to receive payment, and was therefore held to be contractually authorised to sue in its own name.

The same principle is stated in *Sealy and Hooley on Commercial Law: Text, Cases and Materials* (6th edition 2020) at page 179, where it is observed that an agent is entitled to sue upon a contract made on behalf of the principal where it is the intention of the parties that the agent should have rights as well as liabilities under the contract. The learned authors further observe, at the same page, that:

Where the agent has some special property in the subject matter of the contract, or possesses a lien over it, or has a beneficial interest in completion of the contract, he may sue the third party. For example, the auctioneer’s right to sue the highest bidder for the price stems from his special property in, or lien over, the subject matter of the sale he effects (Benton v. Campbell Parker & Co [1925] 2 KB 410 at 416, per Salter J); although the right of action actually arises under a collateral contract between the auctioneer and the highest bidder (Chelmsford Auctions Ltd v. Poole [1973] QB 542 at 548-549, per Lord Denning MR).

This principle is illustrated by the decision in *Short and Others v. Spackman* (1831) 2 B & Ad 962, where Lord Tenterden C.J. observed that, although he initially had difficulty in accepting that the brokers

could sue, “on looking to the contract itself, there appears nothing to prevent it.” Parke J. further held that the plaintiffs were authorised by their principal to enter into the transaction and that the contract was binding upon them.

In light of the foregoing authorities, the question whether an agent may sue or be sued on a contract made on behalf of a disclosed principal is ultimately one of construction, turning on the express or implied intention of the parties as gathered from the terms of the contract and the surrounding circumstances, and is therefore a question of fact.

As stated earlier, the sale and purchase agreement relevant to this case was entered into between the plaintiffs and the defendant. It is true that the plaintiffs were acting as agents in selling goods produced by Kammalpattu Coconut Producers’ Co-operative Society Limited. However, in terms of the agreement, the defendant was required to pay the purchase price to the 1st plaintiff and not to Kammalpattu Coconut Producers’ Co-operative Society Limited.

Kammalpattu Coconut Producers’ Co-operative Society Limited has made it clear that it was the responsibility of the plaintiff to recover the full purchase price from the defendant and thereafter remit the amount due to it. By letter dated 16.09.2003 marked P14, the said Society wrote to the plaintiff stating as follows:

ඉහත කොන්ත්‍රාත්තුවේ හිඟ මුදල් කඩිනමින් ලබාදීමට තැරැව්කරු වශයෙන් ඔබගේ වගකීමක් බව අවධාරණය කරමි. එම කොන්ත්‍රාත්තුවට අදාල සැපයීම් ප්‍රමාදයකින් තොරව සිදුකර දැනට මාස 02 කට වැඩි කාලයක් ගත වී ඇති බැවින් නොපමාව අප සමිතියට ලැබීමට ඇති ඉතිරි මුදල් ලබා දෙන ලෙස ඉල්ලා සිටිමි.

There is no dispute that, in the instant case, the agent remits the contract price to the principal after retaining its commission. To that extent, the agent “has a beneficial interest in the completion of the contract”, bringing the case within the recognised exception that permits an agent to sue on the contract made on behalf of the principal.

Having regard to the facts and circumstances of this case, I hold that the 1st plaintiff is entitled to recover the balance sum together with interest from the defendant.

The High Court considered the principle relating to an agent contracting for a disclosed principal in the abstract and treated the general rule that only the principal may sue the buyer as an absolute rule of law. In doing so, the High Court failed to appreciate the recognised exceptions to that rule and to apply the law to the specific facts and circumstances of the present case.

I therefore answer the question of law on which leave to appeal was granted as follows: As a general rule, an agent contracting for a disclosed principal cannot maintain an action in respect of the contract, but on the facts and circumstances of this case, the plaintiffs are entitled to do so.

Accordingly, the judgment of the High Court is set aside, and the judgment of the District Court is restored. The plaintiffs are entitled to costs in all three Courts.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree.

Judge of the Supreme Court

Sampath B. Abayakoon, J.

I agree.

Judge of the Supreme Court