

::RAM MANDIR CASE::

ARGUMENT BY MR. SUSHIL KR. JAIN (SR. ADVOCATE)

Mr. Sushil Kr. Jain, Sr. Advocate appearing for Nirmohi Akhara (Plaintiff in Suit No. 3) commenced his argument as follows:

- Mr. Jain handed over a note (submissions) to the court and started to read the argument of witnesses to establish the fact that there is no question on the possession of Nirmohi Akhara in the Statement of Witness, so his possession is undisputed.

D.Y. Chandrachud : Mr. Jain you concentrate on your case of Sheibaitship, you basically focus on three things.

- **Shebaitship,**
- **Worship**
- **Possession**

- We were in possession of deity, if it is shifted to one place to another (inner courtyard to outer courtyard) in between (in 1949), it doesn't make any difference.
- Mr. Jain referred to his notes indicating evidence of different witnesses and read out relevant portion

After around 1.30 hour J. Bobde asked as why you are reading all these evidences, Mr. Jain replied that I want to show that there is no cross examination on my Sheibaitship rights, possession and management, therefore in the absence of cross examination these facts are admitted facts.

- Mr. Jain argued that In the Gazetteers word 'Hindus' has been used, this word Hindu is nothing but 'Nirmohi Akhara'. The word Hindu indicate towards Nirmohi Akhara.
- Mr. Jain that in the proceedings u/s 145 Cr.P.C. the articles which were recovered are all Hindu Articles belongs to Nirmohi Akhara.
- He repeated that there is no dispute regarding my possession.
- Mr. Jain argued that as per Hon'ble High Court they have recorded that I didn't objected proceedings u/s 145 Cr.P.C., however, I filed objection so this fact is factually incorrect/wrong.

- He again indicated from para no. 6,7,11,12,25 of plaint that no case of Sheibaitship is made out by plaintiff in Suit 5.
- Mr. Jain further read the evidence of OPW2 – Devki Nandan, OPW5 Shri Ram Nath Panda and other witnesses and read the evidence of other witness, to establish the possession of Nirmohi Akhara.
- Mr. Jain argued that Suit 5 which is filed by next friend is not applicable as per order 30 Rule 1.
- Mr. Jain argued that whether plaintiff no. 1 is deity, and entire property belongs to deity, the Nirmohi Akhara has no grievance in this regard.

J. D.Y. Chandrachud and Justice Bobde discussion and queries:

Justice DYC stated that role of next friend is for the purpose of judicial proceedings, as soon as judicial proceedings are over, the role of next friend gets over, in the light of that you have plead your case in both ways.

J. DYC further added (indicated to Mr. Jain) that even Suit 5 is decreed, you can claim your Sheibaitship right. He said that you are claiming something on which there is no dispute between you and plaintiff of suit 5, its for Sunni Central Waqf Board to raise his argument in this regard. Why you are going into order 32 rule 1 and other legal aspects against plaintiffs of Suit 5.

J. Bobde: If suppose Suit 5 is dismissed, you will claim your Sheibaitship for What?

J. DYC : You both have to stand together.

J. DYC : As per your submissions regarding maintainability of legal position of plaintiff no 3 (next friend) in Suit 5 it will finally resulted in dismissal of Suit 5 (if succeed), then in that case Your Sheibaitship Right will also be gone.

Mr. Jain : I admit that my Lord is right. I will raise my argument in this regard tomorrow, today I am leaving it like that. Today I will not argue it any further. Now I will only argue on my Sheibaitship Right.

J. Bhushan : You have already argued. You can make your further submissions in rejoinder.

Mr. Jain : I have to argue against pleading of Suit 4.

J. Bhushan : Without hearing argument in Suit 4, how can you argue against pleading in Suit 4.

J. Bobde : The way in which you are arguing, you are seeking relief against deity's interest.

Mr. Jain : No No. I haven't taken any plea against deity.

Mr. Jain further argued that when there is no dispute regarding title, deity is not a necessary party (and quoted a judgment on this from compilation of judgment – volume II handed over to judges)

Mr. Jain by relying upon judgment volume –II filed by Mr. S.K. Jain argued as follows:

- If any person who could represent deity was Sheibaitship (i.e. Nirmohi Akhara)
- If Sheibaitship is acting against interest of Idol then it is desirable that deity should be represented by next friend, since there is no such case, deity should have been represented by me.
- Right of Sheibaitship is more than the manager.
- He quoted a judgment on right of Mathadhipati in which it is observed that Mahant is not a mere manager but more than that.
- Mr. Jain quoted a judgment on Idol is a juristic person.
- None other than Sheibaitship can represent the idol.
- Worshiper can represent idol if Sheibaitship claim adverse to the interest of idol.

J. D.Y. Chandrachud: Your submission is that your suit is maintainable, however, it's not as Suit 5 is not maintainable.

Justice D. Y. Chandrachud further added that at no point of time it is stated in any judgment that possession can be given to Worshipper (next friend), if Sheibaitship is there.

Further argument will continue by Nirmohi Akhara on Tuesday.

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