

::RAM MANDIR CASE::

MR. RAJEEV DHAWAN (SR. ADVOCATE) RAISED YESTERDAY'S INCIDENT

Mr. Dhawan commenced his argument by regretting yesterday's incident. He said that Iqbal Ansari on of the plaintiff was attacked by some Shooters. Mr. Dhawan stated that Shooter was arrested. Mr. Iqbal Ansari was son of Mohd. Hashim Ansari plaintiff in C.A. No. 2894 of 2010.

He further stated that he doesn't want any security for himself, his house is open. The appointment of security will completely change his life, so he doesn't want that.

(CJI and other judges were looking quite serious on mentioning of this incident. They discussed about it amongst themselves for around 1 minute)

CJI: Ok. We will look into this.

ARGUMENTS MADE BY MR. RAJEEV DHAWAN (SR. ADVOCATE)

Mr. Dhawan stated his argument by referring the pleading from Appeal and pleading volume. He read the relevant portion and regarding Nirmohi Akhara he stated that they are fighting for their existence, and reorganization. He read the ground of his Appeal (page 21) that this is an assertion of right and not the conclusion of right for them. He further read (page 23) the argument being that the inner court yard is land locked is also not sustainable on the ground that the passage to inner courtyard only goes through the outer courtyard.

I want to link between 1885 case and the present case, initially they said that Raghubar Das was not ours and thereafter they said he is ours.

Mr. Dhawan argued that he doesn't dispute Shebait.

J. Nazeer : You don't dispute Shebait

Dhawan : No I don't

Mr. Dhawan further argued that Kailash Parvat' has a particular shape so it is worshiped in that form but this place can't be compared with Kailash Parvat.

COMPILATION – 1

NOTE ON CONCLUSION DERIVED FROM PLEADING IN SUIT NO. 3 OF 1989 & CIVIL APPEAL NO. 4908 OF 2011

- Mr. Dhawan handed over compilation volume 'Note on conclusion derived from pleading in Suit NO. 3 of 1989 & Civil Appeal No. 4908 of 2011' containing issues and relevant page numbers of the impugned order wherein Hon'ble High Court dealt with these issues.

Mr. Dhawan read the issues and finding of court in context of these issues. He specifically highlighted that Nirmohi has first stated that the term Janam Asthan is completely meaningless phrase, later on it has accepted that Janam Asthan is a juridical entity.

Mr. Dhawan argued that there is no averment in the plaint that Central Dome was the birth place.

Mr. Dhawan argued that the Suit of Nirmohi Akhara was restricted to the inner courtyard now in their case in 1959 they introduced two words possession and belongs to.

Mr. Dhawan argued that earlier Hindus were worshipping at the Ram Chabutara in the outer courtyard.

Finally he stated that though it has been held by J. Sudhir Aggarwal that Nirmohi was not entitled to the relief, outer courtyard has been given in the possession of Nirmohi.

J. D.Y. Chandruchud : As per your Suit you claim portion demarked in 'A', 'B' 'C' 'D' page 193 (Masjid and Ram Chabutara) as far as you accept their 'Shebaitship Rights' you loose Ram Chabutara, you are giving away your rights to the Chabutara.

Mr. Dhawan: Deity is a limited juristic person. In 1885 Suit title was decided. I have right to accept Shebait. Shebaitship rights are for deity. Mr. Dhawan further submitted that technically as per their claim they were coming to railing and praying. Does this give them right (title).

J. Nazeer: In this country we have different practices than Arabic countries, Jerusalem and Dargah are together.

Mr. Dhawan : Fundamental question is that which law do you apply, it's a matter of prayer. What happened after 1885 in modern Anglo Indian era, we can't go back

to Quran, he further added that Quranic Law is accepted by Indian Law, you can't ignore Quranic Law.

Mr. Dhawan further stated that as why did I claim the entire mosque because some people came to me saying that I am prayer here since long time, I accepted their prayer, I said Ok, Pray, Pray on Chabutara, but title in question is entirely different.

Mr. Dhawan read out and referred the Written Submissions of Nirmohi Akhara. He indicated that their suit was confined to the inner courtyard only.

He read para 7 from plaint, and stated that look they are only claiming management and charge of temple. He stated that Limitation start from here. He argued that issues no. 2,3,4,5, 8 and 9 were decided against us by High Court. Two judges have squarely decided against us.

COMPILATION – 2

PROPOSITIONS ON RELIGIOUS ENDOWMENTS AND SHEBAIT IN HINDU LAW

Mr. Dhawan handed over compilation volume 'Propositions on Religious Endowments and Shebait in Hindu Law' containing relevant portions of judgment. He argued to bring a suit by idol through next friend there is a test that either Shebait is not there or Shebait is working against the interest of deity. In that case next friend may represent deity with the permission of the court.

He stated that there can be no compromise between the Shebait and the next friend, one of them has to give up its right to sue. Both can't co-exist.

The Suit of next friend can only exist, where Shebait is working against deity. Wherein Shebait is working against the deity, in that case Shebait suit has to be dismissed. However, in the present case no such situation arises.

Mr. Dhawan submitted that that Nirmohi Akhara has always claimed the 'Shebaitship' and never claimed the title. As Mr. Parasharan has contended that obstruction of prayer is continuous wrong and it was discontinued once a judicial order was passed. This concept is very difficult to define across the board. Nirmohi Akhara has not claimed for outer courtyard in their suit, they have claimed for inner courtyard and against the attachment order by the respondent officials of the state.

Mr. Dhawan argued that can possession of property found to be of deity, can it be handed over to the next friend? In any case my lord it has to go with the 'Shebaits'.

Thereafter he read about the findings of Tifhen Heller and made submission that the cradle-'vedi' was at 'Ram Chabutara' and made a submission that the deity was at 'Ram Chabutara' and it was never inside the inner courtyard.

COMPILATION – 3

RESPONSE TO EXHIBITS RELIED UPON BY NIRMOHI AKHARA

Mr. Dhawan supplied copy of notes on exhibits, containing comments against each exhibits relied upon by Nirmohi Akhara.

Mr. Dhawan indicated Ex. A13 Suit No. 1 Copy of application dated 25.9.1866 by Mohd. Afzal, Mutwalli, Masjid Babri, Oudh and explained the same as suit of Nirmohi Akhara is confined to the disputed structure & the inner outer courtyard. Further, this document records the existence of Babri Masjid near Janamshtan, which falsifies the claim of Nirmohi that there was always a temple at the disputed site.

Mr. Dhawan indicated Ex. 30, Suit No. 1 (Copy of memo of appeal dated 13.12.1870 before Commissioner against order dated 03.04.1877 passed by Dy. Commissioner) and explained that the same as all these documents pertain to outer courtyard which is beyond the scope of the suit filed by Nirmohi.

In the same manner as indicated above he referred the list of 34 exhibits and made submission against each of exhibit filed by Nirmohi Akhara and copy of the same note was supplied to court and opposite party.

COMPILATION – 4

SHORT NOTE ON EXHIBITS OF NIRMOHI AKHARA

Mr. Dhawan further referred short note on exhibits of Nirmohi Akhara and categorized the exhibits in the following manner (as per their own understanding):

1. The exhibits of Nirmohi Akhara have been dealt in detail by Justice Sudhir Agarwal and he has categorized the said exhibits in the following categories:-
 - i. Documents which cannot be considered as evidence in favour of Plaintiff
 - ii. Documents which are irrelevant for the present case
 - iii. Documents which are inadmissible as well as irrelevant
 - iv. Documents which do not help the plaintiff as they pertain to land outside the disputed premises
 - v. Documents which cannot be relied upon/accepted for any purpose
2. Documents which cannot be considered as evidence in favour of Plaintiffs
3. Documents which are irrelevant for the present case
4. Documents which are inadmissible as well as irrelevant
5. Documents which do not help the plaintiff as they pertain to land outside the disputed premises
6. Documents which cannot be relied upon/accepted for any purpose

COMPILATION – 5

RESPONSE TO SUBMISSIONS MADE BY NIRMOHI ON 27.08.2019

Mr. Dhawan handed over fifth compilation for the day as 'response to the submission made by Nirmohi on 27.08.2019' covering the response on the following issues:

LANDLOCKED NATURE OF PROPERTY

- In the Map annexed to the plaint of the said suit, the existence of the mosque is recorded.
- Justice Sudhir Agarwal holds that merely because the Mosque was landlocked and could not be reached except by passing through the places of Hindu worship, does not mean that it would cease to be a mosque.

PRE-1855 AD

Gazetteer of the Territories under the Government of East India Company by Edward Thornton (1858 AD) Nirmohi Akhara has stated that even though the disputed structure was recognized as Mosque, the same is being used as a pilgrimage by Hindus. However, the following points must be noted

This Gazetteer makes it clear that the mosque existed and the inscription thereupon clearly stated that the same was built by Babur. Needless to say, that at that stage there could be no question of any tampering with the inscriptions as has been suggested by some parties.

Further, it has categorically been mentioned that Hindus regarded a cradle (bedi) as the birthplace of Lord Ram. It is submitted that this cradle was in the outer courtyard at the Ram Chabutara.

1855-1885

Reliance has been placed on the following to show that the Hindus re-captured the alleged Janamsthan from the Muslims during the riots of 1855, and it has been submitted that thereafter they never gave up the possession thereof.

- i. Historical Sketch of Faizabad by P Carnegi [1862-65]
- ii. Report of settlement of Land Revenue of Faizabad district by A F. Millet [1880]
- iii. Fyzabad Gazetteer, Volume XLIII of the District Gazetteers of the United Provinces of Agra and Oudh by H R Nevill [1928]

SUBMISSION IN REFERENCE OF ABOVE :

- Millet records that Babur built a mosque at the Janamsthan
- He further records that the mosque bears the name of Babur & also notices the two inscriptions.

- The Kasuati pillars, which may have been a part of a previous temple, have been used in the construction of Babari Mosque strongly resemble Buddhist pillars.
- Till 1855, Hindus and Moheemmeddians alike used to worship in the Mosque-Temple.
- Since British rule a railing has been put up to prevent disputes. It is within this railing that the mosque exists and that is where the Muslims pray. Whereas the Hindus pray outside the fence where they have raised a platform.

Submissions:

The officials of the Government at that time inspected and found it correct that expenses were being incurred for the upkeep of the mosque. Certainly, the officials would not have approved of the same if the mosque wasn't being used for prayers.

Secondly, Nirmohi Akhara was in the management and possession of only the Ram Chabutara and other Hindu religious structures and places existing in the outer courtyard.

THE 1885 SUIT

Nirmohi cannot take contradictory stands in respect of Mahant Raghubar Das.

It is relevant to note that even previously Nirmohi had distanced itself from Mahant Raghubar Das.

However, subsequently, during the course of arguments Nirmohi Akhara accepted that Mahant Raghubar Das was a Mahant of the Nirmohi Akhara and this has been recorded in the impugned judgment.

The existence of Masjid in the map attached to the Complaint, amounts to an admission on part of the opposite parties regarding the existence of the masjid.

FROM 1885-1934

It was averred that the disputed site was being constantly used by the Hindu pilgrims and made submission in regard to Ex. 8, Suit No. 3 and Ex. 49, Suit No. 4

PERIOD AFTER 1934

:: Hearing resumed will begin tomorrow::

**Notes Prepared by:
Amit Sharma, Advocate**