

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

In the matter of an Appeal to the Supreme Court from the judgment of the High Court of the Western Province (holden in Colombo) exercising civil jurisdiction in terms of the provisions of the High Court of Provinces (Special Provisions) Act No. 10 of 1996.

SC CHC Appeal No:
34/2023

HC (Civil) 73/2014 MR

Pujitha Prabath Weerawardhana,
No. 385, Galle Road,
Kosgoda.

PLAINTIFF

Vs.

1. Ocean Rich Seafood (Pvt) Ltd,
No. 96, St. Andrews Road,
Colombo 15.

Current Address:

No. 83/11, Wekanda Road,
Colombo 02.

2. Jason Chen,
No. 96, St. Andrews Road,
Colombo 15.

Current Address:

No. 92A, Rodrigo Place,
Mattakkuliya,
Colombo 15.

3. David Chen,
No. 96, St. Andrews Road,
Colombo 15.

Previous Address:

No. 92A, Rodrigo Place,
Mattakkuliya,
Colombo 15.

Current Address:

No. 622, 10A, Aluthmawatha,
Colombo 15.

DEFENDANTS

AND NOW BETWEEN

Pujitha Prabath Weerawardhana,
No. 385, Galle Road,
Kosgoda.

PLAINTIFF-APPELLANT

Vs.

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DEFENDANT-RESPONDENTS

- Before** : Achala Wengappuli, J.
: Menaka Wijesundera, J.
: Sampath B. Abayakoon, J.
- Counsel** : Farman Cassim, P.C. with Vinura Kularatne
Instructed by Shaymali Athukorala for the Plaintiff-
Appellant.
: Saliya Edirisinghe for the 1st and 3rd Defendant-
Respondents.

Argued on : 12-11-2025

Written Submissions : 07-11-2025 and 05-12-2025 (By the Plaintiff-Appellant)

: 05-12-2025 (By the Defendant-Respondents)

Decided on : 11-05-2026

Sampath B. Abayakoon, J.

This is an appeal preferred by the plaintiff-appellant (hereinafter referred to as the plaintiff) on being aggrieved of the judgment dated 09-06-2023 pronounced by the learned Judge of the Commercial High Court of the Western Province holden in Colombo.

From the said judgment, the learned Judge of the High Court dismissed the claim made by the plaintiff for a judgment in his favour, where a sum of USD 257,500/= or an equivalent sum in Sri Lankan Rupees, together with legal interest against the 1st, 2nd, and 3rd defendant-respondents (hereinafter referred to as the defendants) and other incidental reliefs were sought.

Having dismissed the plaintiff's claim, the learned Judge of the High Court allowed the claim in reconvention made by the 2nd and 3rd defendants for a sum of USD 64,292/= and USD 5,327.98/= or a sum equivalent to the said amount together with legal interest.

In his petition of appeal at paragraph 18, the plaintiff has set out 21 grounds of appeal among other grounds that his Counsel may urge during the hearing of the appeal for the consideration of the Court [from (a) to (u) of the English alphabet].

However, at the hearing of this appeal, the learned President's Counsel who represented the plaintiff informed the Court that he will confine his submissions only in relation to the allowing of the defendant's cross-claim made against the plaintiff, and not the dismissal of the plaintiff's action by the learned Judge of the High Court.

Accordingly, the learned President's Counsel reframed his grounds of appeal in the following manner.

1. Whether the learned Judge of the High Court erred in law and facts by not considering the admissibility of the documents tendered by the defendant, namely V1 (1)-(32), V2, V3, and V8?
2. Whether the learned Judge of the High Court erred in granting the relevant cross-claim in favour of the 2nd and 3rd defendants?
3. Whether the learned Judge of the High Court erred in facts and law by failing to assess correctly and evaluate the evidence in granting the reliefs sought by the defendants?

This Court heard the submissions of the learned President's Counsel in relation to the grounds of appeal urged before the Court and also the submissions of the learned Counsel who represented the defendants in that regard.

The Court also had the benefit of considering the written submissions tendered by the parties for the purpose of determining this appeal.

The Facts -

The facts that led to the judgment in favour of the defendants by the learned Judge of the High Court can be summarized in the following manner.

The plaintiff has based his action on an alleged verbal agreement entered between the plaintiff and the defendants to allow the defendants to use the plaintiff's fishing trawler on the conditions agreed by the parties, and to share the profits made out of the sale of the fish harvest at the rate of 50% for each party.

It has been the plaintiff's contention that the defendants failed to abide by the agreement between the parties and did not correctly disclose the fish harvest yielded during the relevant period. It has been his allegation that the defendants undervalued the income generated and the profit made out of the agreed operation. The plaintiff has calculated the alleged profit made by the defendants for the relevant period as a sum of USD 515,000/=. It was on that

basis the plaintiff has sought a judgment for a sum of USD 257,000/=, being the 50% of the said alleged profit and other incidental reliefs.

The case has proceeded to *ex-parte* trial against the 1st defendant company, and 2nd and 3rd defendants have filed their answer praying for the dismissal of the plaintiff's action for the reasons adduced in their answer, while making a claim in reconvention under two cross-claims amounting to USD 64,292/= and USD 5,327.98/=, and for other reliefs. They have made the said claim on the basis that such a sum is due from the plaintiff for the expenses incurred by the defendants during the operation as for their agreement.

It has been the position of the defendants that the profit entitlement of the plaintiff from the operation was USD 15,922.02/=. It has been contended that when considering the costs of the operation, and the remaining unpaid costs due from the plaintiff as stated in their answer that should be paid to them for the costs incurred in order to bring the fishing trawler to the required standard necessary to conduct deep sea fishing operations, there was nothing due to the plaintiff.

I find that in the impugned judgment, the learned Judge of the Commercial High Court has well considered the evidence placed before the Court in relation to the plaintiff's case against the defendants, and has given clear reasons as to why he is determining that the said claim has not been established before the Court on the balance of probabilities, for which I need not probe further as the plaintiff is now contesting only the allowing of the cross-claim granted against him in favour of the defendants.

Consideration of the Grounds of Appeal -

It needs to be noted that the plaintiff's challenge to the learned trial Judge's decision to allow the claim-in-reconvention is on the basis that the learned trial Judge has considered documents that had not been proved by the defendants in order to establish their claim as relevant in the judgment.

It was on the said basis the learned President's Counsel argued that the documents marked V1(1)-(32), V2 and V8 were documents marked subject to proof, and the defendants have failed to prove the said documents, and hence,

the determinations reached by the learned trial Judge upon unproven documents should not be allowed to stand.

It was his position that the plaintiff objected to the acceptance of the said document as evidence at the closure of the plaintiff's case (at page 505 of the appeal brief). Hence, those documents should not have been counted as evidence.

The legal position in relation to the admissibility of the objected documents during a trial is well settled in this country. In the case of **Samarakoon Vs. Gunasekara and Another (2011) 1 SRI L.R. 149**, it was held inter alia that;

“When a document is admitted subject to proof, the party tendering it in evidence is obliged to formally prove it by calling the evidence necessary to prove the document according to law. If such evidence is not called and if no objection is taken to the document when it is read in evidence at the time of closing the case of the party who tendered the document it becomes evidence in the case.

On the other hand, if the document is objected to at the time when it is read in evidence before closing the case of the party who tendered the document in evidence, the document cannot be used as evidence for the party tendering it.”

I find that all the above-mentioned documents are computer generated statements where the registered Attorney of the 2nd and 3rd defendants has given notice of the defendants' intention to produce the said documents as required in terms of section 7 of the Evidence (Special Provisions) Act No. 14 of 1995.

At the hearing of this appeal, although the learned President's Counsel contended that the documents marked V(1) to (32) were objected and allowed subject to proof, I find that at the time the case of the defendant was closed, as per page 505 of the appeal brief, the learned Counsel for the plaintiff has objected only to the documents marked V1(30), (31), (32) on the basis that those particular documents were not proved and not the whole set of documents from V1(1) to V1(32).

It needs to be noted that the document marked V1 is the main document in relation to the above set of documents. V1 is a summary of the sums mentioned in the computer-generated documents marked V1(1) to (32). I am of the view that the document marked V1 and the documents marked V1(1) to (32) are interconnected documents that have to be considered together.

The said documents relate to the costs and profits made by the fishing operation agreed upon by the parties as per the documents maintained by the defendants.

The said document has been produced to show that the profit made from this operation was not high as the profit claimed by the plaintiff, but much less in value where the plaintiff is entitled to 50% of such profit.

It is noteworthy to mention that when the plaintiff was giving evidence, these documents had been shown to the plaintiff. His position had been that although he admits the documents, he is not admitting the contents of them (page 402 of the appeal brief). This shows that the plaintiff is only challenging the contents, but not the authenticity of it.

At one stage, the plaintiff has taken up the position that the said documents are only photocopies and not the originals, which appears to be a reference to justify his challenge to the document. However, it needs to be noted that all the documents the plaintiff claims that had not been proved by the defendants are either electronically transmitted documents or computer-generated documents. The defendants have given the relevant notice in relation to the computer-generated documents as required by law before producing them as evidence.

The document marked V2 is the accounts statement relied on by the defendants to claim that the plaintiff owes them USD 64,292/=. The document marked V8 is the document produced by the defendants to establish the equipment supplied to the fishing trawler by them. I find that although at the closure of the defendants' case the document marked V7 has also been objected on the basis that it has not been proved, it is only an email

sent by the brother of the plaintiff to the 2nd defendant regarding a meeting between them, which has no material relevance to the defendants' claim.

It has been the evidence of the 2nd defendant that it was he who prepared the documents marked V1, V2, and V8. Therefore, it is my view that the very person who prepared the documents had given evidence before the trial Court to substantiate the contents of the said documents in relation to the cross-claim made by the defendants.

It is my view that therefore, it was a matter of evidence for the learned trial Judge to consider and come to a finding whether what is stated in the said documents which are essentially account statements, had been established by the defendants in order to succeed in their claim. I find that in the impugned judgment, the learned trial Judge, after having decided that the plaintiff has failed to establish his case, has proceeded to consider the evidence placed before the Court in order to find out whether the defendants have proved their cross-claim on the balance of probability.

It is very much apparent that the learned trial Judge has considered the evidence as a whole in relation to the plaintiff's claim, as well as the defendants' counter-claim, as he should have in a case of this nature. Towards that end, the learned trial Judge has concluded that it was the brother of the plaintiff, one James Weerawardhena, who has acted at all times as the agent of the plaintiff in relation to the whole transaction for which I have no reason to disagree. The plaintiff as well as the defendants have relied on a series of email messages sent between the parties at the trial. The learned trial Judge has correctly evaluated the evidence in that regard in order to determine whether the defendants have incurred costs as they claim in relation to the entire transaction under which they have based their counter-claim.

The learned trial Judge has considered the evidence of the 2nd defendant in detail as to the accounts statement he produced to substantiate their claim with the view of determining whether such evidence can be believed. It has been considered as relevant the email marked V4, where James

Weerawardhena has written to the 2nd defendant stating that there is a bill to be settled and it is his intention to pay it back from the profits generated out of the fishing operation.

The learned trial Judge has well considered the evidence where the plaintiff has claimed that no new equipment was supplied to the trawler by the defendants before it commenced fishing operations, and whether the defendants' claim, that since the trawler was in idling state before it was taken over by the defendants, they had to equip the trawler with the necessary motor engine as well as other relevant fishing gear to bring it to a standard where deep sea fishing operations can take place, had been substantiated.

Having satisfied that the defendants' claim of expenditure can be justified, the learned trial Judge has proceeded to consider whether the claimed income and expenditure as quoted by the defendants have a basis, and have been established. I find that the learned trial Judge has taken pain to consider the methods of calculating the value of fish and the income generated out of a fishing operation of this nature, and has satisfied himself on the evidence of the 2nd defendant in relation to both the cross-claims made by the defendants.

I am of the view that although the learned Counsel for the plaintiff has claimed at the closure of the defendants' case that certain documents considered above have not been proved, I find that the 2nd defendant, being the author of the said documents, had provided acceptable evidence before the trial Court, and the learned trial Judge has well analyzed the evidence before coming to his determinations.

It is my observation that there was no basis for the plaintiff to assert that the defendants have failed to prove the relevant documents, whereas the author of the document has given evidence in Court to substantiate the contents of the documents.

Towards this end, I would like to quote from **Janak De Silva, J. in S.C. Appeal No. 183/2011 decided on 18-07-2024** where he considered and quoted **Birch, J.**;

*“Probative value of evidence means the weight to be attached to the evidence tendered and is different from admissibility of evidence. It is a question of fact that cannot be regulated by a set of precise rules. As **Birch, J. in R Vs. Madhub Chunder (1874) 21 WRL 13** held, “for weighing evidence and drawing inferences from it there can be no cannon. Each case presents its own peculiarities and in each common sense and shrewdness must be brought to bear upon the facts elicited.”*

In terms of section 61 of the Evidence Ordinance, the contents of documents may be proved either by primary or by secondary evidence. As I have considered before, the documents where the defendant alleges to have not been proved are computer-generated documents relating to statements of accounts regarding transactions that have taken place between the parties. The very author of the said documents has given evidence before the trial Court and had withstood the test of cross-examination in relation to the contents of the said documents.

Although it has been contended that the documents were not proved by the defendants, I find that by giving evidence through the person who prepared the documents, the defendants have proven the said documents.

As I have considered before, the learned trial Judge has well considered the matters of evidence placed before the Court in concluding that the defendants have proved their counter-claim to the satisfaction of the Court.

I find no reason to disagree with the findings of the learned trial Judge and of the view that there should be no interference to the findings of the trial Judge as the said findings have been reached after careful analysis of the facts as well as the law in that regard.

Accordingly, I answer the grounds of appeal considered in the following manner.

1. The trial Judge has well considered the admissibility of the documents marked subject to proof at the closure of the defence case. The plaintiff has claimed that only the documents marked V1(30), (31), (32) and the documents marked V2, V7, V8 had not been proved.
2. No.
3. The learned trial Judge has correctly assessed and evaluated the evidence placed before the Court before granting reliefs sought by the defendants.

Hence, the appeal is dismissed for want of merit.

The parties shall bear their own costs.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court