

**IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)
Civil Appeal No.4768-4771 of 2011**

IN THE MATTER OF :

Bhagwan Sri Rama Virajman & Ors.

..Appellants

Versus

Sri Rajendra Singh & ors.

...Respondent

**COMPILATION OF PROCEEDINGS IN
CASE NO. 61/280, YEAR 1885
BY MR. K. PARASARAN, SENIOR ADVOCATE
PAPER BOOK
(FOR INDEX KINDLY SEE INSIDE)**

P.V.YOGESWARAN ADVOCATE FOR THE APPELLANT

INDEX

S.No.	Particular	Page
1.	Copy of Complaint dated 19.1.1885, Mahant Raghobar Das Vs. Secy. of State in Case No.61/280, Year 1885 in the Court of Sub Judge Faizabad Mai Naqsha Nazari.	1-4
2.	Copy of Written Statement filed by Syed Mohd. Asghar Mutawalli Masjid Babari in Raghobar Das Vs. Secy. of State, Case No.61/280, Year 1885.	5-8
3.	Copy of Judgment by Munsif/Sub Judge Faizabad dated 24.12.1885 in M. Raghobar Das. Vs. Secy. of State, Case No.61/280 year 1885.	9-16
4.	Copy of the Judgment dated March 18/26, 1886, passed by F. E. A. Chemier, District Judge, Faizabad in Civil Appeal No.27/1886, Raghobar Das Vs. Secy. Of State and Mohd. Asghar.	17-20
5.	Copy of the Decree dated 18/26.03.1886 in C. A. No.27/1886 Court of District Judge Faizabad in Raghobar Das Vs. Secy. of State.	21-23

IN THE COURT OF MUNSIF SAHIB BAHADUR

Mahant Raghubar Das Mhanat Janmsthan
Situatd at Ayodhya

...Plaintiff

Versus

Secretary of State for India in the Session of Council

...Defendant

The plaintiff abovenamed Submit as under:

Suit for grant of permission for construction of Mandir, i.e., prohibition to the defendant that plaintiff should not be restrained from construction of Mandir on chabootra-Janmashtan situated at Ayodhya, North 17 feet, East 21 feet, south 17 feet, west 21 feet and the value of the suit cannot be fixed as per market rate therefore as pre Item No. 17, paragraph 6, Appendix-II, Act, 1870, court fee was affixed and the position of the site can be known very well from the attached map/sketch.

Section-1: That the place of janmsthan situated at Ayodhya City, Faizabad is a very old and sacred place of worship of Hindus and plaintiff is the Mahant of this place of worship.

Section -2: That the chabootra janmashtan is East-West 41 feet and North -South 17 feet. Charan Paaduka is fixed on it and small temple is also place which is worshipped.

Section-3: That the said chabootra is in the possession of the plaintiff. There being no building on it, the plaintiff and other faqirs are

put to great hard ship in summer from heat, in the monsoon from rain and in the winter from extreme cold. Construction of temple on the chabootra will cause no harm to anyone. But the construction of temple will give relief to the plaintiff and other faqirs and pilgrims.

Section-4: That the Deputy Commissioner Bahadur of Faizabad from March or April 83, because of the objection of a few Muslims opposed the construction of the mandir, this petitioner sent a petition to the local government regarding this matter where no reply received about this petition. Then the plaintiff sent a notice as required under Section-444 of the Code (of Civil Procedure) on 18th August, 1883 to the office of Secretary, Local Government but this too remained un-replied. Hence the cause for the suit arise from the date of prohibition at Ayodhya under the jurisdiction of the Court.

Section-5: That a well wishing subject has a right to construct any type of building which it wishes as the land possessed and owned by it. It is the duty of fair and just government to protect its subjects and provide assistance to them in availing their rights and making suitable bandobast for maintenance of law and order. Therefore the plaintiff prays for issue of the decree for construction of temple on chabootra –Janmastahn situated at Ayodhya North 17 feet, East 41 feet, South 17 feet and West 41 feet and also to see that the defendant does not prohibit

and obstruct the construction of mandir and the cost of the suit should be ordered to be borne by the defendant.

I Raghubar Das Mahant Janmasthan, Ayodhya Certify that the contents of the plaint an all five points are true and correct to the best of by knowledge and belief.

Signature of Mahant Raghubardas in Hindi script.

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EXHIBIT – 14

IN THE COURT OF SUB-JUDGE BAHADUR, FAIZABAD

Copy of the answer (reply) to the plaint. Meer Muhammed Asghar Mutavali (trustee) of Babri Masjid in connection with Mahant Raghubar Das Versus Secretary of State included in the file case No.61/280, year 1865 decided on 24th December, 1885.

Raghuvar Das Mahant

Government Bahadur of Kaisar-e-Hind and Muhammad Asghar

Versus

Khateeb (Prayer Leader) and Mutavalli (trustee) of Jama Masjid Situated at Avadh, defendant.

Narration of the suit. Suit for construction of temple on Chabootara Platform in the premises of Babri Masjid.

Long live the just and the cherisher of the poor!

Section 1: That the suit clearly needs justice. Though many arguments can be advanced to rebutt the claim of the plaintiff but (illegible) I submit in short.

- (i) When Babar Lord of the country and King of the time built this Masjid and on the door of the compound of the Masjid got the word "Allah" on stone engraved and fixed he also assigned rent-free lands for meeting its expenses. Against the lord of the Country in the prayer house built by the king of the time,

the ownership of another person doesn't exist except when the king who built the Masjid or his representative or another ruler gives any parcel of land on which chabootrah has been built to the legatees of the plaintiff. Ownership of the said land cannot be claimed by the plaintiff as he has not produced any proof regarding the ownership of the land neither from king Babar nor from any other King or the ruler of the time. When Plaintiff has not acquired the rights of ownership on this parcel/piece of land then he has no right to construct a temple on the land of others either by law or by justice.

Section 2: If plaintiff presumes the fact of going and coming of Hindus in the compound of the Mosque as proof of ownership, it is no proof of ownership of his and Hindu people. Very often in the Imambadas and the mosques and mausoleums and other houses of worship of Muslims, Hindus go in large numbers during special ceremonies and festivals and during other days also and offer gifts. Muslim do not prohibit them. In the same way, Muslims also visit the places of worship of Hindus and come and go through near these places. But mere passage from a place or offering does not make the place their property.

Section 3: It is evident from the date of construction of the Masjid that till 1856 there was no chabootra on the site. The chabootra came up in the year 1857. When the Muslims filed a suit,

order for digging it was issued. From this, it becomes evident that the chabootra came up in the year 1857.

Section 4: The matter that required thoughtful consideration is that after the appearance of the chabootra, by what right they exercised the right of passage to it. Evidently, it was conditional on not making a new construction on it. The plaintiff did not acquire the ownership rights as it even from the year 1857. Not only this, any new construction that was attempted to be made was stayed/restrained by the government. A faqir had erected a hut, which was demolished and removed. It is only just that when they could not acquire any proof/ document of their ownership they cannot have a right to construct a temple inside the compound the floor of the Masjid. The thinking of the plaintiff that chabootra is their and so they have a right to construction is a mislead standing, as even on the chabootra, the right of offerings is subject to condition.

Section:5: Copies of various orders at various occasions against the defendants about -illegible- any new construction and demolition of the house near sitaji's rasoi (kitchen) and demolition of the hut, which the faqir had erecte4d in execution of the old orders, and because of the absence of ownership of the plaintiff from the administrative and looking to the massacre between Hindus and Muslims which took place earlier, were issued legally and with valid authority from the competent Department. This relevant fact about this suit and proofs support our statement. As per those order and

especially the order of 23rd February, 1857, the case of the plaintiff and cause of the suit and the present suit also suffers from bar of jurisdiction. All these legal orders cannot be overlooked by the court. These orders are still in operation and continuing. The plaintiff has not got these orders cancelled and without preferring suit for cancellation, present suit cannot be entertained. We, therefore, hope and expect that after having a look at the papers, the suit of the plaintiff be dismissed. What is proper has been submitted.

Application of the Obedient Servant

Meer Muhammad Asghar

Mutavalli (trustee) Babri Masjid

Defendant

Dated 22nd December, 1885

// TRUE AND TRANSLATED COPY //

IN THE COURT OF SUB JUDGE SAHEB BAHADUR, FAIZABAD

Copy of the decision in the case No. 61/280 of 1885 decided by Pandit Hari Kishan Sahib Bahadur, sub-judge, Faizabad dated 24th December 1885.

Mahant Raghubardas, Mahant of the Janmasthan situated at Ayodhya

Versus

Secretary of State for India and
Muhammad Asghar

Suit for permission of construction of Mandir

Judgment of the Court.

Today this case file in the presence of the plaintiff and his advocate Kakkumal and Pandit Vishvabharnath, Government Pleader and Muhammad Asghar, Defendant, and his advocate was presented. After inspection of all the papers, it became clear that the plaintiff is the Mahant of janmasthan. His plaint versus Secretary of State was presented. Thereafter Muhammad Asghar was made defendant in the case as per his request.

The summary of the Suit of the plaintiff is that the chabootra janmasthan East-West 21 feet and North-South 17 feet is under the possession of the plaintiff. There being no building/structure on it, the plaintiff and other mendicants face severe hardship in summer from heat, in monsoon from



rain and in winter from cold. And no harm/loss will be cause by construction of mandir on this chabootra. The worship which is being done today will be continued as before. But the construction of the temple is prohibited by the Deputy Commissioner for reasons. Therefore, plaintiff has requested for decree for construction of mandir on the aforesaid chabootrah and through amendment, the date of arising of the suit be declared June 1884.

The Government pleader in his written reply submitted in brief that since the plaintiff has not been evicted from the chabootrah, the cause for suit does not arise and the suit is also barred by jurisdiction and the plaintiff is not entitled to the redress prayed for by him.

Muhammad Asghar submitted his written reply with the explanation that the stamp affixed on the plaint is not sufficient. The stamp should be affixed with reference to the value of the building and the plaint also suffers from bar of jurisdiction and the lands of chabootrah are Zaid Qayam and the same are not in the possession of the plaintiff. The plaintiff has been prohibited from construction on it on a number of occasions.

In view of the circumstances of the case, six issues arise for decision.

- (1) Whether the stamp affixed on the plaint is sufficient or not?
- (2) Whether the plaint is time barred?
- (3) If not, whether the cause for suit has arisen?
- (4) Whether such redressal is legal or illegal?
- (5) How much are the lands of Chabootra?

- (6) In whose possession or ownership are the lands of chabootra from among the parties.

The burden of proof with respect to the points no. first, third, fourth and sixth for determination is on the plaintiff. The burden of proof for second point is on defendant and the fifth regarding measurement and rebuttal of the sixth is decided to be on the defendant. Through Gopal Sahay, Custodian of the Records, the map of the disputed site was got prepared and included in the record of the proceedings which was deemed fit to be revised. In connection with the revision to the map, following papers as proof thereof were submitted by both the parties:

Written proofs submitted by plaintiff;

- Copy of the selection of Gazeteer of Avadh State Page 7 printed by the order of the Government, May;
- Journal of the Asiatic Society relating to the translation of Ayodhya Mahant;

Proofs from Defendant.

- Order of the officiating Deputy Commissioner with translation of the order of the officiating Commissioner;
- Copy of the Decision of the Court of the Sub-Commissioner and sanction of the Deputy Commissioner for demolition of the house of rasoi of Sitaji;
- A slip of paper signed by ex-Deputy Commissioner dated 23rd February, 1857;
- Copy of the order of the Deputy Commissioner 6th December, 1858;

- Copy of the Judgment of Sahib Bahadur 3rd December, 1860, and 16th March, 1881 in the case of Meer Rajab Ali Versus Singh;
- Copy of the statement of Bholanath Inspector (Government Lands) 8th September, 1866;
- Copy of the order of Mirza Khudadad Beg as per the approval of the order of Deputy Commissioner, 12th January, 1884;
- Copy of the order of Assistant Commissioner Muhammad Asghar Plaintiff Versus Govind Ram;
- Copy of the application of GurmukhSinh resident of Lahore city 18th May, 1883;
- Copy of the application and order of Meer Shah Munshi, etc. 17th January, 1805;

On the site of the land, in the presence of the parties and advocate of the plaintiff and Inspector of Government, Investigations were started. Four witnesses each from the side of the plaintiff and Muhammad Asghar Defendant were produced and their statements were recorded. No need was felt to produce any witness from Government side. After hearing the arguments of the advocates of the parties regarding determination of the point No. 1, it is clear that the plaintiff's redressal is for granting permission for the construction of mandir. Muhammad Asghar, Defendant has in his reply stated that the stamp as per the estimated cost of the construction of the temple should be affixed. The stamp should be affixed with reference to the cost of Chabootra. In view of the annexure II section 17 Sub-section 6, Act 7, 1870, it is very clear that if the value of claimed property can be fixed by market rate stamp of Rs. Ten is sufficient. Construction of temple can be done for Rs.100, Rs.1000 and more than that in a few thousands

also. No amount can be fixed for it. Hence for such a claimed property market rate cannot be fixed and the suit is not for constructing the Chabootra so that the stamp should be taken on its value. Hence stamp of Rs. 10/- is sufficient and proper.

As regards to Issue No. 2, it is clear that no notification as per section 145 of the Criminal Procedure Code was notified to the plaintiff which is required to be cancelled by the Plaintiff. A person named Gurmukh Singh Punjabi had brought stone for construction of the temple. Deputy Commissioner had issued order in his name to remove the stone. The order of the Deputy Commissioner is clearly to the effect that Munshilal and Ram Narayan whose agent Gurmukh Singh is and who has brought the stone for construction of temple cannot be permitted and Commissioner has disallowed appeal on the basis that there is no previous permission for construction as it is legally necessary to obtain permission for construction. So no order for prohibition for construction of mandir on chabootra has been issued to the plaintiff. It is not necessary for the plaintiff to get the order cancelled and the precedent submitted by the Government Pleader is not relevant to present case as in that case, court order was issued against plaintiff. So In this suit no order regarding construction on Chabootra was issued against the plaintiff. Moreover, taking into consideration Section 23, Act 15, of the year 1877, it is evident that in such cases, complaint suits should be instituted any time.

Since whenever the date of order of rejection is given it creates cause for suit and a new cause for suit arises and a new suit may be filed and no special cause is available barring jurisdiction in such type of case, there is

the limit of six years as per special head. Therefore the limit of six years under head no. 120 of Act 15 of the year 1877 seems to be fit and proper. Therefore there is no time bar of hearing in the present suit. Regarding third decision without the objection of the defendant, it is found to be time-barred and there is the objection regarding cause for the suit. Moreover, the plaintiff was restrained from construction and no order for construction was issued on it. This also is a cause of complaint (suit) to arise

Regarding determination of point – 5 measurement was done on site and the measurement of the map is correct which is as per the contents of the suit. Muhammad Asghar too had no objection now about the measurements mentioned in the suit. But it is less by some inches but correct in feet. As regards point six taking into consideration the site, it is evident that, charan (feet) in paduka is the print/ mark which is being worshipped. Over and above this, the temple situated on the chabootra an idol of Thakurji is kept which is being worshipped. The chabootra is in the possession of the plaintiff and whatever is offered on it is taken by the plaintiff. This matter, i.e. offering is also accepted by Muhammad Asghar at this point of time. The possession of plaintiff is proved by the witnesses of the plaintiff and railing wall separating the boundary of Hindus and Muslims exists from a long period which will be referred to in the future have been set up. The witnesses of the defendant express their lack of knowledge about the possession of the chabootra by the plaintiff. Between the Masjid and Chabootra is a well-built wall with railings. A map of the site was prepared by the Custodian of the maps as per amended suit from which the situation/facts of the case will become clear. It became clear that boundaries between this and Chabootra have been set up and this is

also supported by the Government Gazetteer which was compiled before the present controversy. It is evident that before this controversy arose that both Hindus and Muslims offered worship on the place. In the year 1855, after the quarrel between Hindus and Muslims a wall in the form of the railing was erected to avoid controversy. So that Muslims may worship inside it and Hindus may worship outside it. So the outside land with chabootra which is in the possession of the plaintiff belongs to Hindus. As regards framing of the fourth issue which is based upon the decree for dismissal of the suit, the place is not generally like other buildings where the owner and the possessor has the right to build or construct on it. Taking into consideration the special situation of the place, the prayer for construction of the temple is at the place where there is only one way to the Masjid. Though the place where Hindus worship they hold its possession since old because of which there cannot be objection to their ownership and the area surrounding around the wall of the Masjid and on the outer door word Allah is engraved. In such place and chabootra, if a mandir is constructed the bell will be rung and the conch will be blown, contiguous and adjoining it and there is only one approach for the Muslims and Hindus. If the Hindus are prevented to build a temple most probably inimical case will arise and will culminate in the massacre of thousands.

Keeping this expediency in view, the officials connected with criminal matters from time to time have prohibited construction of a new religious building. Therefore, this Court is also of the opinion that permission for construction of a mandir/ temple is tantamount to laying the foundation of a war and mischief between Hindus and Muslims. Therefore, it is in the interest of two communities of Hindus and Muslims, it is good and

opportune not to give permission for the construction of the temple. In the wisdom of this Court and considering special situation, justice demands that permission for such redressal should not be given and looking to the principle of contract it becomes clear that none of the parties should be made to enforce the contract which is found to be against the public good. Therefore in view of the reasons mentioned above, in the opinion of this Court, this redressal is believed to be against the legal way. Therefore the result of this issue is in the favour of the defendant and as regards others matters it is decided a in favour of the plaintiff. Order as per section 198 of Civil Procedure Code, the suit of the plaintiff is dismissed and the costs of the suit to be borne by concerned parties and case be sent to record.

24th December, 1885.

Signature: Harkishan/ Judge

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ANNEXURE A - 156

EXHIBIT - 17

Words about:- 1000

In the Court of the District Judge, Faizabad.

Copy of judgment dated 18/26 March 1886, passed by

Mr. F.E.A. Chamier, Distt. Judge.

Civil Appeal No. 27 of 1886

Mahanth Raghubardass,
Mahant Janam Asthan City Oudh,
Distt. Faizabad

...Plff - Appellant.

Versus

1. Secretary of State of India,
Court of Council and Mohd. Asghar
R/o. Oudh

...Defts - Respondents.

Appeal against the judgment and decree of Sri P. Hari Kishen, Sub-Judge, Fyzabad, dated 24th December, 1885, dismissing plff's claim for permission to construct temple.

March 18, 1886

Parties respected.

I visited the land in dispute yesterday, in the presence of all parties.

I found that the Masjid built by the Emperor Baber stands on the border of the town of Ajudhia- that to say to the west and south it is clear of habitations. It is most unfortunate that a Masjid should have been built on

land specially held sacred by the Hindu, but as that event occurred 356 years ago it is too late now to remedy the grievance all that can be done is to maintain that parties in status quo. In such a case as the present one any (sic) would cause more harm and damage (Sic) of order than benefit. The entrance to the enclosure is under a gateway way which bears the superscription "Allah" - immediately on the left as the platform or Chabootra of masonry occupied by the Hindus. On this is a small superstructure of wood, in the form of a tent. This "Chabootra" is said to indicate the birth place of Ram Chander. In front of the gateway is the entry to the masonry Platform of the Masjid. A wall pierced here and therewith railings divides the platform of the Masjid from the enclosure in which stands the "Chabootra".

The words of the Sub-Judge. "bahir ke durja ke arazi mai Chabootra mukbooza mudai wa Hindu logon kehahi _ _ _" Go is makan part ahil Hunud paristish Kurte hai Kadeem kabza unka hai jis se milkiyat unke men koi kulam nahin ho sakta hai."

The words are redundant and are to be struck out of the judgment. The only question decided in this case is that the position of the parties will be maintained.

The true object of the suit was disclosed by B.Kuccu Mul yesterday when we were standing near the Masjid- namely the British Government as no respecer of persons was asked through its Court to remedy an injustice committed by a Mohammedan Emperor. The Dy. Commissioner contends that the Civil Court has no jurisdiction in this matter, the relief asked for brief in contravention of clause (d) Sec. 56 Act I, 1877. It is not clear to me how the order of the 14th May 1883 can be said to have been issued in connection with the public duties of any department of the

Government of India on the Local Govt. On the contrary the plff states that the Local Government has sent him no answer to his application. If it be said that the after of the 14 May 1883 was passed by a Magistrate then the section of Criminal Procedure Code should have been cited under which the order was passed, at page 309 V I.L.R.Made. it is laid down that persons of whatever sect are at liberty to erect buildings therein conduct public worship provided they neither invade the rights of property enjoyed by their neighbours nor cause a public nuisance and subject to such directions as the Magistrates may lawfully give to prevent obstructions of the thorough fare or breaches of the public peace:-

If the particulars act complained of is to be viewed as the act of Government and that in the part which the Deputy Commr. Took he merely acted as the Officer of the Government intending to discharge his duty as a public servant with perfect good faith, even on the assumption if the act of the Dy.Commr. was in itself wrong as against the plff and produced damage to him, he the plaintiff must have the same remedy by action against the doer whether the act was his own or whether it was done by the order of the superior powers. The civil irresponsibility of the local Government could not be maintained with any show of justice if its agents were not responsible from tortions act the reason why this is dismissed is that there is no injuria nothing which would give a right of action to the plff.

The decisions which I have been able to find as to the jurisdiction of the Civil Courts bring barred, refer to questions of a pubic right determined by a Magistrate – for instance a Civil Court could not entertain a suit to set aside an order of a Magistrate rate which declares a road to be a public road.

Mohammedan Dt. Intervened of his own will his could be paid by plff
only as to Court fees and costs of copies. The Govt. Pleader is allowed costs
(Sic) in each Court.

18/26 March 1886

Sd. F.E.A Chamier.
District Judge.

Typed & read by:- Sd/-
Heard by:- Sd/-
Examd. by:- Sd/-

Ext. - 17
R. S. No. 12/61
Sunni Central Board
Vs.
Gopal Singh & Others

SD/-
CI Judge
20.2.65

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ANNEXURE A – 157

EXHIBIT – 18

Words about:- 300/-

Copy of Decree by a Court of Appellate Jurisdiction.

Section 579, Act XIV of 1882.

IN THE COURT OF THE DISTRICT JUDGE, OF FYZABAD.

CIVIL APPEAL NO. 27 OF 1886

Nahant Raghubardass

...Plff-Appellant.

Versus

1. Secy of State
2. Mohammad Asghar

...Deft-Respondents.

The Plff Appellant appeals to the District Judge's Court at Fyzabad against the decree of P. Hari Fishen Sub-Judge Fyzabad dated 24 December 1885, dismissing plff's claim for possession to construct temple i.e. deft be prohibited to withhold from obstructing plff to build temple on the Janam Asthan. Froth 17th, South 17 ft. East 21 ft. West 21 ft.

For the following reasons, namely:-

1. That every kind of worship is offered and there is no prohibition hence by construction of temple (torn) new worship will be performed – hence L. Courts apprehension of a riot is wrong.
2. That as the platform together with land appertaining to it, is occupied by the plff-appellant and is a place of worship of the Hindus, is there appears no restriction for constructing the temple.

3. That the Govt. is not feeble and Govt. is bound to protect in obedient subject and to keep back Persians from illegal oppression. Consequently it is very hard on the appellant not to allow him for the construction.
4. That the appellant is in every respect entitled to the relief sought and there is no point against law (torn) only hence L. Courts decision is wrong. Hence appeal for its reversal.

This appeal coming on for hearing on the 1st day of March, 1886, before Coll. F.E.A Chamier, D.J. in the presence of B.Kukumal Vakil for the Appellant, and P. Bishambharnath Govt. Pleader and Mohd. Afzal Vakil for the Respondent, it is ordered that the appeal be dismissed that the remarks of the sub-Judge quoted on the judgment of this Court declaring the right of property to restrain plff be cancelled. and, the costs of this appeal amounting to Rs. 72/5/- as noted below are to be paid by plff excepting 16/- Mohd. Asghar.

(Pleaders fees)

The Costs of the Original Suit are to be paid by plff with above exception.

Given under my hand and the seal of the Court this 18/26 day of March 1886.

Memo of Costs	Appellants	Respondent Secy. State	Mohd. Asghar.
LAW STAMPS	10-0-0	-----	10-0-0
Process-fess	1-0-0	-----	0-8-0
Pleader's Fees	16-0-0	16-0-0	16-0-0
Misc.) Copy Ch. 1-5-0) Ink 0-8-0)	1-13-0	0-8-0	0-8-0
Total	28-13-0	16-8-0	27-0-0

SD. F.E.A. CHAMIER.
JUDGE

Typed & read by:- Sd/-
Heard by:- Sd/-
Examd by:- Sd/-

Words about:- 300/-

Ext. - 18 R.S. No. 12/61 Sunni Central Board Vs. Gopal Singh & Others	SD/- CI Judge 20.2.65
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