

HEARING DATED: 15.10.2019

::RAM MANDIR CASE::

Several advocates mentioned as they would like to argue including Mr. V. Shekher, Sr. Advocate, - Advocate for Shia Waqf Board and some other advocates, however, bench refused to hear them and asked them to file their submission, if they wish to.

ARGUMENT BY MR. K. PARASARAN (SR. ADVOCATE)

Mr. Parasarn : I am appearing for defendant no. 2 in Suit No. 4.

- Mr. Parasaran argued on Historical Wrong.
- Mr. Parasaran stated that it was argued by them that I am emperor Babar, Law is below me. He said that we have to consider the effect of this argument.

Above argument was objected by Mr. Dhawan, he said that it's new argument.

- Mr. Parasaran cited several judgments in support of his argument.
- On putting dividing grill he said that it was just an arrangement to maintain law and order.
- He said that authorities are not here to recognized title.
- Babur was a foreign conqueror; he said that people came in our country to conquer, none of the Indian gone out to conqueror.
- For Hindus it's a birthplace, for Muslims it's a Historical Mosque.
- For Muslims are mosques are equal.

J. DYC: In title Suit special significance can't be considered.'

Mr. Parasaran: I am maing comparison on the basis of their own theory. According to them it's a Historical Mosque, but without title.

- Mr. Parasaran quoted 1997 (7) SCC 339
- Mr. Parasaran quoted page 2848 from impugned order para 4488. He said that there are around 50-80 mosques in Ayodhya.

Mr. Dhawan: My Ld. Friend should also point out as how many temples are there in Ayodhya.

Mr. Parasaran: That's because of population proportion.

Mr. CSV: He should not interrupt like that.

Mr. Dhawan: I surrender, I will not interrupt.

MR. PARASARAN VEHEMENTLY ARGUED ON LIMITATION.

- Mr. Parasaran strongly argued on limitation, he said that Suit 4 –filed by Muslims is barred by limitation.
- Mr. Parasaran indicated the pleading and read pleading in Suit 4.
- Mr. Parasaran read para 23 of pleading related to cause of action.
- Mr. parasaran argued on continuous wrong.

J. DYC: We need no to go into the concept of continuous wrong. If article 142 of old Limitation applies then we need not to go into article 120, keeping in mind the incident of 16.12.1949 and 22/23.12.1949 incidents.

- Mr. Parasaran indicated prayer A in Suit 4, and emphasized on word, “Public Mosque”
- Mr. Parasaran argued that in prayer they sought declaration to declare it as public mosque.

CJI: If the suit property is not in existence then can there be declaration for that? Mosque is destroyed, how can there be declaration?

Mr. Parasaran: its second aspect, I am on Ist aspect. There case is once a mosque is always a mosque.

CJI: Are you supporting it (once a mosque, always a mosque)

Mr. Parasaran: No, my argument it as once a temple, it’s always a temple.

J. Bobde: The declaration was sought to declare a building?

Mr. Parasaran: In India there are two concept of declaration – Building & Land.

J. DYC: As per site plan attached with suit, they have sought declaration in reference of property ABCD which includes structure and land both. The suit also claimed the open land, so in that situation it doesn’t make any difference whether structure exist or not.

CJI: Indicating to Mr. Dhawan, are we putting enough question to them now?

Mr. Dhawan: Ask them which they can’t answer.

CJI : We can’t say anything on ability of a lawyer.

Mr. Parasaran: All questions put to me on Swyambhu earlier.

- Indicating para 11A and other paras in plaint Mr. Parasarn argued that this property has so many character.
- They say that we can pray in open also. I am not replying to this issue as whether open area can be mosque or not but reading the fact.
- They say that God is 'formless', we say God has 'Form'.
- In their pleading they said that they have perfected their title by adverse possession.

J. DYC: Except from prescriptive right, they alternatively argued on adverse possession. They alternatively argued on adverse possession.

Mr. Parasaran: If a property is attached u/s 145 Cr.P.C. we have to seek declaration.

J. DYC: If property is attached to receiver, then receiver has to act in consonance of court order, they need not to ask for possession.

J. DYC: Assuming, suit is within limitation, can a party say that I am taking plea of adverse possession to perfect my title without title.

J. Nazeer: Whether they will confer title in such situation?

Mr.Parasaran: They have deliberately not mentioned anything in cause of action in regard of adverse possession.

J. Nazeer: Can you assume title on the basis of old possession (without adverse possession), assuming that there is no opposition. People possess government land for 100 of years and enjoys title.

Mr. Parasaran: That's negative argument, you have filed a suit, onus is on you to prove your title, you are shifting your onus.

J. Nazeer: Burden and onus are pendulum, can we assume title on the basis of long possession, does it fructified to title.

Mr. Parasaran : That's interesting question. Lunch Now.

:: LUNCH::

J. DYC: We are putting our query in different word now, A is claiming title, B is claiming possessory title, both the parties don't have substantive title. B can't claim unless he claims adverse possession.

Mr. Dhawan objected again said that it's a title suit or we can say it possessory suit. The property is dedicated to Waqf. The cases cited by Mr. Parasaran are not relevant. Firstly we are Waqf, now title vest in Allah, it's manage by people and there is an in charge.

Mr. Parasaran: I have my duty to MyLord and I am answering to MyLord, I am ignoring interruption and continuing.

- Mutwali is Waqf, without mutwali suit is not maintainable, we can't produce de facto mutwali.

Mr. Dhawan objected again.

CJI : Mr. Dhawan we will hear you in rejoinder.

Mr. Parasaran argued on burden of proof, he said that burden of proof is on someone who is claiming himself owner. He read page 762 of Impugned order. It's an order in Appeal in 1885 Suit wherein it is said that it's most unfortunate that mosque is raised on temple.

Mr. Parasaran stated that decision was in favour of Hindus but he didn't grant relief considering that fact that such relief can't be granted after 356 years.

- Prayer for possession is made to get rid of limitation issue.
- Mr. Parasarn argued on cause of action.
- Mr. Parasarn argued on right to sue.
- Mr. Parasarn argued on continuous wrong/ Continuous injury.
- Mr. Parasaran argued on limitation and cited judgments to buttress his argument.
- Mr. Parasarn argued on act of state, he referred Indira Gandhi case on rule of law.

Mr. Vikas Singh, Sr. Advocate - appearing for Hindu Mahasabha sought permission of court to put his argument. Permission not granted.

Mr. CSV said that I will take 45 minutes today and 1 hour tomorrow.

Mr. Parasaran said that I have given my argument by way of Written Submission.

ARGUMENT BY MR. C.S. VAIDHNATHAN, SR. ADVOCATE

Suit No. 4 is a case of possessory title; it's not on the basis of adverse possession by long and continuous possession and on creation of Waqf.

For dedication, there is no evidence.

In pleading there is no such case.

Mr. CSV referred Ismile Farooqui case and read several paragraphs from it. Para 19, 61, 133 and 134. He said that I am referring these paragraphs to show as what was the case which was pleaded.

Mr. CSV referred their pleading on page 85 of pleading volume 'A'.

He said that from reading of para 11 and 11A it's clear that Muslims on the basis of long and exclusive possession have stated to perfect their title.

Para 21A it is mentioned that Idol wrongly placed. He read para 23 of plaint.

He emphasized on the fact that according to Muslims their case is based upon as it's a grant by Babur – dedication of title – adverse possession.

He said that bare reading of para 11A is an admission on their behalf. They are claiming adverse possession, now question is as adverse possession against whom, it's against deity.

HOT EXCHANGE BETWEEN MR. DHAWAN AND MR. CSV.

Looking as strong argument placed Mr. CSV Mr. Dhawan again interrupted stating that that's not argued by him.

On which CSV said to CJI as what's that, he is not allowing me to argue and interrupting.

Mr. Dhawan said 'stop it' to CSV.

Hot exchange took place between counsels.

Mr. CSV: I can't argue like that, he can't say as 'Stop it' to me.

CJI: You kindly continue your argument, don't mind distraction. We all do it. You did it, he did it. Doesn't matter.

Mr. CSV continued.

Mr. CSV argued that claiming adverse possession is amounting to admission that deity is an owner, we have to identify pre existing owner, who is that, deity!

- They have not been able to prove grant / dedication by Babur.
- They are not able to prove ouster of previous owner.

- They are not able to prove exclusive possession.

Therefore, this is a case which is not pleaded. In this case, there is no pleading, no issue, and no evidence and due to these reasons the suit is barred.

Mr. CSV made his submission on law and title.

Mr CSV referred various case and said argued on 'Possessory title'.

The structure was used as Mosque till 1949, that's a waqf without user, it can't claim possessory title.

Bench: You show us the pleading as where they have said it as it was built by Babur and dedicated to Waqf?

Mr. CSV: read para 1 and para 2 of plaint wherein it was stated that it was built by emperor Babur and used by Muslims as Mosque. He said that para 1 and 2 have to be read as whole.

Justice Bobde: Built means consecrated and dedicated.

J. DYC: We have to read it like a pleading not like statute. The general meaning of it is as it was made by Babur and used by Muslims as mosque.

J. Nazeer: If something is not pleaded, it's not fatal to the case.

Mr. CSV: There is no pleading, no evidence and no issues were framed.

J. Bhushan : Showcased issue 1BB on page 265 of impugned order, volume 1.

Mr. CSV: it's not a waqf as user.

J. DYC: Use of mosque for the purpose of Waqf.

- Mr. CSV argued on possession, he said that can there be dedication of waqf in joint possession.
- Use of mosque doesn't constitute possession.
- Mr. CSV show the finding of J. Khan and J. Aggarwal from impugned order.
- Mr. CSV argued that there is no evidence on possession of Muslims and there is no challenge to these finding. It's 1st appeal.
- If they are not in possession then how can it be dedicated, Muslims have failed to prove their possession.

Mr. Dhawan again interrupted.

CJI: Don't interrupt; place your argument on your turn.
Mr. Dhawan said apologized to CJI.

- Mr. CSV argued that both are offering prayer, if Hindu worship at that place then it's deity, deity can't be deprived of possession.
- In suit 5 my plea is that land is deity, in their case they are failed to prove title.
- There is no document prior to 1860.

Mr. CSV shown the finding of judges of High Court.

Mr. CSV read their Written Submission (notes) volume A113 wherein translated copy of 'Nakal register' is placed. He has shown the same 'Nakal register placed in impugned order of High Court and said that they have placed on record wrong translation. He showcased that words 'Land free grant' and 'given as waqf' is not there, however, they have placed these words in translated version. They were given enough time to translation

CJI: you have indicated to us... its wrong translation, we have marked it.

Mr. CSV read para 2336 from impugned order wherein it was stated that there is no material to show any grant.

Mr. CSV indicated the documents placed by Muslims, he said that all these documents were disbelieved by Hon'ble High Court.

Mr. CSV made his submission on 'Grant free revenue land'. He said that grant was given in respect of some other land, it's in lieu of that land but not for this land.

Mr. CSV said that all these documents were considered by Hon'ble High Court in it's impugned order. And read page 1443 /1393 regarding documents.

J. DYC: It's difficult to prove as who walked away with grant in such old case.

It's 5.15 now.

Discussion on tomorrow's schedule.

CJI : Tomorrow 45 minutes to Mr. CSV.
: 1 Hour to Mr. Rajeev Dhawan.

Mr. Ranji Thomas, My Writ Petition is also tagged alongwith it, I need to argue the same.

It's wrongly tagged. Directed to de-tagged.

Mr. Ranjeet Kumar, Sr. Advocate, I need only 2 minutes to conclude my argument.

CJI: You divide rest of the time amongst yourself.

Mr. Rajeev Dhawan: Molding of relief should be part of their reply only.

Other advocates mentioned that they would like to argue.

CJI: You divide the rest of the time amongst yourself, 2 minutes, 5 minutes or 7 minutes.

(*Note: If Molding of relief is covered as part of reply by both parties, then hearing be concluded tomorrow.)

Concluding argument will continue on Wednesday.

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