

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved on: March 08, 2011
Judgment Delivered on: March 14, 2011

+ **LPA 117/2010**

RUSTAM DECD THR LRS Appellant
Through: Mr.Sunil Chauhan, Advocate

versus

JAMIA MILIA ISLAMIA UNIVERSITY
& ORS. Respondents
Through: Ms.Jaya Goyal and Ms.Nagina Jain,
Advocate with Mr.Rohit Gandhi,
Advocate

LPA 118/2010

MAWASEE DECD THR LRS Appellant
Through: Mr.Sunil Chauhan, Advocate

versus

JAMIA MILIA ISLAMIA UNIVERSITY
& ORS. Respondents
Through: Ms.Jaya Goyal and Ms.Nagina Jain,
Advocate with Mr.Rohit Gandhi,
Advocate

LPA 120/2010

SHAFIQUE HASSAN DECD THR LRS Appellant
Through: Mr.Sunil Chauhan, Advocate

versus

JAMIA MILIA ISLAMIA UNIVERSITY
& ORS. Respondents
Through: Ms.Jaya Goyal and Ms.Nagina Jain,
Advocate with Mr.Rohit Gandhi,
Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. A common judgment dated 22.1.2010 has resulted in three writ petitions, being W.P.(C) No.4929/2007, W.P.(C) No.4930/2007 & W.P.(C) No.5292/2007 being disposed of. The appellants of LPA No.117/2010 were the writ petitioners of W.P.(C) No.4930/2007. The appellants of LPA No.118/2010 were the writ petitioners of W.P.(C) No.4929/2007. The appellants of LPA No.120/2010 were the writ petitioners of W.P.(C) No.5292/2007. All the appellants had challenged an order dated 6.7.2007 passed by a learned Additional District Judge upholding orders passed by the Estate Officer of the first respondent ordering possession to be recovered of the subject land from the appellants in proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act 1971.

2. All and sundry defences were raised by the appellants before the Estate Officer, including the plea that the forefathers of the appellants had acquired title to the subject lands by prescriptions. We note that other defences taken were that the subject lands did not belong to Jamia Milia Islamia. A defence was taken that at site, the subject lands were not in respect whereof eviction proceedings were

directed. Jurisdictional issues pertaining to the subject land being public premises were raised.

3. At the hearing of the three appeals, since inchoate and rolled over submissions were being pressed into aid, resulting in waste of judicial time, we had repeatedly emphasized upon learned counsel for the appellants to segregate the documents upon which appellants relied for a particular plea. For example, qua the plea that the subject lands were not the ones qua which Jamia Milia Islamia claimed title, requiring counsel for the appellants to show us the relevant documents, we found that the response was to show documents relatable to the plea of adverse possession. When required to segregate such documents on which appellants relied upon to make good the plea of adverse possession, counsel would show us documents pertaining to demarcations carried out at site. After some quibbling, if we may with apology use the expression, counsel for the appellants stated that the appeals are being pressed only with respect to the plea of having acquired title to the disputed lands by prescription. The common order dated 8.3.2011 passed in the 3 appeals reads as under:-

“1. Arguments heard.

2. Learned counsel for the appellants submits that the appellants admit that the land in dispute is a part of land comprising 24 bigha and 11 biswa, Khasra No.68 min.

3. Learned counsel for the appellants gives all other pleas which were raised before the learned Single Judge and states that the appellants have acquired title to the land in dispute by prescription; being in adverse possession of the said land.

4. Learned counsel does not dispute that as per revenue record of village Okhla, land comprised in Khasra No.68 admeasures 125 bigha and 5 biswa. Counsel asserts that the said land was divided into five segments being as under:

- (a) Khasra No.68 min (1-10) recorded in the ownership of Respondent No.1.
- (b) Khasra No.68 min (23-1) recorded in the ownership of Respondent No.1.
- (c) Khasra No.68 min (4-4) recorded in the ownership of the Central Government.
- (d) Khasra No.68 min (89-2) recorded in the ownership of the Central Government.
- (e) Khasra No.68 min (1-10) recorded in the ownership of the Central Government.

5. Counsel submits that only 2 out of the 5 parcels of land which were bifurcated out of original Khasra No.68 i.e. parcel No.a and b admeasuring 1 bigha and 10 biswa and 23 bigha and 1 biswa came under the ownership of Jamia Milia Islamia. Counsel states that remaining three parcels admeasuring 4 bigha and 4 biswa; 89 bigha and 2 biswa; and 1 bigha and 10 biswa came under the ownership of the Central Government.

6. As desired by learned counsel written submissions are permitted to be filed with respect to the plea urged and such documents on which parties rely; being the ones which were before the writ court.

7. Reserved for judgment."

4. Written submissions, running into 17 pages, have been filed and the only documents referred to therein are, as stated, in para 7 thereof. The documents are a possession report dated 25.1.1953 and a plaint pertaining to a suit for possession filed by the University against Rustam.

5. These are the only two documents referred to in the written submissions and indeed were the only two documents referred to during arguments in support of the plea of having acquired title by adverse possession. We may hasten to add that learned counsel for the appellants had made us read various other documents, but after reading each one of them, would concede that none of them was relevant qua the plea of adverse possession and this is our reason why, to pin the appellants, we had required the appellants to file written submissions.

6. Before we deal with the documents, we would highlight that a perusal of the impugned order shows that principally, the writ petitions before the learned Single Judge were also argued on the plea of having acquired title by prescription.

7. The ethos of the impugned judgment is that claim for adverse possession or title by prescription is established only when the claimant is in actual physical possession, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding 12 years. Mere long and continuous possession by itself does not constitute adverse possession, if it is either permissive possession or possession without possendendi. Relying upon the judgment reported as JT 2009 (9) SC 527 Lnaswathama & Anr. Vs. P.Prakash, the learned Single Judge has held that unless person in possession shows requisite animus to possess the property, hostile to the title of the owner, period of prescription does not commence.

8. We may only add that in the decision reported as (2006) 7 SCC 570 T.Anjanappa & Ors. Vs. Somalingappa &

Anr., it has been observed that adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. In the decision reported as AIR 2008 SC 346 Annakili Vs. A.Vedanayagam & Ors. it was observed that claim by adverse possession has two elements: (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. In the decision reported as AIR 2007 SC 1753 P.T.Munichikkanna Reddy & Ors. Vs. Revamma & Ors. it was observed that it follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. In the decision reported as (2004) 10 SCC 779 Karnataka Board of Wakf vs. Government of India & Ors. it has been observed: *“Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) On what date he came into possession, (b) What was the nature of his possession, (c) Whether the factum of possession was known*

to the other party, (d) How long his possession has continued, and (e) His possession was open and undisturbed.”

9. Let us consider the plea taken by the appellants in response to the notice served upon them by the Estate Officer.

10. We extract the reply filed by Rustam Khan. He has stated as under:-

“1. That the objector/respondent is not an unauthorized occupant over the land, over which the House of the objector/respondent is located, a site plan of which is being filed herewith. The objector/respondent has been in possession of the land and the house standing thereon in the capacity of owner in his own right since more than the last 50 years.

2. That the land which is the subject matter of dispute is not a public premises and consequently the present proceedings against the objector/respondent are not maintainable.

3. That the university has no locus standi to sue and initiate proceedings in respect of the subject matter of dispute. The University of Jamia Milia Islamia has had never any right, title or interest in the same. The university has neither been the owner or in possession thereof. The university has had never any connection with the same. Hence, the present proceedings which are a sheer nullity in the eyes of law and as such be dropped.

4. That even otherwise the University of Jamia Milia Islamia is estopped from filing the instant eviction proceedings in respect of the house of the objector/respondent particularly in view of the fact that it had already instituted a suit for possession, mandatory and permanent injunction against the objector/respondent regarding this very house and the land underneath the same, in the civil court. The suit being Suit No.256 of 1981 and styled as Jamia Milia Islamia University versus Shri Rustam Khan was tried by the court of Shri Gurdeep Kumar, the then Sub-

Judge, Delhi, Tis Hazari Courts, Delhi. A copy of the plaint thus filed by the university of Jamia Milia Islamia is being attached herewith for your kind perusal. It was on 6.2.1985 that Shri S.K.Mahajan, Advocate for the Jamia Milia Islamia university made the following statement before the Court:

“As the suit land had been acquired by the Government, I do not want to continue with the suit. As such I withdraw the suit, Parties be left to bear their own costs.”

The Learned court of Shri Gurdeep Kumar, the then Sub-Judge, Delhi, passed an order on the basis of the statement of the University's counsel that the suit is hereby dismissed as withdrawn. The parties are left to bear their own costs. The file be consigned to the record room. Photostat copies of the statement thus made by the Learned counsel of the university of Jamia Milia Islamia and the order passed by the Hon'ble Court on 6.2.1985 are being filed herewith for the perusal of this Hon'ble Court.

5. That in view of the filing of the suit, its dismissal by the Hon'ble Court on 6.2.1985, the university of Jamia Milia Islamia is estopped from initiating the proceedings yet afresh again. The same have been initiated by the university simply to harass the poor objector/respondent, merits dismissal and be dismissed.

6. That on account of the unconditional withdrawal of the suit by the university on 6.2.1985 before the Court of Shri Gurdeep Kumar, Civil Judge, Delhi, the present proceedings are barred by order 2 rule 2 and section 11 of the Code of Civil Procedure. The same are not maintainable on account of the fact and the very well established principle of law that nobody can be vexed twice. Our judicial system does not encourage multiplicity of litigation. Thus on account of the previous suit having been dismissed as withdrawn, the instant proceedings cannot continue.

7. That the Jamia Milia Islamia university, its staff, agents and employees are guilty of concealment of true facts from this Hon'ble Court. It seems that the fact of filing the suit no.256 of 1981 by the university of Jamia Milia Islamia against the objector/respondent and the subsequent unconditional withdrawal by their counsel Shri S.K.Mahajan on behalf of the university, was not brought to the notice of this Hon'ble Court for the reasons best known to them. Had these material facts been brought to your kind notice, no proceedings could have been initiated against the objector and no notice could have been issued by the Court against the objector/respondent.

8. That as a matter of fact, the University of Jamia Milia Islamia had in an earlier suit alleged that the objector/respondent had encroached upon the land in dispute in May, 1970. The true facts are that the objector/respondent has been in possession of the subject matter of dispute since 1940. It was in May, 1970 that the University of Jamia Milia Islamia had started construction of a wall from the Southern side of the objector's house and in doing so, threatened to demolish a portion of the objector's house, whereupon the objector was compelled to file the suit. The whole of the structure as depicted by the objector/respondent in the site plan exists since 1940, the house was a kacha one, which was constructed by the objector/respondent a pucca one in 1957, which was later on assessed to house tax. The two Doors of the objector's pucca house opened towards the land, which is a part and parcel of the above mentioned pucca house of the objector/respondent. The house of the objector/respondent cannot be enjoyed by him and his family members without the land in suit. As a matter of fact, the land which is the subject matter of these proceedings, is apurtenet to the house of the objector/respondent and is very necessary for the proper enjoyment of the objector's house. The land in an ancestral land of the objector/respondent in which the University of Jamia Milia Islamia, has no right, title or interest.

9. That the present proceedings as already submitted, are not maintainable in law and this Hon'ble Court has no jurisdiction to try the same in view of the statement earlier made by the counsel of the university Shri S.K.Mahajan before the Civil Court of Shri Gurdeep Kumar, Civil Judge, Delhi on behalf of the University. The proceedings as such are not maintainable and be dropped."

11. Others have taken similar pleas.

12. It strikes the reader that the pleas required to be advanced as per the decision reported as 2004 (10) SCC 779 Karnataka Board of Wakf Vs. Government of India & Ors. are wanting and thus the appellants are liable to be non-suited on said count alone. Suffice would it be to state that evidence sans a plea is meaningless. The principle of law prohibiting variance between pleading and proof compels us to do so.

13. But, we would consider the two documents relied upon by the appellants.

14. The possession report relied upon pertains to the date 25.1.1953 and records that of the 3.959 acres of land, at site actual possession of 3.622 acres was handed over to the representative of Jamia Milia Islamia and that 0.337 acres was under encroachment. It be highlighted by us that as recorded in our order dated 8.3.2011, which has been reproduced by us hereinabove, of the 125 bigha and 5 biswa of land comprised in Khasra No.68 only two parcels ad-measuring 1 bigha and 10 biswa and 23 bigha and 1 biswa i.e. total land ad-measuring 24 bigha and 11 biswa was recorded in the ownership of Jamia Milia Islamia.

15. Now, though the report is dated 25.1.1953 and certainly evidences that 0.337 acres land was under

encroachment, but it does not show that the predecessor-in-interest of the appellants were occupying the encroached land.

16. Dealing with this issue, we find that a large number of persons are attempting to use the same very possession report to justify their occupation of land belonging to Jamia Milia Islamia. 11 writ petitions of various dates filed by various persons, lead matter being W.P.(C) No.3772/2002 Mohd.Shamim Vs. Jamia Milia Islima & Anr. was dismissed by a learned Single Judge on 31.8.2004. Letters Patent Appeals filed against said decision were dismissed and challenge to the said decisions before the Supreme Court also failed.

17. The report in question takes us nowhere and needless to state, takes the appellants nowhere.

18. As regard the suit, plaint whereof has been relied upon by the appellants, suffice would it be to state that one Rustam and one Naziruddin had filed suits for injunction against Jamia Milia Islamia in the year 1970 claiming ownership of the subject lands, comprising in part of Khasra No.68 in the revenue estate of Village Okhla. Issue of title was framed and after litigating for 8 years, vide judgment and decree dated 9.10.1978 it was held that title was proved to be in the name of Jamia Milia Islamia but ignoring the fact that the plaintiffs thereof could not show possession prior to the year 1970, and for the reason an interim injunction enured in their favour, the learned Trial Judge held that Jamia Milia Islamia could regain possession as per law. Thereafter, Jamia Milia Islamia filed an appeal which was allowed by the learned ADJ on 21.10.1980.

19. Jamia Milia Islamia had two options. To take forcible possession as the embargo over the University was no longer operative. Or take recourse to action contemplated by law.

20. Probably for the reason large number of persons trespassed different parcels of land and each claimed benefit of the possession report dated 25.1.1953, Jamia Milia Islamia was advised to file a suit for recovery and this is the plaint relied upon by the appellants. The suit was filed in the year 1983. It was withdrawn on 6.2.1985.

21. It is true that proceedings were initiated under the PP Act in the year 1997, but relevant would it be to state that post 1970, till the year 1980, it was the appellants who had, under Court orders prevented Jamia Milia Islamia to regain possession and thus the appellants cannot claim benefit of said period. In the year 1988 Jamia Milia Islamia was declared a Central University. We do not go into the issue whether period of adverse possession qua the immovable property of Jamia Milia would be 30 years or 12 years, but would simply highlight the fact that there is no evidence that after the appellants lost on the issue of title, they did any act asserting title to the subject land. We highlight that mere reiteration of possession is neither here nor there. It assumes importance to note that the appellants have simply opened the doors of their houses to trespass upon abutting land belonging to Jamia Milia Islamia, possession whereof is being sought to be recovered by Jamia Milia Islamia. As per the appellants, a fact brought out in para 8 of the reply filed to the eviction notice, the land in dispute is vacant land abutting their houses.

22. In what manner have the appellants asserted title; what acts have been done by them to assert title, none have been pleaded and indeed none exists.

23. It is a simple case of an owner of a building putting a hedge or a boundary wall on the abutting land and probably putting a chair or two thereon to bask in the sun. We doubt whether this would constitute an act of hostile title.

24. An issue of adverse possession is a blended question of fact and law and we find that the learned Single Judge has decided the issue within the confines of writ jurisdiction.

25. We find no merit in the appeals which are dismissed.

26. No costs.

**(PRADEEP NANDRAJOG)
JUDGE**

**(SURESH KAIT)
JUDGE**

MARCH 14, 2011
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