**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL Nos.10866-67 OF 2010**

**IN THE MATTER OF:**

M. Siddiq (D) Thr. Lrs. … Appellants

-Versus-

Mahant Suresh Das & Ors. ... Respondents

## SUBMISSIONS ON BEHALF OF SRI K. PARASARAN IN RE. SUIT 4

## I. RE. LIMITATION:

### *A. SUIT NO. 4 IS HIT BY THE BAR OF LIMITATION IN ARTICLE 120 OF THE LIMITATION ACT, 1908*

1. It is submitted that as per para 23 of the plaint in Suit 4, the cause of action arose on 23.12.1949, when *"the Hindus unlawfully and illegally entered the mosque and desecrated the mosque by placing idols in the mosque."*

2. On 29.12.1949, preliminary order under Section 145, Cr.P.C. was issued by Additional City Magistrate, Faizabad-cum-Ayodhya and simultaneously attachment order was also passed treating the situation to be of emergency. The disputed site was directed to be given in the receivership of Sri Priya Datt Ram, Chairman, Municipal Board.

3. Sri Priya Datt Ram took charge on 05.01.1950 and made inventory of the attached properties.

4. Suit 1 was instituted on 16.01.1950 by Shri Gopal Singh Visharad. An ad-interim injunction order was passed on the same day to the effect *"issue interim injunction in the meanwhile as prayed"*. It was modified on 19.01.1950, which is quoted below:

*"The opposite parties are hereby restrained by means of temporary injunction to refrain from removing the idols in question from the site in dispute and from interfering with puja etc. as at present carried on. The order dated 16.01.1950 stands modified accordingly."*

5. The temporary injunction order was confirmed by a detailed order on 03.03.1951 after hearing both the parties and was directed to remain in force until the suit was disposed of. Appeal under Order 43 Rule 1(r), C.P.C. filed from the said order being F.A.F.O. No.154 of 1951 was dismissed by the High Court on 26.04.1955.

6. Suit 4 was filed on 18.12.1961 by The Sunni Central Board of Waqfs, U.P. and 8 Muslims of Ayodhya. The reliefs prayed for in Suit 4 are as under:

- A declaration to the effect that the property indicated by letters A, B, C, D in the sketch map attached to the plaint is public mosque commonly known as Babri Masjid.
- In case in the opinion of the Court delivery of possession is deemed to be the proper remedy, a decree for delivery of the possession of the mosque in suit by removal of the idols etc. be passed in plaintiff's favour against the defendants.
- One more prayer was added through amendment allowed on 25.05.1995 to the effect that statutory receiver be commanded to handover the property in dispute by removing the unauthorised construction erected thereon.

7. It is submitted that Suit 4 sought a declaration about the nature of the building in dispute and did not seek injunction for enforcement of right of worship. Therefore, it is governed by Article 120 of the Limitation Act, 1908 alone, and Articles 142 and 144 will not apply. See:

- ***Raja Rajgan Maharaja Jagatjit Singh v. Raja Partab Bahadur Singh*** AIR 1942 PC 47 @ 49 - The case before the Privy Council was a suit for declaration of title and it was held that:

*"As the suit is one for a declaration of title, it seems clear that Arts. 142 and 144 do not apply, and their Lordships agree, with the Chief Court that the suit is governed by Art. 120. This leaves for consideration the main issue of proof of adverse possession by the appellant and his predecessors, and the appellant is at once faced by a difficulty which proved fatal to his success before the Chief Court, viz., that unless he can establish adverse possession of the lands in suit as a whole, he is unable, on the evidence, to establish such possession of identified portions of the lands in suit. Before their Lordships, the appellant's counsel conceded that, in order to succeed in the appeal, he must establish adverse possession of the lands in suit as a whole."* [Emphasis Supplied]

- ***Peirce Leslie and Co. Ltd. v. Violet Ouchferlong Wapshare*** (1969) 3 SCR 203 @ 211 - In this case, the suit was for a declaration that the old company was the real owner of the suit property and the new company held the said property in trust for the old company, and for a decree vesting or re-transferring the property to the old company and alternate relief to the plaintiff. At page 211 and 212, this Hon'ble Court held as follows:

*"In the plaint there is no prayer for recovery of possession. The plaintiffs claim declaratory reliefs, a decree vesting or re-transferring the properties to the old company or to the plaintiffs and accounts. Such a suit is governed by Article 120. The High Court passed a decree for money and not for recovery of immovable properties. A suit for such a relief would be governed by Article 120. Even if the suit is treated as one for recovery of possession of the properties it would be governed by Article 120 and not by Article 144. The old company could not ask for recovery of the properties until they obtained a re-conveyance from the new company. The cause of action for this relief arose in 1939 when the properties were conveyed to the new company. A suit for this relief was barred under Article 120 on the expiry of six years. After the expiry of this period the old company could not file a suit for recovery of possession. In Rani Chhatra Kumari Devi v. Prince Mohan Bikram Shah [LR 58 I.A. 279] the Privy Council held that in a case where the property was not held by the trustee for the specific purpose of making it over to the beneficiary and the trust did not fall within Section 10, a suit by the beneficiary claiming recovery of possession from the trustee was governed by Article 120. Sir George Lowndes said:*

> *"The trustee is, in Their Lordships' opinion, the 'owner' of the trust property, the right of the beneficiary being in a proper case to call upon the trustee to convey to him. The enforcement of this right would, Their Lordships think, be barred after six years under Article 120 of the Limitation Act, and if the beneficiary has allowed this period to expire without suing, he cannot afterwards file a possessory suit, as until conveyance he is not the owner."*

*It follows that the suit is barred by limitation."*

This Hon'ble Court held that there was no prayer for recovery of possession in the plaint and so, the plaintiff's claim of declaratory relief is governed by Article 120. If the suit is treated as one for recovery of possession of the property, still it will be governed by Article 120 and not by Article 144. After the expiry of the period, under Article 120, the company could not file a suit for recovery of possession.

8. In a suit for declaration of title to property filed when it stands attached under Section 145 of the Code, it is not necessary to ask for the further relief of delivery of possession since the defendant is not in possession and is not able to deliver possession. Property under attachment is in *custodia legis*. See ***Deo Kuer v. Sheoprasad Singh*** (1965) 3 SCR 655 @ 656-657. In this case, the attachment under Section 145 of Cr.P.C., was still continuing and no decision was given in the proceedings resulting in the attachment. This Hon'ble Court held that in a suit for declaration of title to property, if the property stands attached under Section 145 of Cr.P.C., the Magistrate holds possession on behalf of the party whom he ultimately finds to have been in possession, is irrelevant. On the question however whether the Magistrate actually does so or not, this Hon'ble Court found it to be unnecessary to express any opinion. (Refer page 657).

9. In view of the law declared by this Hon'ble Court, a prayer for possession was never necessary since the property has been in *custodia legis* since December, 1949. Therefore, the prayer for grant of possession is sought only to circumvent the limitation of 6 years imposed by Article 120. It is well settled that what cannot be done directly cannot be achieved indirectly. See ***Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*** (1962) Suppl. 1 SCR 450 @ 469-470.

10. Statutes of Limitation are statutes of Repose. See:

i. ***Yeswant Deorao Deshmukh v. Walchand Ramchand Kothari***, 1950 SCR 852 : AIR 1951 SC 16.

ii. ***Popat and Kotecha Property v. State Bank of India Staff Assn.***, (2005) 7 SCC 510 @ 514, para 7.

11. The declaration being a discretionary remedy, the court will not grant the decree in favour of the plaintiff, based solely on adverse possession. The plaintiff has to pray also for declaration of title and plead title also by adverse possession. In the present case, declaration is sought only as to nature and character of the disputed property.

## *B. RIGHT TO SUE AND CAUSE OF ACTION*

12. It is submitted that the period of 6 years prescribed by Article 120 has to be computed from the date when the right to sue accrues and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right. See ***C. Mohd. Yunus v. Syed Unnissa*** (1962) 1 SCR 67 @ 71.

13. The right to sue under Article 120 accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right. See ***Mst. Rukhmabai v. Lala Laxminarayan*** 1960 (2) SCR 253 @ 286-289.

14. Right to sue means cause of action. See:

i. ***State of Punjab v. Gurdev Singh*** (1991) 4 SCC 1 @ pg. 5, para 6 (in context of Art. 120)

ii. ***Laxman Prasad v. Prodigy Electronics Ltd.***, (2008) 1 SCC 618 @ pg. 625, para 30

15. As to cause of action, see ***A.B.C. Laminart (P) Ltd. v. A.P. Agencies***, (1989) 2 SCC 163 @ pg. 170, para 12.

### *C. NOT A CASE OF 'CONTINUING WRONG'*

16. It is submitted that under Order VII Rule 1(e) of the C.P.C., the plaint shall contain the facts constituting the cause of action and when it arose. Under Order VII Rule 6, once the suit is instituted after the expiry of the period prescribed by the law of limitation, the plaint shall show the grounds on which exemption from such law is claimed. Under the proviso thereto, the court may permit the Plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint if such ground is not inconsistent with the grounds set out in the plaint.



17. It is therefore necessary for the Plaintiff to plead all the facts constituting cause of action and when it arose. The court may also permit the cause of action not pleaded to be claimed by the Plaintiff in case where such ground is not inconsistent with the grounds set out in the plaint. But, the cause of action has to clearly set out the dates when the cause of action arose.

18. It is submitted that in suit No. 4, the cause of action for the suit is alleged in the plaint in para 23. It specifically pleads that the cause of action arose on 23.12.1949 when the Hindus unlawfully and illegally entered the mosque and desecrated the mosque by placing idols in the mosque thus causing obstruction and interference in the rights of the Muslims in general of offering prayers and performing other communal ceremonies in the mosque and that the Hindus are also causing obstructions to the Muslims in the graveyard. The injury so caused are cause of action arising therefrom to the plaintiffs is renewed de-die-in-diem and that the cause of action against the

defendants 5 to 9 arose on 05.12.1949, the date on which the 7th Defendant (District Magistrate) attached the mosque and handed over possession to the 9th Defendant. Therefore, the date when the cause of action arose is pleaded as 22.12.1949 and the bar of limitation of 6 years which would operate as per Article 120 of the Limitation Act, 1908, was sought to be got over by alleging that this is a cause of action renewed de-die-in-diem.

19. The majority (i.e. Agrawal and Sharma JJ.) hold that OS 4 is barred by limitation. See paras 2402, 2423-2424, 2430-2431, 2434-2436, 2443, 2452-2453, 2564-2565 in the judgment of Agarwal J; pages 2993-2995 & 2998 in the judgment of Sharma J. in Vol III. However, S.U. Khan, J. dissents giving the following reasons (see Vol I):

    i. Relief for possession could not be asked for since the disputed property was attached in proceedings u/s 145-146 of CrPC and given under the receivership of Sri Priya Datt Ram. The only relief which may be asked for is declaration. The limitation for seeking declaration is 6 years under Article 120 of the Limitation Act, 1908. (at pg. 72)

    ii. However, limitation does not start only from 29.12.1949 viz. the date of the attachment order for the following reasons:

        - In case the Magistrate had passed some final order either after dismissal of the appeal directed against the temporary injunction order or on any other date, it would have provided fresh starting point for the purposes of limitation for filing suit for declaration. (at pg. 73)

        - The demolition of the constructed portion of the premises in dispute on 06.12.1992, acquisition of the premises in dispute and adjoining area by the Central Government and the judgment of the Supreme Court in ***Dr. Ismail Farooqui's*** case [1994 (6) S.C.C. 360] changed

the whole scenario and gave a fresh starting point for the purposes of limitation. Even if it is assumed that the remedy of all the parties, except of plaintiff in suit no.1, stood barred due to lapse of limitation, still his/its rights subsisted. Section 27 of New Limitation Act (28 of old Limitation Act) did not extinguish the right to property as due to attachment a suit for possession could not be filed. (at pg. 76)

- Demolition of structure was more severe violation of the right in respect of the constructed portion than its attachment. For suits for declaration such situation gives a fresh starting point for limitation. (at pg. 76)

- It is admitted to all the parties that since 23.12.1949 (if not before that) the Puja and Bhog continued in the constructed portion of the premises in dispute and no Muslim offered or could offer Namaz therein. Accordingly, the aforesaid view of the Privy Council of continuing wrong (Section 23 of Limitation Act, 1908) applies with greater force in Suit No.4. It also applies to suit No.3 as according to its plaintiff Nirmohi Akhara, its right of managing the Puja etc. is constantly being denied. (at pg. 79)

- Even if suit nos. 4 and 3 are held to be barred by time still the Court is required to record finding and pronounce judgment on all issues as required by order 14 Rule 2(1) C.P.C. Accordingly we are required to record finding regarding right and title also. In case suit nos. 4 and 3 are held to be barred by limitation still if title and right of plaintiffs of any of these two suits is held to exist, property in dispute will have to be released in its favour as irrespective of dismissal of suit on the ground of delay, determination of the rights and entitlement to possession will be there. (at pg. 79)

20. It is submitted that S.U. Khan J. rightly holds that relief for possession could not have been asked for, since the disputed property was in *custodia legis.* However, it is submitted that the principle of continuing wrong will not apply in the present case. The criterion is not whether the 'right' is a 'continuing' one but whether the 'wrong' is a continuing one. A continuing wrong is one that is originated by and kept in existence by the opposite party. Even assuming without conceding that the act of placing the idols under the central dome on 23.12.1949 constituted a 'wrong', such 'wrongful act' was a complete act inasmuch as it resulted in a complete ouster of the Muslim worshippers. See ***Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan,*** 1959 Supp (2) SCR 476 @ 496-499, wherein it has been held as under:

> "*"31. It is then contended by Mr Rege that the suits cannot be held to be barred under Article 120 because Section 23 of the Limitation Act applies; and since, in the words of the said section, the conduct of the trustees amounted to a continuing wrong, a fresh period of limitation began to run at every moment of time during which the said wrong continued. Does the conduct of the trustees amount to a continuing wrong under Section 23? That is the question which this contention raises for our decision. In other words, did the cause of action arise de die in diemas claimed by the appellants? In dealing with this argument it is necessary to bear in mind that Section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that Section 23 can be invoked. Thus considered it is difficult to hold that the trustees' act in denying altogether the alleged rights of the Guravs as hereditary worshippers and in claiming and obtaining possession from them by their suit in 1922 was a continuing wrong. The decree obtained by the trustees in the said litigation had injured effectively and completely the appellants' rights though the damage caused by the said decree subsequently continued. Can it be said that, after the appellants were evicted from the temple in execution of the said decree, the continuance of their dispossession was due to a recurring act of tort committed by the trustees from moment to moment? As soon as the decree was passed and the appellants were dispossessed in execution proceedings, their rights had been completely injured, and though their dispossession continued,*

> *it cannot be said that the trustees were committing wrongful acts or acts of tort from moment to moment so as to give the appellants a cause of action de die in diem. We think there can be no doubt that where the wrongful act complained of amounts to ouster, the resulting injury to the right is complete at the date of the ouster and so there would be no scope for the application of 23 in such a case. That is the view which the High Court has taken and we see no reason to differ from it."* [Emphasis Supplied]

21. Even assuming without admitting that the placement of the idols under the central dome was a 'continuing wrong', its continuance came to an end once the disputed property came to be attached u/s 145-146 of the CrPC. It is important to note that the suit was filed in 1961, after the property was attached, and not prior to the attachment – after 23.12.1949 and before 29.12.1949.

22. Once the cause of action arises, is not suspended or interrupted unless it falls under Section 23 of the Limitation Act, 1908. See in this regard, ***Subbaiya Pandaram v. Mahamad Mustapha Maracayar*** AIR 1923 PC 175 @ 176-177. The requirement of Section 23 is that in the case of a continuing wrong, a fresh limitation begins to run at every moment of time during which the breach or wrong, as the case may be, continues. In the present case, the suit property is in *custodia legis*. It is not a continuing wrong since the property is in the custody of the court and injunction orders have been passed by the Subordinate Judge on 16.01.1950, modified on 19.01.1950 and confirmed on 03.03.1951. Such consequence of worship of the idols in that place under orders of the courts cannot be held to be a continuing wrong.

23. The decision of the Privy Council in ***Hukum Chand v Maharaja Bahadur Singh,*** AIR 1933 PC 193 is distinguished by this Hon'ble Court in ***Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan,*** 1959 Supp (2) SCR 476 @ 498, on the ground that the former was not a case of the ouster of the plaintiff or complete dispossession of the plaintiff and therefore it was a case of continuing wrong. On the other hand, the case before this Hon'ble Court was one of complete ouster and the

impugned act amounted to an ouster. Therefore the case was not governed by Section 23 of the Limitation Act and though on merits the plaintiff succeeded, the suit was dismissed on the ground of limitation. In the present case the Muslims were prevented from offering namaz from 22/23rd December 1949. They were completely ousted in the sense that they were not allowed to worship at the mosque. Therefore, it is a complete ouster of their worship from 22/23.12.1949.

24. It is submitted that the Magistrate is bound by the civil court decree which decides the question of title, as a ruling of the civil court. The City Magistrate is the 7th defendant in the suit. The Superintendent of Police is the 8th defendant and the Receiver is the 9th defendant. They being the parties to the present proceedings, they are bound by the orders of the civil court and therefore most appropriate course that followed by the Magistrate is consigning the records till the decision of the civil court.

25. It is submitted that the judgment in ***Deo Kuer's*** case (supra) has been wrongfully understood by S.U. Khan J. In the present case, no final order has been passed. That does not mean that the cause of action for filing the suit for declaration does not arise till the final order is passed. The cause of action, i.e. when the idols were allegedly placed in the inner courtyard, arose before the 145 proceedings, which were initiated in order to prevent breach of peace. The cause of action having arisen even before initiation of 145 proceedings, the fact that the Magistrate has not passed any final order would not stop the running of the period of limitation. On the other hand, the Magistrate consigned the records to avail remedy before the civil court. It is most respectfully submitted that it has to be held to be his final order, as after the civil court adjudicates and decides title and/or possession to the property by a party, the Magistrate cannot pass any orders thereafter, and has to ensure law and order in accordance with the trial court's decision. In the present

case, when no final order has been passed by the Magistrate, the civil court has granted the injunction permitting the Hindus to offer prayers and directing the idols not to be removed.

26. Further, after the Acquisition of Certain Areas at Ayodhya Act was passed in 1993, the disputed area vested in the Central Government, to the extent that the Government would act as the statutory receiver with the duty for its management and administration requiring maintenance of *status quo,* and to hand-over the disputed area in terms of the adjudication made in the suits. Therefore, there cannot be any cause of action on the ground of continuing wrong. Demolition of the structure (mosque) in 1992 is the subject matter of a criminal trial which is proceeding separately.

27. Thus, Suit 4 is barred by limitation under Article 120 of the Limitation Act, 1908.



**II. RE. ACT OF STATE:**

28. It is submitted in para 1 of the plaint in Suit 4, the plaintiff pleads that *"in the town of Ayodhya ... there exists an ancient historic mosque, commonly known as Babri Masjid, built by Emperor Babar more than 433 years ago, after his conquest of India and his occupation of the territories including the town of Ayodhya ..."*. In para 2, it is further pleaded that *"the mosque and the graveyard is vested in the Almighty."* Thus, according to the plaintiff, the 'title' to the mosque is traceable to the conquest and occupation of Emperor Babar.

29. It is submitted that the Plaintiffs have failed to prove their title on this basis.

30. Suit 4 is filed for an action in ejectment. It is submitted that in an action for ejectment, the plaintiff has to succeed on the strength of his own title. See in this regard:

i. ***Lala Hem Chand v. Lala Pearey Lal*** AIR 1942 PC 64 @ 66, wherein it has been held that:

> *"The law is well settled that in an action for ejectment the plaintiff can recover only by the strength of his own title, and not by the weakness of that of the defendant."*

ii. ***Jagdish Narain v. Nawab Said Ahmed Khan*** AIR 1946 PC 59, wherein it has been held that:

> *"Where a plaintiff sues in ejectment, he can succeed on the strength of his own title. There is no obligation upon the defendant to plead possible defects in the plaintiff's title which might manifest themselves when the title is disclosed. It is sufficient that in the written statement the defendant denies the plaintiff's title and under this plea he can avail himself of any defect which such title discloses."* [Emphasis Supplied]

iii. ***Moran Mar Basselios Catholicos v. Thukalan Paulo Avira***, AIR 1959 SC 31 @ 37-38, para 20 wherein it has been held that:

> *"The plaintiffs have brought the suit out of which the present appeal has arisen claiming to be trustees and praying for a declaration of their own title as trustees and for a declaration that the defendants were not trustees and for possession of the trust properties and other incidental reliefs. It is perfectly clear that in a suit of this description if the plaintiffs are to succeed they must do so on the strength of their own title. ... On our finding on that question to be hereafter recorded, namely, that the defendants and their partisans had not become ipso facto heretics in the eye of the civil court or aliens or had not gone out of the Church, it must necesssarily follow, apart from the question of the competency of the convener of the meeting, that the meeting had not been held on due notice to all churches interested and was consequently not a valid meeting and that, therefore, the election of the plaintiffs was not valid and their suit, in so far as it is in the nature of a suit for ejectment, must fail for want of their title as trustees."* [Emphasis supplied]

31. It is further submitted that in the 1885 suit, The District Judge, in his judgment dated 18.03.1886, observed as under:

> *"It is most unfortunate that a masjid should have been built on land specially held sacred by the Hindus, 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 the parties in status quo."* [Emphasis Supplied]

32. Second Civil Appeal No.122 of 1886 was filed against the judgment of the District Judge, which was also dismissed by the Court of Judicial

Commissioner, Oudh on 01.11.1886. Appeals were preferred only by Mahant Raghubar Das, and not by the Mutawalli, Mohd. Asghar.

33. Therefore, the burden of proof is on the Muslim parties to show that this finding, that the mosque was built on land held sacred by Hindus, is wrong. Even where a case is decided in favour of a party, he can attack findings adverse to him in the appeal filed by the other party. See:

    a. ***Harachandra Das* v. *Bholanath Das*** (1935) ILR 62 Cal 701, followed in;

    b. ***United Provinces v. Atiqa Begum*** AIR 1941 FC 16 @ 42, followed in;

    c. ***Ponnalagu v. State of Madras*** AIR 1953 Mad 485 @ 488, approved in;

    d. ***Nookala Setharamaiah v. Kotaiah Naidu*** (1970) 2 SCC 13 @ 23, para 24.

34. The Muslim parties chose not to file an appeal against the said finding, which has attained finality. In any event, irrespective of the conduct of Muslim parties, the finding of the District Judge has attained finality. Therefore, the burden of proof does not lie on the Hindu parties to show that they held the disputed property to be sacred. It is the duty of the Muslim parties to displace the said finding while dealing with facts nearer to their ken. See in this regard, the judgment of the Privy Council in ***Midnapore Zamindari Co Ltd v. Naresh Narayan Roy*** AIR 1922 PC 241 @ 243 wherein it has been observed as under:

> *"Their Lordships do not consider that this will found an actual plea of res judicata, for the defendants, having succeeded on the other plea, had no occasion to go further as to the finding against them; but it is the finding of a Court which was dealing with facts nearer to their ken than the facts are to the Board now, and it certainly creates a paramount duty on the appellants to displace the finding, a duty which they have not been able to perform."*

35. The judgment of the District Judge was rendered in 1886. The presumption of such belief of the Hindus operates forwards and backwards from 1886. See Illustration (d) to Section 114 of the Evidence Act in this respect:

> *"That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence."*

36. An inference of continuity may be drawn forwards and backwards. See ***Ambika Prasad Thakur v. Ram Ekbal Rai*** (1966) 1 SCR 758 @ 760.

37. It is important to note that under Muslim law, there is no law of limitation. See finding of Hon'ble Justice Agarwal at page 1312, para 2170. It is submitted that Hon'ble Justice Agarwal at para 3389 holds as under:

> "…*The position of Babur, in our view, was that of independent sovereign, Sole Monarch, having paramount power. It was Supreme, uncontrollable and absolute, not answerable to anyone. Whether invader or anything else, the fact remains that he had been the supreme authority in the territory which he conquered. Nobody could have questioned him.*"

38. Further at para 3405, Hon'ble Justice Agarwal holds that:

> "*Something which took place more than 200 and odd years, we are clearly of the view, cannot be a subject matter of judicial scrutiny of this Court which is the creation of statute came into force in a system which itself was born after more than hundred and odd years when the building in dispute might have been constructed. All the Expert religious witnesses have admitted that if a mosque is constructed, the picture or images of living being like human images or animal images shall not be allowed to remain thereat. The creator of the building in dispute thought otherwise, yet the followers of Islam did not hesitate in using the premises for the purpose of Namaz. Whether the belief of such persons, who visited this premises for such worship, is superior or inferior, whether such offering of Namaz was regular or frequent or occasional and intermittent would be of no consequence. Suffice, if there had been Namaz by the Muslim. The offering of worship by Hindus knowing the building in dispute that it is a mosque is something else but on that basis the manner in which the building in dispute has been known for the last more than 250 years and odd cannot be changed. What ought to have been the ideal system of suzerainty or the system or policy of a king ought to have been according to Shariyat or Hindu Dharm Shastra etc. are all the issues which travel in the realm of pious wishes on the subject, but that cannot be a criteria to adjudicate the supreme authority of the erstwhile kings who were not subordinate to anyone except of the higher sovereign authority, if any."* (Emphasis supplied)

39. It is submitted that, in demurer, if courts cannot go into the question, it is Plaintiff which has failed to prove its case. As title pleaded itself is traceable to an emperor building a mosque, which being an, act of state cannot be taken into account. The result is Plaintiffs have not proved a valid title /

dedication (but a tainted one through a conqueror) and are not entitled to offer prayers.

40. The Muslim rule came to an end when the British Rule was established. In 1858, the British acquired the territory as a 'new sovereign.' See in this context, Article I of the Government of India Act, 1858 whereunder the government of the territories in the possession or under the Government of the East India Company ceased to be vested in the said Company and stood vested in Her Majesty. Thus, Her Majesty was a new sovereign, and only such title as recognized by Her Majesty was to prevail. See in this regard, ***Vinodkumar Shantilal Gosalia v. Gangadhar Narsingdas Agarwal***, (1981) 4 SCC 226 at pgs. 235, 240-241, paras 17, 28-29:

> *"**17.** Before considering the merits of the respective contentions bearing on the effect of the provisions of the Administration Act and the Regulation, it is necessary to reiterate a well-settled legal position that when a new territory is acquired in any manner — be it by conquest, annexation or cession following upon a treaty — the new "sovereign" is not bound by the rights which the residents of the conquered territory had against their sovereign or by the obligations of the old sovereign towards his subjects. The rights of the residents of a territory against their State or sovereign come to an end with the conquest, annexation or cession of that territory and do not pass on to the new environment. The inhabitants of the acquired territory bring with them no rights which they can enforce against the new State of which they become inhabitants. The new State is not required, by any positive assertion or declaration, to repudiate its obligation by disowning such rights. ...*
>
> *...*
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> *28. The decision in Pema Chibar is an authority for four distinct and important propositions: (1) The fact that laws which were in force in the conquered territory are continued by the new Government after the conquest is not by itself enough to show that the new sovereign has recognised the rights under the old laws; (2) The rights which arose out of the old laws prior to the conquest or annexation can be enforced against the new sovereign only if he has chosen to recognise those rights; ...*
>
> *29. ... in cases of acquisition of a territory by conquest, rights which had accrued under the old laws do not survive and cannot be enforced against the new Government unless it chooses to recognise those rights. In order to recognise the old rights, it is not necessary for the new Government to continue the old laws under which those rights had accrued because, old rights can be recognised without continuing the old laws as, for example, by contract or executive action. On the one hand, old rights can be recognised by the new Government without continuing the old laws; on the other, the mere continuance of old laws does not imply the recognition of old rights which had accrued under those laws. Something more than the continuance of old laws is necessary in order*

*to support the claim that old rights have been recognised by the new Government. That "something more" can be found in a statutory provision whereby rights which had already accrued under the old laws are saved. Insofar as the continuance of old laws is concerned, as a general rule, they continue in operation after the conqnest, which means that the new Government is at liberty not to adopt them at all or to adopt them without a break in their continuity or else to adopt them from a date subsequent to the date of conquest."* [Emphasis Supplied]

41. As to 'act of state', see also the following judgments:

- ***Secretary of State in Council of India v. Kamachee Boye Sahaba*** (1859) 7 M.I.A., 476 @ 532, 541, followed in;
- ***T.R. Bhavani Shankar Joshi v. Somasundara Moopanar*** (1963) 2 SCR 421 @ 428
- ***Arunachellam Chetty v. Venkatachalapathi Guruswami*** (1919) 46 Ind App 204 @ 217
- ***Chidambaram Chettiar v. Santhanaramaswami Odayar*** (1968) 2 SCR 754 @ 759-760.
- ***Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshitulu*** (1991) Supp. 2 SCC 228 @ 241-242, para 8.



42. The British law was that there can be an act of State by the British against citizens of India. See ***Kamachee Boye Sahaba*** (supra). This was an erroneous judgment. This Hon'ble Court has held subsequently in ***State of Gujarat v. Vora Fiddali*** (1964) 6 SCR 461 (judgment of Hon'ble Justice Hidayatullah) that there can be no act of State against a citizen.

43. It is submitted that in 1856-57, the British Government (under the East India Company) erected an iron grill, artificially partitioning the disputed property into an inner courtyard (comprising the structure masjid) and an outer courtyard (comprising Ram Chhabutra and Sita Rasoi). This was done after the riots between 1853-1855 to ensure law and order. <u>But what is significant is that, notwithstanding the existence of the structure of the Masjid, the Hindus' right to worship at the disputed property was recognized by the British; the Hindus were not ousted therefrom.</u> It is submitted that this was

for the reason that the Hindus, even before the advent of the British rule, were worshipping at that place, based on the belief that it is the birthplace of Lord Rama.

44. When the Constitution came into force, 'we the people' became the 'new sovereign'. Two suits were instituted by the Hindu worshippers – Suit 1 was filed before the Constitution came into force (on 16.01.1950) and Suit 2 was filed thereafter (on 05.12.1950) but which was subsequently withdrawn in 1990. This 'new sovereign' could have refused to recognize the claim of the Hindus that the disputed property was the birthplace of Lord Ram. However, this did not happen inasmuch as the dispute was pending adjudication before the court.

45. This Hon'ble Court in ***M. Ismail Faruqui (Dr) v. Union of India***, (1994) 6 SCC 360 case struck down the provisions relating to abatement of the suits and left it to be adjudicated upon and not allow either Legislature or the Executive to convert it into an act of state. This Hon'ble Court did not act on the statement of the Ld. Solicitor General and refused to answer the question referred to it on the following grounds (at page 413):

> *"62. To appreciate the stand of the Central Government on this point, we permitted the learned Solicitor General to make a categorical statement for the Union of India in this behalf. The final statement made by the learned Solicitor General of India in writing dated 14-9-1994 forming a part of the record, almost at the conclusion of the hearing, also does not indicate that the answer to the question referred would itself be decisive of the core question in controversy between the parties to the suits relating to the claim over the disputed site. <u>According to the statement, the Central Government proposes to resort to a process of negotiation between the rival claimants after getting the answer to the question referred, and if the negotiations fail, then to adopt such course as it may find appropriate in the circumstances. There can be no doubt, in these circumstances, that the Special Reference made under Article 143(1) of the Constitution cannot be construed as an effective alternate dispute-resolution mechanism to permit substitution of the pending suits and legal proceedings by the mode adopted of making this Reference. In our opinion, this fact alone is sufficient to invalidate sub-section (3) of Section 4 of the Act. [See Indira Nehru Gandhi v. Raj Narain [1975 Supp SCC 1 : (1976) 2 SCR 347] .] We accordingly declare sub-section (3) of Section 4 to be unconstitutional. However, sub-section (3) of Section 4 is severable,</u>*

*and, therefore, its invalidity is not an impediment to the remaining statute being upheld as valid."* [Emphasis Supplied]

46. The following observations of Jeevan Reddy J. in ***Indra Sawhney v. Union of India***, 1992 Supp (3) SCC 217 at page 658, para 684 are apt to be reproduced here:

> *"We are dealing with complex social, constitutional and legal questions upon which there has been a sharp division of opinion in the society, which could have been settled more satisfactorily through political processes. But that was not to be. The issues have been relegated to the judiciary — which shows both the disinclination of the executive to grapple with these sensitive issues as also the confidence reposed in this organ of the State. We are reminded of what Sir Anthony Mason, Chief Justice of Australia once said:*
>
> > *"Society exhibits more signs of conflict and disagreement today than it did before …. Governments have always had the option of leaving questions to be determined by the Courts according to law ….*
> >
> > *There are other reasons, of course … that cause governments to leave decisions to be made by Courts. They are of expedient political character. The community may be so divided on a particular issue that a government feels that the safe course for it to pursue is to leave the issue to be resolved by the Courts, thereby diminishing the risk it will alienate significant sections of the community."*
>
> *But then answering a question as to the legitimacy of the Court to decide such crucial issues, the learned Chief Justice says:*
>
> > *" … my own feeling is that the people accept the Courts as the appropriate means of resolving disputes when governments decide not to attempt to solve the disputes by the political process." (Judging the World: Law and Politics in the World's Leading Courts, p. 343)* [Emphasis supplied]

47. The position under the Government of India Act 1858 continued but the new Sovereign power under the Constitution did not interfere in the dispute, for the reason that the matter was sub judice and under the Constitution, the rule of law has to be ensured. Therefore the issue was to be decided by the Civil Court only. Adjudicatory power is to be exercised by the Courts alone. Any jurisdiction exercised by the legislature in matters which have to be adjudicated by the court is in the nature of Bill of Attainder. See in this regard, ***Indira Nehru Gandhi v. Raj Narain*** (1975) Supp SCC 1 as referred to in ***Ismail Faruqui's*** case (supra). Therefore the dispute has to be resolved on an appreciation of the material on record and bearing in mind principles of

secularism, balancing and protecting all religious rights and the preserving of law and order.

48. Thus, the title claimed based on Act of State will be of no avail and there isn't any other title pleaded or claimed by the Plaintiffs. To recognize the place as one on which a mosque was constructed, vested in the almighty, would be to carve out a particular area conquered by virtue of an act of 'Emperor Babar' which would be lost to Indian citizens. This Hon'ble Court is to decide the matter on merits and discretion as to the granting of declaration is to be exercised strictly in accordance with the provisions of the Specific Relief Act and ought not to uphold such claims.

49. At paras 3 and 4 of the plaint in Suit 4, the plaintiff places reliance on the cash grant for the upkeep and maintenance of the mosque paid from the royal treasury which was continued by the Emperor of Delhi and the Nawab Wazir of Oudh, and the grant of revenue free land made by the British Government in the villages of Sholapur and Bahoranpur in the vicinity of Ayodhya.



50. It is submitted that the cash grant or grant of revenue free land is not a recognition of the title to the mosque. The finding of Hon'ble Justice Agarwal (at page 1380, para 2336) is that no inquiry was conducted by the Commissioner before any grant certificate was issued regarding the revenue free land. Grant of revenue free land only means that the revenue is to be appropriated by the grantee. After considering all the evidence, the Hon'ble Justice Agarwal observed (at page 1393, para 2344-2345) that the grant in question did not prove that the Muslims visited the place in dispute and offered namaz thereat. On the contrary, Hindus continued to visit the disputed site and offer worship. Further, (at page 1414, para 2360), Hon'ble Justice Agarwal observed that documents pertaining to the grant had nothing to do with the disputed site.

51. Thus, it is submitted that the entire claim of title and possession of the plaintiffs in Suit 4 is tainted at its source and through its course and hence, no claims can be made on the basis of initial conquest by Emperor Babar and the subsequent conquest by the British.