

:: RAM MANDIR CASE ::

ARGUMENT OF MR. RAJEEV DHAWAN (SR. ADVOCATE)

Mr. Rajeev Dhawan, Sr. Advocate appearing for Plaintiff in Suit No. 4 and defendant in other Suits (for Muslims) commenced his argument on the basis of compilation volume 'Response to the submission made by Nirmohi Akhara on 27.08.2019'. The following are the main points read and explained by him.

- He argued that Nirmohi has stated that Muslims parties have relied upon some of the exhibits, which related to the repair of the Mosque which was damaged during the 1934, however, same documents does not prove that Muslims were in possession of the disputed site. So Mr. Rajeev Dhawan made his submissions and explanations in reference of those documents.
- Mr. Dhawan referred para 3100 page 1724 from the impugned order wherein Hon'ble High Court stated that Hon'ble High Court nowhere doubted the fact that the disputed structure was being repaired for the benefit of Muslim community.
- Therefore, Mr. Dhawan by his explanation of exhibits and further by referring impugned order of Hon'ble High Court tried to prove that in 1934 after repair Muslims were in possession.
- Mr. Dhawan in para 31 of the note indicated above mentioned that above reports clearly establish that at least Friday prayers were being offered.
- Also on the basis of the report of Waqf inspector it is established that Namaz was only held on Friday and the mosque is locked at other times. The mosque is opened only for Friday Namaz for 3-4 hours.
- Mr. Dhawan further read and argued that an FIR was filed on December 23, 1949 at 7pm by one Sub Inspector who had reached the disputed site on 7

am and learnt that a mob of about 50-60 person are breaking open the locks which were in the compound of the Babri Masjid and after crossing over the wall with the help of the stairs entered into the Masjid and installed the idol of Shri Bhagvan and inside and outside the walls wrote Shri Ram with green, red earth and yellow colour. It is relevant to note that this Sub Inspector who had lodged the FIR had received the information through a constable Mata Prasad. Therefore, the police personnel have themselves reported about placing of idols in the mosque. [Pg. 35 of Vol. 1 of the Impugned Judgment.

- Thereafter Mr. Dhawna argued that the mosque would not lose its character of a mosque when Friday prayers are being continuously offered and the members of the Muslim Community were in possession of the keys of the lock.

Mr. Dhawan thereafter replied 'CAUSE OF ACTION' as it was argued by Nirmohi Akhara suit of the Muslims is barred by time as their cause of action arose on 1885, 1857 (when Chabutara was constructed), After 1934. Following explanation was given by Mr. Dhawan.

- It is submitted that in 1855, after the alleged riots as reported in the Gazetteers the same gazetteers also report that British separated the places of worship of Hindus and Muslims by a grill wall and that the Muslims continued to pray inside the mosque.
- Further, the first and second cause of actions, were both settled in the 1885 suit particularly when the appeal filed by Mahant Raghubar Das, was rejected on 18/26 March 1886. In this judgment, the Hon'ble District Judge categorically observed that the Chabutara belonged to the Muslims, even though it was observed that it was said to indicate the birth place of Lord Ram. [See pgs. 4200-4201/Vol. III at pg. 4201]

Following conclusion was submitted by Mr. Dhawan on the basis of above arguments:

- Till 1855, Hindus and Mohemmeddians 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
- Since 1934 regular Friday prayers have Been taking place in the mosque and this has been admitted even by Nirmohi Akhara
- In view of the foregoing it is clear that there was no temple at the disputed site and that the disputed structure was a mosque where continuous Namaz was taking place.

EVIDENCE OF WITNESS

Handed over a compilation on evidence of witnesses of Nirmohi

After making above submission Mr. Dhawan handed over a compilation of the Witness of Nirmohi Akharas read over the 'highlights' from the evidence of witness as mentioned by him in his compilation volume. Some of the points read over by Mr. Dhawan from the evidence of witnesses mentioned below:

- I don't know as who kept the Idol.
- Satya Narain Tripathi – he doesn't know as which temple belongs to Nirmohi Akhara.
- Regarding one of the witness he mentioned as he had RSS background.

Justice D.Y. Chandrachud : You are saying that statements of witnesses are not trustworthy, in such situation how can you say that such evidence can be acceptable to the extent of establish Shebaitship right. Either the witness can be accepted or rejected?

Mr. Dhawan : We are wishing to establish that they are Shebait at 'Ram Chabutara'. I am separating credible part of these witnesses and placing before the court.

THE ELEMENTARY PRINCIPLE OF JURISPRUDENCE

Thereafter Mr. Dhawan produced one more Volume 'The Elementary Principle of Jurisprudence Compilation Volume' and handed over the same to the judges and other parties.

- In such compilation volume Mr. Dhawan attempted to attack on the basic foundation of 'Juristic Personality'. He gave examples of Legal Personality such as 'Company as Juristic Person' and tried to showcased the nature of Legal Personality and the Purpose of Juristic Personality.
- Mr. Dhawan argued that what was the reason for creating the existence of such juristic personality.
- Mr. Dhawan argued that are such juristic personality create possessory rights, he said no.
- He further argued the 'corporate personality' and compared the same with 'juristic personality' to showcase that such personalities were created with the specific reason to safeguard the interest of people, however the same can't be used for personal gain or for personal interest.

'BELONGS TO'

Handed over a compilation volume on 'belongs to'

Mr. Dhawan argued on the right of Shebaitship he said that Shebaitship is not owner they are the mere manager of deity. Without existence of deity there is no existence of Shebaitship.

While arguing for Nirmohi Akhara or in pleading the word 'Belongs To' was used. According to the argument of Nirmohi Akhara it was argued that they are seeking Shebaitship rights and place of dispute 'belongs to' them. Mr. Dhawan argued that Nirmohi is claiming themselves as manager of 'Janamsthan' and saying that give me all.

MR. Dhawan argued that Nirmohi is claiming ownership just to get rid of limitation.

Mr. Dhawan stated that Nirmohi Akhara is saying that since Suit 5 is not barred by Limitation on account of being Perpetual Minor, therefore, same applies to me also.

Mr. Dhawan read the several judgments from his compilation volume 'Belongs To'. In these cases the word 'Belongs to' was used in several other context, however, no case exactly matching with the present case was presented in context of 'Belongs To'.

He explained the intention of Nirmohi Akhara from the word 'belongs to' in the following manner.

Belongs To; then

Possession; then

Ownership.

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- Mr. Dhawan highlight from pleading where Nirmohi Akhara used 'Belongs To'.
- Possession is a term of art means it described a meaning.

- Belonging is not a term of art, it is used to showcase your ownership, however, flexible formatting doesn't have any meaning.

J. Nazeer : 'Belongs To' is part of pleading it's not a statue.

Dhawan: In their pleading and written submitting they are using it in different phrases.

Mr. Dhawan quoted case study on 'Belongs to'

Justice D.Y. Chandrachud : Nirmohi doesn't have its own existence, they depends on deity, they are only claiming Shebaitship right i.e. management not title, they are trying establishing their right as 'Shebait'.

Dhawan : Nirmohi Akhara can't fight against the Idol but they are saying wherever Idol goes I am the Shebait. He is not claiming to the Idol he is only claiming to serve the Idol. He is claiming deity, not title.

J. Bobde : Their rights belongs to whom?

Dhawan : To the worshiper and idol. They are claiming to serve Idol and worshipper.

Dhawan :

'CONTINUOUS WRONG' AND 'LIMITATION'

- Mr. Dhawan handed over another compilation on continuous wrong.
- Initially they were aggrieved only with 145 Cr.P.C. proceedings.
- He said that Nirmohi can't claim something which he doesn't have.
- He said Nirmohi is saying that because the Magistrate slept over on my file therefore it's a continuous wrong in context of 145 CrPC proceedings.

Justice D.Y. Chandrachud: Suit 5 doesn't complaint about Suit 3, Suit 3 is aggrieved by proceedings u/s 145 Cr.P.C.

Mr. Dhawan : The limitation starts from cause of action. The cause of Action begin w.e.f. 05.01.1950, if you are aggrieved with 145 CrPC you can't seek title, and you can take possession.

Mr. Dhawan : The Nirmohi Akhara is basically aggrieved with 145 proceeding, they said we are being impatient, please decide it finally. This is all about their suit. As per their argument they kept on waiting since 05.01.1950, they didn't' file anything, hence barred by limitation.

:: Hearing resumed will begin tomorrow::

**Notes Prepared by:
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