

## **Akshaya Restaurant vs P. Anjanappa And Anr on 27 March, 1995**

**Equivalent citations: AIR 1995 SUPREME COURT 1498, 1995 AIR SCW 2277, 1995 HRR 568, (1995) 2 RAJ LW 118, (1996) 1 ICC 445, (1996) 1 BLJ 535, (1995) 3 CIVLJ 918, 1995 SCC (SUPP) 2 303, (1996) 1 CURLJ(CCR) 689, (1995) 2 GUJ LH 620, (1996) 1 HINDULR 85, (1996) 1 LANDLR 606, (1996) 2 BANKCAS 209, (1995) 3 ALL WC 1872, (1995) 2 CIVILCOURTC 522, (1995) 2 SCR 1154 (SC), (1996) 1 MAD LJ 43, (1995) 6 JT 269 (SC)**

**Author: K. Ramaswamy**

**Bench: K. Ramaswamy**

CASE NO.:

Appeal (civil) 4407 of 1995

PETITIONER:

AKSHAYA RESTAURANT

RESPONDENT:

P. ANJANAPPA AND ANR.

DATE OF JUDGMENT: 27/03/1995

BENCH:

K. RAMASWAMY & B.L. HANSARIA

JUDGMENT:

JUDGMENT 1995 (1) SCR 1154 The following Order of the Court was delivered :

Leave granted.

We have heard the counsel on both sides. Admittedly the respondents are owners of the land measuring 5 acres 39 guntas in Bhoopasandra village Kasaba Hobli, Bangalore North Taluk. An agreement dated 25.1.1991 was entered into between the appellants and the respondents. On the basis thereof the appellants filed a suit for perpetual injunction restraining the respondents from interdicting with his possession and further activities thereon. The written statement was filed taking certain stands. In paragraph 6 of the written statement, the respondents have stated thus:

"It is true that this defendant has entered into an agreement of sale with the plaintiff, agreeing to sell the suit schedule property on 25.1.1991 and for a sale consideration of Rs. 29,87,000 and that day the plaintiff has paid sum of Rs. 2,50,00 as token advance

and agreed to pay a sum of Rs. 5,00,000 within 2 weeks from the date of agreement and the balance amount shall be paid on or before 31.3.1992. but the possession of the schedule property was not delivered to the plaintiff at all. it is relevant to state here that the plaintiff has not acted upon as per the terms of the agreement and he has not paid further advance amount of Rs. 5,00,000 till 19.3.1991, in spite of repeated requests and demands made by the defendant. Hence the defendant was constrained to cancel the agreement dated 25.1.1991 by issuing a legal notice on 19.3.1991. It is also relevant to state here that though there is a mention regarding delivery of possession of the schedule property to the plaintiff in the agreement, the possession has not been delivered to the plaintiff at any point of time. On the other hand the defendant is in peaceful possession and enjoyment of the schedule property and all the revenue records stand in the name of this defendant. it is further submitted that the defendant "is in actual possession of the schedule land which makes it more crystal clear from the documents referred to above and produced along with the written statement,"

Subsequently an application under order 6 Rule 17 was filed for amendment of the first sentence of paragraph 6 which reads thus:

"Delete the averments made in para 6 of the Written Statement "it is true that this defendant has entered into an agreement of sale with the plaintiff, agreeing to sell the suit schedule property on 25.1.1991 for a sale consideration amount of Rs. 29,87,000".

In place of it add;

It is incorrect to state that the defendant have entered into an agreement of sale with the plaintiff on 25.1.1991. It is true that this defendant have entered into an agreement with the plaintiff on 25.1.1991 for the development of the suit schedule land for the mutual benefit of the parties.

2. Delete the words, "of sale"! in fifth line of para 8 of the written statement.
3. Delete the words "of sale" at lines 9 and 13 of the para 5 of the objection statement to I.A.
4. Delete the words "of sale" at lines 9 and 13 of para 5 of the objection statement to I.A. No. 2."

The trial court dismissed the petition holding that it is not open to the respondents to explain whether the agreement entered into was an agreement of sale or for mutual benefit since the agreement was subsilentio in that behalf. The High Court C.R.P. No. 524/91 by judgment dated 6.9.1994, allowed the amendment. Thus this appeal by special leave.

Learned counsel for the appellant vehemently contends that having made an admission that the respondents had entered into an agreement of sale and having made certain averments in support thereof, it was not open to the respondents to wiggle out from the admission. Admission is a

material piece of evidence which would be in favour of the appellant and binds the respondents when the admission is sought to be withdrawn and some additional facts are sought to be introduced, it would be inconsistent and the High Court was not justified in permitting such an amendment.

We find no force in the contention. It is settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. It is seen that in paragraph 6 of the written statement definite stand was taken but subsequently in the application for amendment, it was sought to be modified as indicated in the petition. In that view of the matter, we find that there is no material irregularity committed by the High Court in exercising its power under Section 115 C.P.C. in permitting amendment of the written statement.

The appeal is accordingly dismissed. No costs, Since the terms of the agreement are subject matter in the suit, it would be open to the parties while adducing evidence to explain the terms and conditions of the covenant and the circumstances in which they came to be executed.