

HEARING DATED: 06.08.2019

:: RAM MANDIR CASE ::

MENTIONING FOR LIVE STREAMING

Just after resemble of bench as soon as the hearing commenced one Junior Counsel made a mentioning regarding Live Streaming of this Case, CJI refused even to hear the mentioning and didn't allow the counsel to explain.

MR. JAIN REQUESTED TO BEGIN WITH SUIT NO. 5

Mr. Sushil Kumar Jain (Sr. Advocate) representing the Nirmohi Akhara in Suit 3 (Suit 26 of 1959) requested to the Hon'ble Court to begin the hearing of cases with Suit No. 5 (Bhagwan Sri Ram Virajman - represented by Mr. Parasaran, Sr. Advocate), however, Hon'ble CJI took strong objection on this stating that haven't you gone through our last order, we clearly indicated that we will start the hearing with Suit 3 and 5 on which Mr. Jain replied that he is ready and will begin.

ARGUMENT MADE BY MR. SUSHIL KUMAR JAIN FOR NIRMOHI AKHARA

Mr. Sushil Kr. Jain begins his argument stating that his suit is for taking charge of inner courtyard (wherein three dome structure were existing as per MAP). He argued that he is aggrieved by the order of court wherein receiver was appointed to take over the charge from him.

Justice Bobde put a query to Mr. Jain as are you a registered body on which Mr. Jain replied that yes Nirmohi Akhara is a registered body.

Mr. Jain took the court to the pleading of Nirmohi Akhara Suit 3 (Suit 26 of 1959) as what was actual complaint all about and he explained that the Suit was filed on 17.12.1959. He indicated the MAP as per his suit and shown the portion of Sita Rasoi, Chabutra & Bhandar situated out of inner courtyard.

- Mr. Jain indicated that attachment order in 1951 as in reference of inner courtyard only.
- He argued that in our pleadings we are using the word 'belongs to' not 'ownership'
- He stated that on 06.12.1992 the temple got demolished by some miscreants who had no caste or religion.
- Nirmohi Akhara is very well known owns many temples in India in different state.

- He argued that no Muslim was ever allowed to enter into the premises.
- He argued that Nirmohi Akhara was in exclusive possession of temple.
- He argued that plaintiff was wrongly deprived from the charge of said temple by the proceeding u/s 145 Cr.P.C.

Mr. Jain shown the **prayer part** to the court from the pleadings wherein following prayer was made on behalf of Nirmohi Akhara:

"A decree be passed in favour of the plaintiffs against the defendants for removal of the defendant no. 1 from the management and charge of the said temple of Janma Bhoomi and for delivering the same to the plaintiff through its Mahant and Sarbarhrahkar Mahant Jagannath Das."

CJI said that show us as what the defendants pleaded in reply of your case. Show us the Written Statement:

Mr. Jain read out the part on page 54 on pleading volume 'A' which is filed on behalf of Muslims denying all the contentions raised by Plaintiff Nirmohi Akhara. He further read objection part filed by Muslims in said W.S. He specifically indicated that as per their own claim they offered last Namaz on 16.12.1949, hence their own suit is barred by limitation and didn't read it further.

HOT EXCHANGED OF WORDS BETWEEN MR. DHAWAN AND C.J.I.

Mr. Dhawan representing Muslims in Suit 4 (being Suit No. 12 of 1961) made strong objection and said as why are you not reading it further on which CJI replied that you will get your chance to make your submission, don't intervene like that.

Mr. Dhawan said that he has apprehension that he will not be given chance to explain his case on which CJI said it's your duty to maintain decorum, you will be given enough chance. Mr. Dhawan remained adamant and said that I feel so.

CJI shown his great annoyance on the attitude of Mr. Dhawan.

Mr. Jain read out the portion on Page 63 of pleading volume 'A' which is statement of defendant no. 10

After reading some portion from the Written Submission Mr. Jain took the court to the issues framed issue No. 3

ISSUE NO. 1 (Is there a temple of Jamam Bhoomi with idol installed as alleged in plaint)

Justice	Page No./Para No.	Remarks
J. Khan	105 Vol I	Against the plaintiff. Idols were kept on the pulpit in the night of 22 nd and 23 rd December 1949
J. Aggarwal	Para 4425	Against the plaintiff
J. Sharma		Against the plaintiff

ISSUE NO. 2 (Does the property in Suit belongs to Plaintiff)

Justice	Page No./Para No.	Remarks
J. Aggarwal	Para 4482	Against the plaintiff
J. Sharma	Decided as per Suit 4	Against the plaintiff

ISSUE NO. 3 (ADVERSE POSSESSION)

Justice	Page No./Para No.	Remarks
J. Aggarwal	1673/3024 (Vol. 2)	Issue was decided against plaintiff

ISSUE NO. 4 (REGARDING CHARGE OF TEMPLE)

Justice	Page No./Para No.	Remarks
J. Aggarwal	2846/4484	Issue was decided against plaintiff

ISSUE NO. 5 (MOSQUE WAS MADE BY EMPEROR BABAR KNOWN AS BABRI MOSQUE)

Justice	Page No./Para No.	Remarks
J. Khan	Page 99	Affirmative Till 1934 Muslims were offering prayer Thereafter till 1949 only Friday prayers used to offer.
J. Aggarwal	1100/1682	Issue decided in Negative
J. Sharma	Page 3494 Vol III	Decided with issue no. 1 and denied the existence of any temple structure and idol therein

ISSUE NO. 6 (Whether the alleged mosque was dedicated by Emperor Babar for Worship by Muslims in general and made a public Waqf property)

Justice	Page No./Para No.	Remarks
J. Khan	Page 107	Affirmative. Dedication presumed.
J. Aggarwal	Page 830 Vol I Page 835	Not Proved. No valid notification under waqf Act was ever made.
J. Sharma	1913/3345	Answered in Negative means that was not a valid mosque

VERY IMPORTANT

CJI itself Indicated something from the Judgment of Justice Khan and asked Mr. Jain to read it again:

“Under the Muslim Law no one can construct a mosque over the land of the other unless the other i.e. the owner permits or sanction afterwards for the same. It has been held earlier that it is not proved that the land over which the mosque was constructed belonged to Babar or to the person under whose order the mosque was constructed. However, it has also been held that it has not been proved that the land belonged to anyone else hence from existence of the mosque for a long period title be presumed. Accordingly, it can’t be said that the mosque was not a valid mosque having been constructed over the land of someone else”.

Mr. Jain further argued as the alleged mosque was not a valid mosque as it was not having following characteristics.

“No Minarets on the alleged mosque”

“No place of Vaju”

“No graveyard could be situated near Mosque”

“Kasturi Pillars which are a part of temple found in construction of alleged mosque”

ISSUE NO. 7a (Was there any valid notification under Waqf Act)

Justice	Page No./Para No.	Remarks
J. Khan		
J. Aggarwal	Page 835	No valid notification under waqf Act was ever made.
J. Sharma	1913/3345	Decided as per Suit 4

ISSUE NO. 8 (ADVERSE POSSESSION)

Justice	Page No./Para No.	Remarks
J. Khan	109 Vol I	Held that parties in joint possession, hence no need to decide this issue.
J. Aggarwal	1690/3073-75	Against the plaintiff
J. Sharma		Against the plaintiff as per Suit 4

ISSUE NO. 9 (LIMITATION)

Justice	Page No./Para No.	Remarks
J. Khan	Page 71 reasons Page 87 Findings	Affirmative for all the suits including present Suit of Nirmohi Akhara.
J. Aggarwal	1514/ 2568-2580 1565/2737-38 1466/2452	If we read the judgment in entirety then it was answered in favour of plaintiff, however, in some portion of judgment it appears as it held against the plaintiff.
J. Sharma	Pg 2976-2998 Pg 3495	Against the plaintiff in Suit 4 (Sunni Central Waqf Board), and same finding for Nirmohi Akhara in Suit 3

Issue no. 10 and 10a (on 80C) not argued.

ISSUE NO. 11 (NON JOINDER OF NECESSARY PARTY)

Justice	Page No./Para No.	Remarks
J. Khan		Not decided
J. Aggarwal	909-10/1292-94	In favour of plaintiff as not pressed.
J. Sharma		Stated as this issue is identical to issue no. 21 in suit 4. (No effective relief can be granted)

Issue no. 12 (entitled to special cost u/s35 CPC) not argued.

ISSUE NO. 13 (To what RELIEF plaintiff is entitled)

Justice	Page No./Para No.	Remarks
J. Khan	Pg 116	Given relief to all three.

J. Aggarwal	2868-74/2566	Against the plaintiff. Stated in Para 4557 as plaintiff in Suit 3 is not entitled to any relief.
J. Sharma	Pg 3585	Suit is dismissed.

ISSUE NO. 14 (Suit is not maintainable as framed)

Justice	Page No./Para No.	Remarks
J. Khan		Issue not decided.
J. Aggarwal	2847/4886 Vol III	Decided against plaintiff as Suit 3 is not maintainable
J. Sharma	Pg 3495	Decided in favour of plaintiff as its maintainable.

Issues no. 15 & 16 are not argued.

ISSUE NO. 17 (Whether Nirmohi Akhara is Panchayati Math)

Justice	Page No./Para No.	Remarks
J. Khan		Issue not decided.
J. Aggarwal	747, 750-51 /788 Vol I	In favour of Plaintiff
J. Sharma	3496 Vol III	In favour of Plaintiff

ARGUMENT OF MR. JAIN ON ISSUE NO. 9 (LIMITATION)

After going through all the issues CJI asked Mr. Jain to explain as what are his arguments on the above issues and on the finding of High Court. Mr. Jain stated that he wants to start with the issue of Limitation first. Limitation is Issue No. 9. CJI said that Issues No. 1, 2, 3,4, 5, 8 & 9 seems relevant for Nirmohi Akhara for the purpose of argument.

ARGUMENT-

An Interim/preliminary order dated 29.12.1949 was passed by City Magistrate Faizabad u/s 145 Cr.P.C. and ordered to attach the entire suit property to receiver Sri Priya Dutt Ram, and thereafter 19.01.1950 passed order of temporary injunction to refraining from removing of the idols in question from the site in dispute.

On 03.03.1951 this interim injunction was confirmed.

Plaintiff (Nirmohi Akhara) went into the appeal against this order and the same was decided 26.04.1955 wherein Hon'ble High Court dismissed the Appeal. Hence injunction is confirmed.

Sunni Central Board filed a Suit after two year on 18.12.1961

Article 47 of Old Limitation Act: Limitation Period prescribed as 3 years from the date of final order in the case.

Mr. Jain Argued as since there is not final order therefore, he always remains in Limitation period. According to him above orders were of interim nature and Article 47 prescribed as 3 years from the date of final order, therefore, Plaintiff is well within Limitation.

J. Bobde: J. Bobde said that since there is no final order, therefore, Article 47 can't be invoked. CJI also put his consensus with J. Bobde.

Article 142 of Old Limitation Act:

Article 142 prescribed 12 years limitation from the date of dispossession or discontinuance.

According to Mr. Jain Suit was filed on 17.12.1959, and first interim order was passed on 29.12.1949, therefore, he is well within limitation as per Article 142 of Old Limitation Act. In support of his contention he referred Para 10 of Pleading Volume 'A' mentioning limitation.

J. Bobde: J. Bobde again put a query that as per your own case you have lost control (as receiver took over property as per order of court), however, you haven't lost the possession. Therefore, this plea can't be looked into that way.

::Hearing resumes for the next day::

**Notes Prepared by:
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