

**RAM PHAL v. BURNS PHILP (SOUTH SEA)  
COMPANY LIMITED**

[Appellate Jurisdiction (Hyne, C.J.) September 7th, 1954]

*Right of action against agent—principles discussed.*

The respondent company supplied Ram Prasad with petrol and oil for use in a lorry which Ram Prasad said was his own. In fact, the owner of the vehicle was Ram Phal. The respondent, the original plaintiff, sued both Ram Prasad and Ram Phal in the Magistrate's Court at Lautoka for the price of the petrol and oil, and the Magistrate in his judgment said that there would be judgment against one defendant only and said that he left it to the respondent's Counsel to decide against whom he wanted judgment. Counsel asked for and obtained judgment against Ram Phal. Ram Phal then appealed.

**HELD.**—There was no privity of contract between the appellant and the respondent. (Principles of liability of agent discussed.)

Cases referred to:—

*R. v. Walker* (1858) 27 L.J.M.C. 207.

*R. Kermode* for the appellant.

*K. Stuart* for the respondent.

**HYNE, C. J.**—The plaintiff, the present respondent, Burns Philp (South Sea) Co. Ltd., Sigatoka, supplied Ram Prasad, known as the first defendant, with benzine and oil for use in connexion with Truck No. 4334. He had informed plaintiff's Sigatoka manager that he had bought the lorry, and plaintiff's manager said he had no reason for assuming that Ram Prasad was not the owner.

The amount claimed was £33 4s. 1d. and interest. Plaintiff's manager said he did not ever remember speaking to Ram Phal and that if he had thought Ram Phal was responsible for the account, he would have expected it to be in Ram Phal's name. He had no authority from Ram Phal to sell benzine and oil to Ram Prasad, who never disclaimed liability for the account.

Evidence for the prosecutions was also given by George Shankar, Clerk to Messrs. Rice and Stuart, to the effect that he had found on search that Ram Phal, the second defendant was the owner of the car. He also said Ram Prasad had told him that he was driver and manager of the truck which belonged to Ram Phal. This was when George Shankar presented the account to Ram Prasad for payment.

Some weeks later this witness saw Ram Phal who confirmed that he was the owner of the truck 4334, and that Ram Prasad drove for him. He said he had paid money to Ram Prasad for maintenance of the lorry, but he would nevertheless pay plaintiff's account if Ram Prasad did not pay, and he asked for four weeks to pay.

Ram Prasad in evidence said second defendant paid him money regularly every month, and he paid plaintiff. He only stopped paying when Ram Phal discontinued payment. He said he was acting as driver for Ram Phal. He agreed to do so for £12 per month. He did cartage for various people, collected the money and handed it to Ram Phal. He admitted that Ram Phal himself sometimes issued writs in his own name for collection of debts, that is, amounts earned while Ram Prasad drove the lorry.

Ram Phal denied owing money to Burns Philp. He said he bought the lorry for Ram Prasad, who said he would pay Ram Phal for it from his earnings. There was nothing in writing about this transaction. Ram Prasad undertook to pay him £30 per month on account of the lorry.

He admitted he sometimes collected freight at Ram Prasad's request, but he says he kept £17 collected from one Shiunandin.

He also collected £8 or £9 from the Vacuum Oil Co. which he says he paid to Ram Prasad.

Later, he said, he seized the lorry and then later still transferred it to Ram Prasad and one Dip Narayan.

Mr. Kermode, Counsel for appellant, said that the Magistrate found that first defendant was the agent of second defendant, and in coming to this decision, he had first decided two matters, namely, that second defendant was the owner of the lorry and that it was he who was operating the carrying business.

Mr. Stuart, for respondent, submitted that, since the appeal is on grounds of law, the facts as found must be accepted.

Counsel for appellant, however, if I understand him correctly, submitted that on the inferences to be drawn from the facts would depend the question whether in law the relationship between Ram Prasad and Ram Phal was that of principal and agent, or that of master and servant, or whether there was no relationship of any kind between them.

It is not denied that the truck was in the name of Ram Phal, but Counsel submitted that this was only "prima facie" evidence of ownership, and that as the vehicle was in the actual possession of Ram Prasad, and as receipts were in Ram Prasad's name, this was strong evidence that Ram Prasad was in fact the owner of the vehicle. There was also, it was submitted, the evidence of Mr. Youde who said Ram Prasad had told him he was the owner of the truck.

As against this, Ram Prasad himself said to Shankar that he was the driver and manager of the lorry, and that Ram Phal was the owner of the lorry. Ram Phal confirmed this, and offered to pay the account if Ram Prasad didn't. As I have already said, Ram Prasad in his own evidence stated he was driving for Ram Phal, who gave him monies to pay Burns Philp's accounts. Ram Phal contended that the lorry was bought for Ram Prasad. On the other hand, Ram Phal himself sued in respect of some of the lorry's earnings.

The learned Magistrate said:

"I detected nothing in the demeanour of either witness to indicate where the truth lay, but I find less difficulty in swallowing 1st defendant's story."

On all evidence, I think he was right in finding that 2nd defendant owned the lorry.

Counsel for appellant, in the course of his argument said that the Magistrate had held that Ram Prasad was a servant of Ram Phal and that he was, therefore, also an agent of Ram Phal. If he were a servant, it is said, there is nothing from which an authority to bind Ram Phal can be implied: and it is submitted that as there was no authority express or implied, Ram Prasad could not bind the appellant.

Mr. Stuart, for the respondent, submitted that there were facts from which the Magistrate was entitled to hold that the relationship was that of Principal and Agent, as distinguished from that of Master and Servant. I agree with him that the question of Master and Servant is not raised in the appeal, to the extent that it is not explicitly raised, but it was, I think, open to appellant's counsel in arguing, to show that if the relationship of principal and agent did not exist then some other relationship existed.

The Magistrate held that Ram Phal was the owner of the lorry and operated the carrying business. Furthermore, the Magistrate preferred 1st defendant's story, which means, it seems to me, that he accepted the existence of some relationship between 1st and 2nd defendants.

It is true that he said in effect that as Ram Prasad was a servant he was, therefore, an agent. He may have done so because the terms "master and servant" and "principal and agent" are frequently interchanged, as though identical in meaning. (*McDonnell—Law of Master and Servant, 2nd Edition—Note (b) on p. 32.*)

It is, however, for some purposes necessary to distinguish between them.

In *R. v. Walker* (1858), 27 L.J.M.C. p. 207, *Bramwell, B.* said:—

"A principal has the right to direct what the agent has to do; a master not only has the right, but also the right to say how it is to be done."

I think that in the present case the evidence of the 1st defendant, coupled with what he said to the witness Shankar indicates that he was the agent and not the servant of Ram Phal and I think the Magistrate was right in saying he was the agent.

The question remains, however, whether Ram Phal, the appellant, is liable for the payment of the amount claimed by the respondent.

If an agent is authorized to make a contract, there are three possible cases to be considered:—

- (1) Where the agent not only discloses to the third party that he is a mere agent, but also discloses the name of the principal.
- (2) Where the agent discloses he is an agent, but does not name his principal.
- (3) Where he neither discloses that he is an agent nor that there is a principal, and the third party believes, which is not true, that the agent is himself the principal and that no one else is interested in the contract.

In the present case, Ram Prasad represented to Burns Philp's Manager that he was the owner of the car. It was he who obtained the credit.

He made no mention of Ram Phal, and the account was opened in Ram Prasad's name. The manager was not told that Ram Prasad was not the owner.

It is clear, therefore, that this matter falls within the third case mentioned above.

*Halsbury, 3rd Edition*, Volume 1 at p. 215 para. 490, dealing with the question as to who may be sued, says:—

“ Any contract made by an agent with the authority of his principal may be enforced, as a general rule by or against the principal whether or not his name or existence was disclosed to the other contracting party at the time when such contract was made. But the rule does not apply where the agent for the undisclosed principal contracts in such terms as import that he is the real and only principal.”

Can it be said that Ram Prasad contracted with the respondent in such terms as imported that Ram Prasad was the real and only principal. I think that on Mr. Youde's evidence the answer must be in the affirmative.

Ram Prasad said he had bought the lorry. He drove it and represented himself as owner. Mr. Youde in cross-examination said—“ I presumed from what Ram Prasad said that he was the owner. I have never been told he isn't the owner. If 2nd defendant were to be responsible for the account, I would have expected the account in his name.”

Ram Prasad described himself as owner of the lorry and respondent accepted him as such, and gave him credit on this assumption. This as I see it was the basis of the contract.

It is true that respondent subsequently ascertained that Ram Phal was the owner of the lorry, but it seems to me that the real test is not what he subsequently discovered, but the basis on which he contracted. I think it is quite clear from Mr. Youde's evidence that the contract was to be confined in its operation to the parties themselves, that is to Burns Philp & Co., and Ram Prasad.

Accordingly, while Ram Prasad was the agent of Ram Phal, respondent did not contract with him on this basis, and while the learned Magistrate was right in holding that Ram Prasad was an agent, the appeal succeeds on the ground that the appellant was not, for the reasons I have given, liable for the debt due to the respondent Company. There was no privity of contract between respondent and appellant.

The appeal succeeds and the judgment against appellant in the Court below must be set aside.