

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

J. M. Wijeratne,
No.120,
Kandalama Road,
Dambulla.
Defendant-Appellant

**SC/CHC/APPEAL/76/2018
HC (CIVIL) 39/2011/MR**

Vs.

Ceylon Grain Elevators PLC,
No. 15,
Rock House Lane,
Colombo 15.
Plaintiff-Respondent

Before: Yasantha Kodagoda, P.C., J.
A.H.M.D. Nawaz, J.
Mahinda Samayawardhena, J.

Counsel: S.N. Vijithsingh for the Defendant-Appellant.
Dr. Lasantha Hettiarachchi with Minaali Haputantri and
Nishadini Gunawardana for the Plaintiff-Respondent.

Argued on: 16.10.2025

Written submissions:

By the Defendant-Appellant on 20.11.2025.

Decided on: 31.03.2026

Samayawardhena, J.

The Plaintiff instituted this action against the Defendant in the Commercial High Court seeking to recover a sum of Rs. 6,740,280.29 together with legal interest. The Defendant filed answer seeking dismissal of the Plaintiff's action and, by way of cross-claim, sought to recover a sum of Rs. 2,200,000.00 from the Plaintiff. After trial, the Commercial High Court entered judgment in favour of the Plaintiff in a sum of Rs. 4,081,666.66 and dismissed the Defendant's cross-claim. Hence, this appeal by the Defendant.

The Plaintiff Company is engaged in the business of rearing chicken for consumption as meat, both by itself and through outgrowers. The Plaintiff provides day-old chicks to outgrowers, together with technical assistance, veterinary services, and chicken feed, for the latter to rear them over a period of approximately 45 days and to achieve a specified weight, upon which the Plaintiff purchases them as broiler birds, subject to agreed conditions. The Plaintiff and the Defendant entered into Agreement marked P1 in this regard.

There is no dispute that the Plaintiff instituted this action on the basis of P1. The Plaintiff called only one witness, namely the Manager-Outgrowers of the Plaintiff Company. The Plaintiff's claim for the aforesaid sum of Rs. 6,740,280.29 is founded on documents marked P2A-P2Z. The Plaintiff's witness admitted in evidence that these documents are internal records of the Company and not vouchers or invoices issued to any particular person. He further admitted that the Statement of Account marked P3 was prepared on the basis of documents P2A-P2Z.

The Plaintiff's witness tendered his evidence in chief by way of an affidavit. He annexed, *inter alia*, P2A-P2Z to the affidavit. Learned counsel for the Defendant vehemently objected to the marking of these documents in evidence on two grounds.

First, it was contended that the said documents relate to transactions between the Plaintiff and third parties, in which the Defendant had no involvement. Each of the documents marked P2A–P2Z contains, *inter alia*, a Batch Number, with the Defendant named as the main outgrower and various third parties named as sub-outgrowers. The Defendant's position was that there was no provision for the Defendant to subcontract with third parties and that the Plaintiff had, in fact, contracted with such third parties independently. It is on that basis, the Defendant objected to the marking of those documents.

Secondly, it was contended that the said documents had not been properly listed.

The learned Judge of the Commercial High Court delivered the order dated 14.12.2012 in respect of these objections. At page 3 of that order, the learned Judge ruled that the first ground of objection would be considered at the stage of final analysis of the evidence. In fact, that was the submission made by learned Counsel for the Plaintiff as well when that objection was raised by learned Counsel for the Defendant. In respect of the second ground, the learned Judge held that documents P2D, P2W, P2X, P2Y, and P2Z had not been properly listed and therefore those documents could not be marked in evidence.

After trial, the Judgment was delivered on 07.04.2017. However, in the Judgment, the learned Judge has just accepted them as evidence (except P2D, P2W, P2X, P2Y, P2Z) on the basis that, those documents were not marked subject to proof at the time of marking them in evidence and, even if they were marked subject to proof, the defendant had stated that they were not proved, not at the close of the Plaintiff's case but at the close of the Defendant's case. I am unable to accept the reasoning of the learned Judge in accepting those documents in evidence at face value.

It was the learned Judge who expressly stated in his earlier order that the admissibility and relevancy of those documents would be considered in the Judgment, and learned Counsel for the Defendant merely

reiterated that position at the close of his case. It was therefore erroneous on the part of the learned Judge to have accepted those documents in evidence without determining their admissibility, relevancy and the probative value to be attached to them.

In fact, the learned Judge has himself raised certain concerns in the Judgment regarding the probative value of those documents, but has thereafter declined to consider them on the basis that they were not marked subject to proof.

The Plaintiff placed reliance on letters written by the Defendant, marked P7/P10 and P1B, to contend that the Defendant had subcontracted with third parties and was therefore accountable for their acts or omissions.

By P7/P10 dated 09.01.2006, the Defendant requested the Plaintiff to appoint him as a Sales Agent. By letter P1A dated 14.02.2006, the Plaintiff responded that “the Company has granted his request to purchase 4,000 broiler chicks per batch under the CGE Out-grower scheme.” However, Agreement P1 dated 11.01.2006 had been entered into prior to the issuance of P1A. Thereafter, by letter dated 05.06.2006 (also marked P1B), the Defendant requested an increase in the number of chicks to 24,000 per month. By letter dated 14.07.2006 (also marked P1B), the Plaintiff informed the Defendant’s brother (not the Defendant with whom P1 was entered into) that it had decided to supply 24,000 chicks every two months.

However, the sole witness for the Plaintiff admitted in evidence that the batches of chicks referred to in documents P2A–P2Z were not handed over to the Defendant, nor is there any clause in Agreement P1 permitting the Defendant to hand over chicks to other farmers.

I must state that the conduct of the Plaintiff falls short of the standard expected in the proper administration of its contractual arrangements.

As stated earlier, the position of the Defendant was that the Plaintiff Company, through its officers, had directly contracted with those third parties and supplied chicks to them. It may well be that the Defendant acted as a facilitator in that process, apart from being an outgrower under the Plaintiff Company. Such conduct, however, cannot impose contractual liability under Agreement P1.

It must also be borne in mind that the Plaintiff instituted this action on the basis of Agreement P1, and therefore documents P2A–P2Z must be brought within the framework of that Agreement. When the Defendant sought to lead evidence of a separate oral agreement between himself and the Plaintiff, the Plaintiff vehemently objected on the basis that the rights and liabilities of the parties must be determined solely on the written Agreement P1.

The Plaintiff's witness sought to impose liability on the Defendant for the acts of the sub-outgrowers referred to in P2A–P2Z on the basis that the Defendant functioned as an agent of the Plaintiff Company. However, in view of clause 10 of Agreement P1, such a position cannot be accepted. The Defendant cannot be regarded as an agent of the Plaintiff Company. Clause 10 of P1 provides as follows:

“Nothing contained in this Agreement shall be read or construed as creating or intending to create any partnership between the parties hereto or any party as agent of the other party and neither party shall have any authority to bind or purport to bind the other party in any transaction or relations with any third party by virtue of this Agreement or otherwise without the express written consent of the other party.”

No such written consent was produced in evidence by the Plaintiff.

For the aforesaid reasons, I hold that the Plaintiff has failed to establish his claim based on documents P2A–P2Z. The Plaintiff has not demonstrated any nexus between Agreement P1 and documents P2A–P2Z. The Defendant is not liable to indemnify the Plaintiff in respect of

any losses caused by third parties. Accordingly, the Judgment of the Commercial High Court cannot be allowed to stand.

The Judgment of the Commercial High Court is set aside, and the appeal is allowed. The Plaintiff's action and the Defendant's cross-claim shall stand dismissed. The parties shall bear their own costs.

Judge of the Supreme Court

Yasantha Kodagoda, P.C., J.

I agree.

Judge of the Supreme Court

A.H.M.D. Nawaz, J.

I agree.

Judge of the Supreme Court