

CASE NO.:
Appeal (civil) 3489 of 2008

PETITIONER:
GOPALDAS DAYALAL DODHIA

RESPONDENT:
KALLU DUKHI CHOUDHARY AND ORS.

DATE OF JUDGMENT: 09/05/2008

BENCH:
S.B. SINHA & LOKESHWAR SINGH PANTA

JUDGMENT:
JUDGMENT

O R D E R
[Arising out of SLP(C) No. 18906/2006]

1. Leave granted.
2. Appellant, who is the elder brother of the original tenant Amritlal Dayalal Dhodia, is before us questioning the judgment and order dated 14.9.2006 passed by a learned Single Judge of the High Court of Judicature at Bombay in Civil Application No.1946/2006 in Review Petition No.14623/2006.
3. Indisputably, the brother of the appellant suffered a decree of eviction. He raised a question that the hutment being in the slum area, the suit for eviction was not maintainable. However, the said plea was rejected.
4. Appeal preferred thereagainst was also dismissed. The Court has been granting time after time to the original tenant to vacate the premises. A finding of fact was recorded that the original tenant had sublet the premises in favour of the appellant. He now claims himself to be the co-tenant.
5. An application for review was filed in Writ Petition No. 4638/2005, wherein in ground (a), he purported to have claimed that the suit premises was situated in the land bearing CTS No.1786/136 to 143 of Village Dahisar. It has been brought to our notice that the slum area was declared so far as sub-plots of land in Plot No. CTS 1786 are concerned, consisting of as under:

CTS No.	Area (sq. metres)
1786 Pt.	3,249.7
1786/8 to 13	57.5
1786/45 Pt.	335.2
1786/46	274.5
1786/86 to 93	77.9
1786/100 to 110	104.6
6. Appellant seeks to take two additional grounds so as to persuade us to set aside the impugned judgment. Firstly, according to him, the High Court in its earlier order has wrongly referred to Plot No.1796 instead of Plot No.1786; and secondly, the Deputy Collector \026 the Competent Authority under the Right to Information Act, in response to a query made by the appellant stated that the land bearing CTS No.8716/ Village Dahisar is within the slum area.
7. The learned counsel for the appellant contends that the respondent \026 decree holder had suppressed the aforementioned material facts.
8. When a question was raised as to why the correct survey numbers were not brought to the notice of the Trial Court, the only answer was that the appellant was not aware thereabout.

9. Appellant was bound to take all pleas to defeat the suit for eviction filed by the respondents. He was bound to show that he had taken all reasonable care in ascertaining the correct fact. The plea which he ought to have taken and has not taken would come within the purview of the principles of constructive res judicata.

10. The High Court has assigned detailed reasons to opine that the review application was not the only delayed but was also not bona fide.

11. The suit for eviction was filed on 23.2.1987 and the decree was passed on 3.4.2003. A period of 21 years has elapsed. Appellant admittedly is now a sub-tenant. He himself took recourse to \021suppressio veri and suggestio falsi\022.

12. As noticed hereinbefore, that times without number he took time to vacate the premises but did not do so and approached the High Court on one plea or the other.

13. As far back as on 23.4.2005, the High Court dismissed his writ petition in limine. He was directed to file an undertaking that he would vacate the premises by 30 June, 2006. It is alleged that only on 21.6.2006, the purported information was sought for by his advocate, who appears to have been appointed only for that purpose. It is on 29.6.2006, i.e. one day prior to the expiry of the date when he was to vacate the premises, an application was filed.

14. Respondent waited for a long time for obtaining vacant possession of the tenanted premise and filed an execution application only on or about 5.7.2006.

15. In the aforementioned factual background, the High Court, in our opinion, has correctly held that the appellant has been adopting dilatory tactics by taking recourse to one plea or the other and acted mala fide.

16 We, therefore, do not find any reason to interfere with the impugned judgment passed by the High Court. The appeal is dismissed with costs. Counsel\022s fee is assessed at Rs. 50,000/-.