

::RAM MANDIR CASE::

MENTIONING BY MR.RAJEEV DHAWAN (SR. ADVOCATE) REGARDING ATMOSPHERE AROUND DURING HIS ARGUEMENT

Before Starting the argument Mr. Dhawan mentioned that I am getting threat on facebook that, "You are in Adalat", when you come out of Adalat, we will see you.

-He said that my clear is being asked by some other clerks that you boss is standing in which side.

-He said that one of the Ministers's said that court is ours, Government is ours.

He said that this is the atmosphere in which I am arguing. I don't want to file contempt over contempt; I have already refused for security.

CJI : If you want anything from us, please feel free to ask and inform.

J. Bhushan : Earlier also we have recorded our appreciation for you.

Dhawan : I am not talking about past, I am talking about now.

ARGUMENT OF MR.RAJEEV DHAWAN (SR. ADVOCATE)

Mr. Dhawan referred the compilation volume and argued regarding scope of Section 145 Cr.P.C. He further referred the case 'Ayyappa Vs Laxamana' from his compilation and raised following questions:-

- Whether suit would lie against magistrate or not?
- What's the period of limitation. Mr. Dhawan argued on section 23 of old limitation act and read the judgment in that context.
- Mr. Dhawan argued that no action can be brought against Magistrate for recovery of possession.

- No cause of action can be said to be invoked against magistrate who is discharging his legal and statutory duties.
- This quarrel between them two, (Nirmohi and Magistrate).
- Mr. Dhawan read the judgment referred from his compilation, and based upon that he argued that their cause of action is against the other parties, but not against the magistrate, they are left with only option to sue them, as they can't sue Magistrate.

J. Chandrachud: Suit for declaration?

Dhawan: Yes, they can file suit for declaration against other parties, but can't sue magistrate who is discharging his legal duties.

'CONTINUOUS WRONG'

Mr. Dhawan again argued continuous wrong and argued regarding 'Tort Law', 'Injury', 'continuance of legal injury'.

He read and argued a case wherein the court gave its finding regarding counter claim, in that case court averted that cause of action firstly arose when they put lock. Mr. Dhawan argued that locking of room is not the cause of action, however, cause of action arose from bundles of fact and locking of room was one of the factor from such bundle.

Mr. Dhawan argued that Section 23 is application only in case where a there is continuous wrong in Law.

Mr. Dhawna said that Limitation Act is a Statute of Reports.

Mr. Dhawan argued regarding scope of tort he said that a tort is not continuous wrong.

Thereafter Mr. Dhawan refered Case of dumping from Tab '5' of compilation volume.

Mr. Dhawan argued that it must be 'continuous wrong' in legal term.

COMPILATION VOLUME ON 'LIMITATION AND POSSESSION'

Mr. Dhawan referred a compilation volume 'Note on Limitation and possession' and argued as what's the relation between them and relief sought. He said that cause of action will arise if there is any breach of right provided by any statute.

Mr. Dhawan argued that when did you actually get possession of inner part as per 1885 suit you were not in possession of inner courtyard.

Mr. Dhawan argued that a defendant can't take the advantage of wrong of the plaintiff, he has to stand on his own leg and has to assert his claim.

He said that first wrong was in 1934, wherein mosque was broken, he said then another wrong was in 1949, another illegal act, we won't let you in, then on 22 December 1949. He said that Mr. Jilani, Sr. Advocate will argue in this regard in detail, I am only making foundation for him.

Then Mr. Dhawan read out the entire pleading of Nirmohi Akhara from pleading 'Volume A' and highlights the facts based upon his argument till now.

'BELONGS TO'

He referred word 'belongs' and always 'belongs' used in pleading. He argued that don't have title, the title lies with Idol. He argued that how can't you claim title, you don't have any claim on title as per law.

'POSSESSION'

In further paras he highlighted the word 'possession' used in pleading.

He read from pleading that none other than Hindus were allowed to enter.

They claim to inner courtyard.

He read out the portion from pleading as no Mohd. is allowed to enter since 1934, he said that its illegal part in their pleading.

Mr. Dhawan the referred amendment part and cause of action from pleading.

Mr. Dhawan argued that it's a suit against Magistrate; I doubt that apart from limitation, it's maintainable.

He said that this entire suit is all about that officials have illegal taken possession from me, give it back to me.

The argued that sole purpose of 'continuous wrong' and 'possession' is to extend the period of limitation, nothing else.

:: LUNCH ::

- Mr. Dhawan while arguing referred 1992 incident he stated that what happened to 1992 the contempt notice was issued to by this Hon'ble Court to Kalyan Singh.
- Thereafter Mr. Dhawan read out the judgment from the compilation volume submitted by him.
- Mr. Dhawan argued that illegality doesn't give any right to anyone, either complicit or non-complicit. It never gives any right, never.
- Mr. Dhawan argued that it was specific averment of Nirmohi Akhara as if they don't succeed in establishing their Shebaitship right, will it be Swyambhu, or there will be no Shebait, What?
- J. Bhushan : What's your Stand on this, if Shebait failed then?
- Dhawan : Mr. Dhawan made his submission on this for around 30 minutes, however, he didn't give any direct answer, he argued the incident from 1858 till 05.01.1950, then he himself stated that the question put to me was of future not of past.
- J. Bobde: It's an established fact that they are shebait?

- Mr. Dhawan: Nobody controverted it. Mr. Dhawan read out the finding of J. Aggarwal from impugned order.
- Mr. Dhawan argued that I support the plea of Nirmohi Akhara as far as these findings are concerned.
- He said that there is issue no. 8 in Suit 5, it became an issue after 1989 when next friend entered.
- Mr. Dhawan argued that Mahant Raghuber Das claimed that he has right in the inner courtyard, his case travelled till higher court, and it was decided by court that he doesn't have any title.
- Mr. Dhawan submitted that it was argued by Mr. Parasaran that since Nirmohi Akhara doesn't have any title so far as outer courtyard is concerned, then how can Nirmohi Akhara share the same with deity, he said that he agreed with Mr. Parasaran in that regard.
- Mr. Dhawan argued that to Nirmohi Akhara, threat came in 1989 from next friend, next friend stated that Nirmohi Akhara doesn't have title, I can understand the situation if Shebait is not there, next friend could enter in it, but now how can they deny the locus of Shebait.
- Mr. Dhawan argued that right to Sue is in 1959 suit (Nirmohi Akhara Suit), though it's premature.
- J. Chandrachud : In Suit 5, the next friend made Shebait as party and Shebait contested it on the ground that they have right to manage it.
- Mr. Dhawan : If there is Suit of Shebait and suppose next friend succeed then who will have the property next friend of Shebait, it was argued by Nirmohi Akhara, next friend can't manage property of deity, it has to go to shebait, or to the trustee. If we bring person 'X', it can't be a flyaway person, it's shebait.
- On reply justice Bhushan query Mr. Dhawan submitted that on what basis next friend can argue as their Shebait terminated. I am supporting them to this regard.

- Then Mr. Dhawan admired the procedure adapted to Madras High Court, that discussion took around 15 minutes.
- CJI : Admired to Dr. Dhawan, he stated that you are well organized.

Mr. Dhawan stated that Mr. Jilani, Sr. Advocate will argue tomorrow and then I will conclude. (Suit 3)

:: Hearing resumed will begin tomorrow::

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