

IN THE SUPREME COURT OF INDIA
(Civil Appellate Jurisdiction)
Civil Appeal Nos. 4768-4771 of 2011

A5

IN THE MATTER OF:

BHAGWAN SHRI RAM VIRAJMAN REPRESENTED BY
NEXT FRIEND TRILOKI NATH PANDEY AND ORS.

...Appellants

Versus

RAJENDRA SINGH AND ORS.

...Respondents

SUMMARY OF FINDINGS IN THE JUDGEMENT OF THE HON'BLE HIGH COURT OF ALLAHABAD IN OS-3, OS-4 AND OS-5

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SUMMARY OF FINDINGS IN OS-3

Filed on 17.12.1959 in the Court of Civil Judge, Faizabad. It was registered as R.S. No. 26 of 1959. However, after transfer to the High Court it has been re-registered as O.O.S. No. 3 of 1989.

PLAINTIFF	DEFENDANTS
- Nirmohi Akhara through its Mahant Raghunath Das (now substituted by Jagannath Das) and another	<ul style="list-style-type: none"> - Initially Sri Babu Priya Dutt Ram, Receiver as well as the State of Uttar Pradesh and its authorities were impleaded as defendants no. 1 to 5. - Three persons from Muslim community were impleaded as defendants no. 6 to 8 as representatives of the Muslim community. - The defendants before the Hon'ble High Court were as follows : "1. Sri Jamuna Prasad Singh, 2. State of Uttar Pradesh, 3. Deputy Commissioner, Faizabad, 4. City Magistrate, Faizabad, 5. Superintendent of Police, Faizabad, 6. Haji Mehboob, 7. Haji Abdul, 8. Mohd. Faiq, 9. U.P. Sunni Central Board of Waqfs through its Secretary, Lucknow, 10. Umesh Chandra Pandey and 11. Mohd. Farook." (The defendants no. 9, 10 and 11 were impleaded on their application allowed by the Court vide orders dated 23.8.1989, 28.1.1989 and 3.12.1991 respectively).

Reliefs sought for:

Decree for removal of defendant no. 1 from the management and charge of the temple of Janam Bhumi and to deliver the same to the plaintiffs through Mahant and Sarbarahkar Mahant Jagannath Das

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
Issue No. 1 :- Is there a temple of Janam Bhumi with idols installed therein as alleged in para 3 of the plaint?	<p>Accordingly, in such scenario the only finding which may be recorded is that till 1934 Muslims were offering regular prayers and since 1934 till 22.12.1949 only friday prayers in the premises in dispute. However, offering of only friday prayers is also sufficient for continuance of possession and use. @ 100</p> <p>idols were kept on the pulpit inside the constructed portion/mosque for the first time in the night of 22nd/23rd December, 1949 @105</p> <p>Ram Chabutra and the Sita Rasoi were there before the visit of</p>	<p>4423. ... We have already held that the disputed structure was constructed as a 'mosque' and always treated and called 'mosque' by Hindus and Muslims both, alike, for the last almost one and half century before the date of attachment. ... @ 2829</p> <p>4424. However, we have also held that despite of the structure constructed as a 'mosque', and, termed and called by the people at large as 'mosque', the Hindus continuously entered and worshipped the place since according to their belief, it was the place of birth of Lord Rama and therefore, could not have been desecrated so as to extinguish in any manner. The idols were kept in the inner courtyard under the central dome on 22/23 December, 1949. ... @ 2829</p> <p>4425. Therefore, the manner in which the plaintiff has depicted the premises in dispute and claimed it to be a temple is not correct in view of our findings recorded</p>	<p>In view of the finding of issues no. 1, 1(a), (b), 1-B(b), 19(d), 19(e) and 19(f) no separate finding is required as the issues are identical issues in this case. These issues are decided in terms of the decision of issues no. 1, 1(a), 1(b), 1B(b), 12, 19(d), 19(e) and 19(f) of O.O.S. No. 4 of 1989. The disputed structure has already been demolished on 06.12.1992 and there is no evidence to establish that at the disputed structure there was any temple inside the structure belonging to plaintiff no. 1, in which he installed the idol of Lord Ram Chandra Ji, Laxman Ji and Saligram Ji from times immemorial. @ 3494</p> <p>[On the basis of the ASI Report, inter alia, it can be conclusively held that the disputed structure was constructed on the site of old</p>

	Tiffenthaler in 1766 @105	<p>above. The premises in dispute cannot be treated to be a temple in the manner it is being pleaded and claimed by the plaintiffs (Suit-3). Though there are other aspects of the matter which we have already discussed, subject to those findings, as pointed out above also, in our view, issue No. 1(Suit-3) has to be answered in negative. It is decided accordingly. @ 2829</p>	<p>structure after demolition of the same. There is sufficient evidence to this effect that the structure was a Hindu massive religious structure. @ 2970 [OS 4 - Issue 1(b)]</p> <p>No valid dedication to the almighty (by plaintiffs in OS 4); the building cannot be treated to be a wakf property or a valid mosque in accordance with Islam. @ 2975 [OS 4 - Issue 1-B(b)]</p> <p>On the basis of the opinion of the experts, evidence on record, circumstantial evidence and historical account from all or any angle, it transpires that the temple was demolished and the mosque was constructed at the site of the old Hindu temple by Mir Baqi at the command of Babur. [OS 4 - Issues 1 & 1(a)] @ 3243</p> <p>Idols and object of worship were installed in the building in the intervening night of 22/23rd December, 1949. [OS 4 - Issue 12] @ 3244</p> <p>There is a strong circumstance that without any minaret there cannot be any mosque. [OS 4 - Issue 19(d)] @ 3039</p> <p>The building in question could not be legally a mosque and was constructed against the tenets of Islam. [OS 4 - Issue no. 19(e)] @ 3046</p> <p>Pillars which contain images of Hindu God and Goddesses which were found inside the mosque go to show that they remained part of Hindu Temple. Thus, the disputed structure lacks the character of Mosque under the tenets of Islam. [OS 4 - Issue No. 19(f)] @ 3048]</p>
Issue No. 2 :- Does the property in suit belong to	Concur with Agrawal, J	<p>4482. As is evident, the property in suit for the purpose of Suit-3 is the premises within the inner courtyard. The plaintiff, though claimed to be the owner thereof</p>	<p>In view of the findings of issue no. 1B(c), 2, 4, 10, 11, 12, 13, 14, 15, 19(a), 19(b), 19(c), 27 & 28 no separate finding is required.</p>

the plaintiff No.1?		<p>and its counsel has also made a statement to this effect under Order X Rule 2 C.P.C., but not even a single document has been placed on record to show the title. Faced with this situation, the plaintiff sought to claim acquisition of title by way of adverse possession against the Muslim parties. This claim we have already negatived above. We answer this issue in negative, i.e., against the plaintiff. @ 2846</p>	<p>Accordingly, the above issues are decided in terms of issues already decided in O.O.S. No. 4 referred to above. @ 3494</p> <p><i>[A mosque if adversely possessed by a Non-Muslim, it will loose it sacred character as a mosque. The plaintiffs are not in possession over the property in suit and filed the suit for recovery of the possession. There is no reliable evidence that the prayers were offered by Muslims from times immemorial. [OS-4 - Issue 1B(c)] @ 2976</i></p> <p><i>The plaintiffs have failed to prove that they were in exclusive possession of the property in suit up to 1949 and they were dispossessed from the same in the year 1949. Hindus have proved that they were regularly making prayers at the birth place of Lord Ram and they were in exclusive possession of the outer courtyard and vising inner court yard for offering prayers. Muslims have failed to prove that they were in possession over the property in suit from 1528 A.D. continuously, openly and to the knowledge of the defendants and Hindus in general. The defendant no. 3 has also failed to prove that he was in exclusive possession of the disputed site, but Hindus were in exclusive possession of the outer courtyard i.e. part of the disputed site. [OS 4 - Issues 2, 4, 10, 15 & 28] @ 3378</i></p> <p><i>It is established that the property in suit is the site of Janm Bhumi of Ram Chandra Ji and Hindus in general and the defendants in particular had the right to worship Charan, Sita Rasoi, other idols and other object of worship existed upon the property in suit. It is also established that Hindus have been worshipping the place in dispute as Janm Sthan i.e. a birth place and visiting it as a</i></p>
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		<p>sacred place of pilgrimage as a right since times immemorial. After the construction of the disputed structure it is not proved the deities were installed inside the disputed structure before 22/23.12.1949, but the place of birth is a deity. It is also proved that in the outer courtyard was in exclusive possession of Hindus and they were worshipping throughout and in the inner courtyard (in the disputed structure) they were also worshipping. It is also established that the disputed structure cannot be treated as a mosque as it came into existence against the tenets of Islam. [OS 4 - Issues 11, 13, 14, 19(a) & 19(c)] @ 3454</p> <p>on the basis of evidence available on record, it transpires that right from the report of Vakil Commissioner in O.S. No. 61/280 of 1985 and also O.S. No. 2/1950 (O.O.S. 1 of 1989) it is established that inside the disputed structure no idol was found by Vakil Commissioner even in the year 1950. Thus, the contention of defendant no. 3 that the deities continued to exist is incorrect. The plaintiffs have proved that idols and object of worship were installed in the building in the intervening night of 22/23rd December, 1949. [OS-4 Issue 12] @ 3243-3244</p> <p>Since the structure has already been demolished but the report of Commissioner is available on record. Accordingly, the disputed structure cannot be deemed to be a mosque according to the tenets of Islam. [OS-4 - Issue no. 19(b)] @3038</p> <p>I hold that the outer courtyard contained Ram Chabutra, Rasoi Bhandar and Sita Rasoi in the disputed premises which were demolished on 6.12.1992 along with disputed structure. [OS-4 - Issue no. 27] @</p>
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Issue No. 3 :- Have plaintiffs acquired title by adverse possession for over 12 years?	As both parties were found in joint possession, this question not decided @109	<p>2994. Now coming to Issue No. 3 (Suit-3), it has to be kept in mind that this suit is also confined to the premises within the inner courtyard and not to the entire premises, i.e., the outer and inner courtyard including the building. This is what stated by the counsel for Nirmohi Akhara in his statement made on 17.5.1963 under Order X Rule 1 CPC. @ 1662</p> <p>2997. There is no averment in the entire plaint that any of the defendant is the owner of the property in dispute, that the plaintiffs are having possession of the said property in the knowledge of the true owner, with an intention to possess it adversely, i.e., hostile possession, continuous and peaceful. What is said in para 5, if the muslims attempted to prove that they have ever entered it, it would be wrong, they have not been allowed to enter it atleast ever since the year 1934. The basic pleadings to claim adverse possession and necessary ingredients are ex facie absent. Mere long possession does not constitute adverse possession [See S.M. Karim v. Mst. Bibi Sakina (supra)]. @ 1662</p> <p>2998. As already discussed above in detail in order to set up and succeed on a plea of adverse possession, one has to show as to who is the true owner, the date from which he is possessing the property, the knowledge of the true owner of such possession as also that the possession is hostile and the possessor has intention to hold possession denying the title of the true owner or in defiance of the right of the true owner. The possession is continuous, uninterrupted, peaceful and has continued for more than 12 years. The entire plaint is conspicuously missing of all the above kind of pleadings, in the absence whereof, the plea of adverse possession cannot succeed. @ 1662</p> <p>2999. Moreover the statement of the plaintiffs counsel is that the property is owned by the plaintiff; the temple is made by the plaintiffs, hence question of holding property in dispute in a hostile possession,</p>	<p>In view of the findings of issue no. 1B(c), 2, 4, 10, 11, 12, 13, 14, 15, 19(a), 19(b), 19(c), 27 & 28 no separate finding is required. Accordingly, the above issues are decided in terms of issues already decided in O.O.S. No. 4 referred to above. @ 3494</p> <p>[Findings on said issues in OS 4 are reproduced above w.r.t Issue No. 2]</p>

		<p>against true owner, does not arise. It also show that the plaintiffs (Suit-3) had no animus possidendi. That is completely absent. In the absence of pleadings, though no evidence is admissible, but we may add at this stage that no document whatsoever to support the necessary ingredients of adverse possession even otherwise had been placed on record by the plaintiffs (Suit-3). Most of the evidence is in respect to the structures which are in the outer courtyard and the right and possession of the plaintiffs on the said property in the last several decades. But so far as the inner courtyard is concerned, only oral evidence has been produced and the attempt also had been to show that they use to visit the premises in the inner courtyard to offer worship of Ram Lala's idol thereat and that Pujaris of Nirmohi Akhara used to perform Sewa thereat. We have discussed these witnesses and it has been demonstrated that virtually all of them on this aspect lack creditworthiness, hence unreliable. @1662</p> <p>3000. A lot of documentary evidences have also been filed by the plaintiff (Suit-3) in support of his claim for possession, but we find that the same do not help the plaintiff (Suit-3) for throwing light in respect to the premises within inner courtyard. Most of the documents are of the period subsequent to the date of attachment and they are concerned with the premises in outer courtyard. ... @1663</p> <p>3001. Some documents of an earlier period have also been filed but they also show an arrangement made by the plaintiff (Suit-3) outside the inner courtyard rather outside the premises in dispute and, therefore, do not help the plaintiff (Suit-3) for deciding the issue in question in their favour. ... @1664</p> <p>3002 - 3006. - Other documents that are not relevant / do not help the case of the plaintiff. @1666-1668</p> <p>3007. A copy of the F.I.R. Dated 23rd December 1949 has been filed by the plaintiff which shows the</p>	
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		<p>placement of idols inside the inner courtyard and it goes against the plaintiff. ... @1668</p> <p>3009. The defendants, on the contrary, have filed certain documents, which are also of subsequent period, i.e, post 1950 to show that plaintiff could not have been in possession of the inner courtyard as they could enter the same with the permission of Receiver only. @ 1668</p> <p>3021. The question as to whether the idols were kept in the disputed structure under the central dome on 22nd/23rd December, 1949 or were already there, has been considered and decided above, and, therefore, in view of those findings, it cannot be said that the plaintiff (Suit-3) possessed the premises in dispute in the capacity as Shebait or manager or owner twelve years prior to the date of accrual of cause of action. @ 1672</p> <p>3023. Whatever the evidence has been produced by the plaintiffs (Suit-3), none has said anything about the adverse possession of the plaintiff and that too in regard to premises in inner courtyard. Twenty witnesses have been produced but even a single one has not uttered a word about adverse possession of plaintiffs on the suit property. Adverse possession is a question of fact. It has to be specifically pleaded and proved. In the absence of proper pleading, evidence, oral or documentary, the claim of title based on adverse possession neither can be entertained nor can be accepted. @ 1673</p> <p>3024. Besides, when the plaintiffs have stated that they are the owner of the property in dispute and the disputed structure which according to the plaintiffs (Suit-3) was a temple, owned by them, the question of entertaining the plea of adverse possession does not arise at all. In any case, the assertion of the plaintiff that the defendants have never entered the premises in dispute since 1934 pre supposes that prior to 1934 their entry in the disputed premises is admitted. With regard to the period subsequent to 1934 we find that</p>	
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		the evidence placed by the plaintiff (Suit-3) did not prove that the defendant-Muslim parties could never enter the premises in dispute till its attachment by the Magistrate under Section 145 Cr.P.C. This aspect we have already considered in detail while discussing Issue No. 12 (Suit-4) and Issue No. 3 (a) (Suit-5) and have recorded a finding that in all probabilities Namaz in the building in dispute i.e. inner courtyard was offered on 16 th December, 1949. In view of the above, we have no hesitation in deciding Issue No. 3 (Suit-3) in negative i.e. against the plaintiff. @1673	
Issue No. 4 :- Are plaintiffs entitled to get management and charge of the said temple?	Concur with Agrawal, J	4484. The plaintiff claim handing over of charge of the property in suit and the disputed structure to it instead of the Receiver. The basis of the claim is that the property in suit was all through a temple even before 1528 and has always been managed, possessed and owned by the plaintiff. It has however miserably failed to prove this fact. This aspect we have already discussed in detail while considering the issues relating to limitation and possession/adverse possession etc. We have also held that the idols were kept under the central dome inside the inner courtyard in the night of 22 nd /23 rd December, 1949. The plaintiffs having disputed this incident being a factitious and fabricated story, the question of their treating as Shebait in respect of the idols placed under the central dome on 22nd/23rd December, 1949 does not arise since according to their own pleadings, they have not admitted any where of taking care of the deity in the inner courtyard under the central dome of the disputed structure. Issue No. 4 (Suit-3), therefore, is answered in negative, i.e., against the plaintiffs. @2846	In view of the findings of issue no. 1B(c), 2, 4, 10, 11, 12, 13, 14, 15, 19(a), 19(b), 19(c), 27 & 28 no separate finding is required. Accordingly, the above issues are decided in terms of issues already decided in O.O.S. No. 4 referred to above. @ 3494 [Findings on said issues in OS 4 are reproduced above w.r.t Issue No. 2]
Issue No. 5 :- Is the property in suit a mosque made by Emperor Babar known as Babari masjid?	Accordingly, in such scenario the only finding which may be recorded is that till 1934 Muslims were offering regular prayers and since 1934 till 22.12.1949 only friday prayers in the premises in	1682(A). Issue no.6 (Suit-1) and Issue No.5 (Suit-3) are answered in negative. The defendants have failed to prove that the property in dispute was constructed by Shanshah/Emperor Babar in 1528 AD. Accordingly, the question as to whether Babar constructed the property in dispute as a 'mosque' does not arise and needs no	In view of the finding of issues no. 1, 1(a), (b), 1-B(b), 19(d), 19(e) and 19(f) no separate finding is required as the issues are identical issues in this case. These issues are decided in terms of the decision of issues no. 1, 1(a), 1(b), 1B(b), 12, 19(d), 19(e) and 19(f) of

	dispute. However, offering of only friday prayers is also sufficient for continuance of possession and use. @ 100	answer. @ 1100	O.O.S. No. 4 of 1989. The disputed structure has already been demolished on 06.12.1992 and there is no evidence to establish that at the disputed structure there was any temple inside the structure belonging to plaintiff no. 1, in which he installed the idol of Lord Ram Chandra Ji, Laxman Ji and Saligram Ji from times immemorial. @ 3494
Issue No. 6 :- Was the alleged mosque dedicated by Emperor Babar for worship by Muslims in general and made a public waqf property?	<ul style="list-style-type: none"> - Valid mosque @107 - Dedication by way of user in the name of God @ 107 - It is a Sunni Waqf @ 108 	<p>3331. ... As already held, the parties could not prove that the building in dispute was constructed in 1528 AD by Babar or any of his agent. Some of these issues would immediately stand covered by those findings. For example issue 6 (Suit-3) would have required a further investigation only if it was built by Babar and not otherwise. However, we would proceed ahead assuming, only for the purpose of these issues, if the building was constructed by Babar in 1528 AD, then how the concerned issues hereat would stand, and/or, to what extent the parties concerned are able to prove in one or the other way, their case. @ 1908</p> <p>3332. Issue 6 (Suit-3) is confined to the act of Emperor Babar i.e. whether the alleged mosque was dedicated by him for worship of muslims in general and made a public waqf property. This issue has been framed on the basis of the pleadings of muslim parties (defendants) in Suit-3. The result of failure to prove the issue would stand in a loss to the defendants muslim parties and therefore, burden to prove it lie upon the defendants muslim parties. @ 1908</p> <p>3333. There is no recorded history or/for the period of 1528 to 1855 A.D., stating in black and white, that this building was constructed by Babar and then dedicated to muslims as a public waqf. ... @ 1908</p> <p>3334. In 1828, the gazetteer of Walter Hamilton i.e. "East India Gazetteer" (Supra) also do not throw any light on it. ... @1909</p> <p>3335. Existence of a mosque or construction of a mosque by somebody is another thing but the issue we are suppose to answer is quite specific, whether this dedication is by Emperor Babar or not. No doubt after 4 or 5 centuries one cannot expect an eyewitness to</p>	<p>[Findings on said issues in OS 4 are reproduced above w.r.t Issue No. 1]</p>

		<p>prove such an issue but then other circumstances or secondary evidence could have been produced to prove it. A presumption in respect to dedication in such a matter which involves a period of several centuries could have been raised if identify of the person, who constructed the building is not in dispute and the only question is whether there is a valid or de facto dedication or not. The doctrine of user etc. could have been resorted to in such a case. But where the dispute of identity of alleged waqif itself is involved, such doctrine would be of no help. @ 1909</p> <p>3336. ... One of the essential condition of creating a waqf is “dedication”. In absence of other evidence, if, public prayer is once said there, with the permission of the owner, it can be treated to have been dedicated. Even if we assume that emperor Babar was owner, no material has been placed which may suggest or give even a faint indication that with his permission any public prayer was made in the building in dispute. In fact we do find no material to suggest that any public prayer was offered by Muslims, at least till 1860. @ 1909</p> <p>3337. We can go even to this extent that a dedication may be inferred from user as waqf property but when the issue is whether a particular person made dedication or not, the question of long user to our mind would not be relevant but it is the factum of dedication of the person concerned which has to be seen. @ 1910</p> <p>3339. It is not the case of the Sunni Board and other muslim parties that the property in dispute owned by Mir Baqi and he made dedication. The issue before us, up for consideration is whether the dedication was made by Emperor Babar or not. There is no suggestion during the course of argument that the issue has not been properly framed or needs any alteration. ... @ 1910</p> <p>3340 - 3344. - Judgments rendered in personam not</p>	
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		admissible as evidence under Section 41 of the Evidence Act. @ 1910-1913 3345. In the absence of any evidence direct, circumstantial or otherwise and also due to inapplication of any principle with respect to presumption etc., we are constrained to hold that issue 6 (Suit-3) is not proved at all hence answered in negative. @ 1913	
Issue No. 7(a) :- Has there been a notification under Muslim Waqf Act (Act no.13 of 1936) declaring this property in suit as a Sunni Waqf?	Concur with Agrawal, J	1077. Issue No. 17 (Suit-4) which has been decided by the detailed order dated 21.04.1966 of the learned Civil Judge is similar to both the above issues. <i>Since it has already been held that no valid notification under Section 5(1) of 1936 Act in respect to the property in dispute has been issued, both the issues no. 7(a) and 7(b) (Suit-3) are answered in negative, i.e., in favour of the plaintiffs (Suit-3) and against the defendants therein. @ 836</i>	In the leading case issues no. 5(a), 5(b), 5(c), 5(d), 5(e), 5(f), 7(b), 17, 18, 20(a), 20(b), 23, 24, 25 and 26 in O.O.S No. 4 of 1989 relate to the above issues. Accordingly, in view of the findings in the leading case, issues no. 7(a), 7(b) and 16 are decided. @ 3495 <i>[Issues 5(a), 5(c), 5(d), 17 in OS-4 stand decided by the learned Civil Judge in the order dated 21.04.1966. @ 2998 & 3035</i> <i>There is no effect of the judgment of Ghulam Abbas's case on the finding of Civil Judge recorded on 21.4.1966 [OS 4 - Issue 18] @ 3036</i> <i>U.P. Act No. 13 of 1936 has no application to the right of Hindus about their worship. [OS-4 - Issue No. 5(b)] @2998</i> <i>Since the Waqf Board has no right to maintain the present suit, the suit was not maintainable under U.P. Muslim Waqfs Act, 1960 also. The plea that under Section 19(q) of Waqf Act, the suit could be filed by the Board is of no avail for the reasons that the property was not validly registered by complying with the provisions of Section 5(1) of Muslim Waqf Act, 1936. [OS - 4 - Issues 5(e) and 5(f)] @ 3020</i> <i>It may conclusively be said that the plaintiffs have failed to point out that Mohd. Asghar</i>
Issue No. 7(b) :- Is the said notification final and binding? Its effect.	Concur with Agrawal, J		

			<p><i>was contesting the case in representative capacity, but on the other hand he was contesting the case in his personal capacity. [OS 4 - Issue 7(b)] @ 3022</i></p> <p><i>For want of valid notification under Section 5(1) of the Muslim Waqf Act, 1960 and the United Provinces Muslim Waqfs Act, 1936, the property cannot be deemed to be a Waqf Property. [OS 4 - Issues 22 & 23] @ 3060-3061</i></p> <p><i>It transpires that the case of the defendants that they adversely possessed the property in suit leave no room for doubt that the property in suit lost its sacred character as a Mosque. Moreover, the disputed structure has already been demolished. Accordingly, this place cannot be called as a Mosque and Muslims can not use the open place as a Mosque to offer prayers. [OS -4 - Issues 25 & 26] @3062]</i></p>
<p>Issue No. 8 :- Have the rights of the plaintiffs extinguished for want of possession for over 12 years prior to the suit?</p>	<p>As both parties were found in joint possession, this question not decided @109</p>	<p>3052. In order to decide issue 8 (Suit-3), whether the rights of plaintiff have extinguished for want of possession over 12 years prior to the suit it has to be seen as to in which capacity the plaintiffs are claiming possession, what they have proved and only then the question of extinction will arise. A right extinguished, if somebody is deprived of possession of a property for more than 12 years under Section 28 of the LA 1963 and Section 27 of LA 1908 which are pari materia. The question of extinction of right would arise if somebody has right over the property and that too in the capacity as owner. If one is not owner of the property in question the occasion of loss of right or extinction of such right does not arise. In the case in hand since the plaintiffs have completely failed to show that they have right as owner over the property in dispute, or a title vested in the plaintiffs regarding the property in question, the occasion of loss of such right or</p>	<p>In view of the findings of issue no. 1B(c), 2, 4, 10, 11, 12, 13, 14, 15, 19(a), 19(b), 19(c), 27 & 28 no separate finding is required. Accordingly, the above issues are decided in terms of issues already decided in O.O.S. No. 4 referred to above. @ 3494</p> <p>[Findings on said issues in OS 4 are reproduced above w.r.t Issue No. 2]</p>

		<p>extinction of such right does not arise at all. It is also not the case where the defendants have admitted title or ownership of the plaintiffs and hence they have no occasion to lead any evidence to prove such title. Had it been so, something could have been said and there could have been an occasion for this Court to consider whether the plaintiffs had the possession in the property in dispute for preceding 12 years prior to the date of filing of the suit or not. @ 1683</p> <p>3071. ... It appears to us, that, no person was restricted from entering the premises in dispute (inner courtyard) and in fact there was no restriction at all whatsoever to any one's visit to the premises in dispute (inner courtyard) for the purpose of worship. The mere entry of Muslims in the premises in dispute in such manner, by no mean can be termed as 'possession' what to say of "exclusive possession" so as to meet the requirement of plea of adverse possession. @ 1689</p> <p>3074. However, as we have already said, the Hindus continue to visit inner courtyard for the purpose of worship. It may be said that the members or people of Nirmohi Akhara were not included in those persons, i.e., Hindus. The nature of worship has also been clarified by some of the witnesses that they used to worship the place which they believe as birthplace of Lord Rama in inner courtyard as also images of Gods and Goddesses carved on the black Kasauti stone pillars which were there in the disputed building in the inner courtyard. Therefore, entry of plaintiffs in the inner courtyard as a mere worshipper atleast till the date when the property was attached may not be doubted but the issue in question is about extinction of their rights which means the right in the capacity of the owner or title as contemplated under Section 27 of LA 1908. In this context we find that the plaintiffs have failed to prove any such right, and the question of extinction thereof does not arise. @ 1690</p> <p>3075. The suit having been filed in 1959. It cannot be said that in the preceding 12 years the plaintiffs never</p>	
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		had possession over the property in dispute (inner courtyard). Neither the plaintiffs could discharge burden of proof that they own the property in dispute nor the defendants could prove by leading trustworthy evidence that the plaintiffs were the owner but remain dispossessed from the property in dispute for over 12 years and that prior or upto the date of the suit, defendants fulfilled all the requirement to clear the plea of adverse possession. Issue no. 8 (Suit-3) is decided accordingly in negative. @ 1690	
Issue No. 9 :- Is the suit within time?	Not barred @ 87	<p>2569. The plaintiffs, in para 10 of the plaint dated 17.12.1959 (Suit-3) have pleaded that cause of action for the suit arose on 5th January, 1950 when defendant No. 4 (City Magistrate, Faizabad) illegally took over the management and charge of the temple with the articles kept therein and entrusted the same to the receiver-defendant No.1 @ 1514</p> <p>2578. We have discussed in detail that possession taken by a Receiver pursuant to an attachment order u/s 145/146 Cr.P.C. does not amount to deprivation of possession to the real owner but the Receiver holds property on behalf of the true owner. Assuming that any cause of action the plaintiffs had, the same could have been enforced firstly by showing their title or seeking a declaration about title, particularly when the title dispute had arisen, inasmuch as, the Muslim parties had already filed their objections claiming that the entire premises, i.e., inner and outer courtyard was a mosque and this was also being contested in another suit, i.e., suit no. 1. The plaintiffs have not shown anything as to how they got title on the property in dispute. The prayer in effect made by the plaintiffs is nothing but a circuitous way of wriggling out of the real question of title and possession knowing it well that the declaration of title has already met the fate i.e. stand barred by limitation. There is no dispossession of plaintiffs by any person, either unauthorisedly or otherwise. Also there is no question of discontinuation of possession. The question of adverse possession does</p>	<p>The instant suit was filed on 17.12.59, admitting that the property was attached on 29.12.49. The suit is covered by Article 120 of the Limitation Act, 1908. It should have been filed within six years of the institution of the suit.</p> <p>This issue is identical to the issue no. 3 decided in O.O.S. No. 4 of 1989. Accordingly, the issue is decided in terms of the finding of issue no. 3 of O.O.S. No. 4 of 1989. @ 3495</p> <p>[OS 4 - Finding on Issue 3 @ 2998]</p>

		<p>not arise. Therefore, Arts. 142 and 144 rightly have been conceded inapplicable. In the absence thereof the only provision which would be applicable in suit-3 is Art. 120. @ 1516</p> <p>2579. The question of continuing wrong also would not apply in the case in hand, inasmuch as, the law laid down by the Calcutta High Court in Panna Lai (Supra) could have been applicable if the plaintiffs could have shown to be the true owner of the property in dispute (i.e. inner courtyard) and not otherwise. @ 1516</p> <p>2580. Sri Verma stated that in the revenue entries, the name of the Mahant of Nirmohi Akhara was directed to be entered in 1941 and this shows the title of the plaintiffs over the entire property in dispute. We find no reason to agree. An entry in revenue record does not confer any title. When the dispute of title was already raised, the plaintiffs had to get this dispute settled in one or the other way failing which they would not succeed in claiming possession of the property in dispute (i.e. inner Courtyard). In any case, since Arts. 144, 142 and 47 are inapplicable and the counsel for the plaintiffs has also not been able to show any continuing wrong in the matter, we find that the suit is barred by limitation vide Art. 120 of the Limitation Act. Issue No. 9 (Suit-3) is accordingly answered in negative and against the plaintiffs 41 (Suit-3). @ 1516</p>	
Issue No. 10(a) :- Is the suit bad for want of notice u/s80C.	Concur with Agrawal, J	621. ... Suit is not barred for want of notice under Section 80 C.P.C. and Issue 10 (a) is answered accordingly. @ 666	Issues No. 10(a) and 10(b) are interrelated and they can be decided at one place. It has been contended on behalf of plaintiff that the suit was instituted after giving a valid notice under Section 80 of C.P.C. On behalf of defendants it has been denied but they have failed to substantiate as to how they were not served with the notice before institution of the suit. It further provides that it is not the case of the plaintiffs that they were not served with the notice nor it
Issue No. 10(b) :- Is the above plea available to contesting defendants?	Concur with Agrawal, J	644. The entire issue 10 (a) and 10 (b) (Suit-3) is, accordingly, decided in favour of plaintiffs (Suit-3). We hold that a private defendant cannot raise objection regarding maintainability of suit for want of notice under Section 80C.P.C. @ 670	

			has been alleged from their side that the notice was defective. Consequently, there is no material before this Court to substantiate the plea raised before this Court by the defendants. Issue No. 10(a) and 10(b) are decided, accordingly, in favour of the plaintiff and against the defendants. @ 3495
Issue No. 11 :- Is the suit bad for non-joinder of necessary defendants?	Concur with Agrawal, J	1292. None has pressed the above issues inasmuch as neither any submissions have been advanced as to who is the necessary party not impleaded in the suit rendering it bad for non-joinder nor the learned counsels for the defendants have pressed for special cost and on the contrary very fairly have said that the decision of the suit at the earliest is itself the biggest cost to them. No arguments have been advanced with respect to the valuation and the Court fees in the matter. We, therefore, answer issues no. 11 and 12 (Suit-3) in negative, i.e., in favour of the plaintiffs (Suit-3). Issue no. 15 (Suit-3) is answered in affirmance, i.e., in favour of the plaintiff (Suit-3). @ 909	This issue is identical to issue no. 21 of O.O.S. No. 4 of 1989. In view of the finding on the leading case, the issue is decided accordingly. @ 3495 <i>[No effective relief can be granted without arraying the deities as parties in this suit and no effective decree can be passed against the deities, who are installed and worshipped prior to the filing of the suit. Suit is bad for non-joinder of the necessary parties. [OS 4 - Issue no. 21] @3060]</i>
Issue No. 12 :- Are defendants entitled to special costs u/s 35 C.P.C.?	Concur with Agrawal, J		The plaintiffs are not entitled for the relief claimed but on behalf of the defendants no case for special costs is made out. The suit is liable to be dismissed with easy cost. @ 3496
Issue No. 13 :- To what relief, if any, is the plaintiff entitled?	That in view of the above both the parties are declared to be joint title holders in possession of the entire premises in dispute and a preliminary decree to that effect is passed with the condition that at the time of actual partition by meets and bounds at the stage of preparation of final decree the portion beneath the Central dome where at present make sift temple stands will be allotted to the share of the Hindus. @116	4557. In view of our findings in respect of issues no. 2, 3, 4, 9 and 14 the plaintiff, Suit-3, in our view, is not entitled to any relief. @ 2868	
Issue No. 14 :- Is the suit	Concur with Agrawal, J	4486. This issue has arisen for the reason that the property in dispute was attached and handed over to	On behalf of defendants it has nowhere been argued as to how the suit has wrongly

not maintainable as framed?		the Receiver pursuant to a statutory order passed by the Magistrate under Section 145 Cr.P.C. on 29.12.1949. If the plaintiff (Suit-3) had any grievance, it could have filed objection before the Magistrate inasmuch order of attachment was a preliminary order and was subject to the final order under Section 145(2) Cr.P.C., but no such objection appears to have been filed by the plaintiff (Suit-3) before the Magistrate. The plaintiffs did not seek any declaration about its title or status and without determining the same, the Civil Judge could not have directed handing over charge from the Receiver to the plaintiff. It is for this reason, in our view, Suit-3 is not maintainable. The issue is answered accordingly. @ 2847	been framed. The suit was properly registered. No material has been placed before this Court to show as to how the suit is not maintainable. Consequently, issue no. 14 is decided in favour of the plaintiffs and against the defendants. @ 3495
Issue No. 15 :- Is the suit property valued and Court-Fee paid sufficient?	Concur with Agrawal, J	Issue no. 15 (Suit-3) is answered in affirmance, i.e., in favour of the plaintiff (Suit-3). @ 909	This issue has already been decided which shall form part of the judgement. @ 3496
Issue No. 16 :- Is the suit bad for want of notice u/s 83 of U.P. Act 13 of 1936?	Concur with Agrawal, J	<p>1195. Learned counsel for the defendant (Suit-3) neither could substantiate their case to support the above issue nor in fact could place anything before this Court to assist us to consider the above issue in an effective manner. @ 880</p> <p>1196. In fact there is no Section 83 in 1936 Act. ... @ 880</p> <p>1197. However, there is another Section 53 in 1936 Act which contain some provision with reference to notice ... @ 880</p> <p>1198. From a bare perusal of Section 53 of 1936 Act, it is evident that its scope and purpose is wholly different. Even otherwise, the requirement of notice under Section 53 in 1936 Act is akin to Section 80 CPC. ... Without considering the question as to whether the relief sought in Suit-3 would attract Section 53 or not; and, proceeding by assuming that Section 53 would apply, we are of the view that this provision has been made for the benefit of Central Board concerned in particular and Muslim communities in general. It is</p>	<u>Same as findings on Issue 7(a) and 7(b) above</u>

		always open to a party for whose benefit the provisions has been made to waive such benefit. ... following the reasons as are applicable to Section 80 CPC, we are of the view that the benefit under Section 53 can also be waived. If non-issuance of notice and defect under Section 53 is not pressed by the concerned Board before the Court, non-compliance of Section 53 would not vitiate the suit. The issue is answered accordingly. @ 881	
Issue No. 17 :- (added by High Court order dated 23.2.96) “Whether Nirmohi Akhara, Plaintiff, is Panchayati Math of Rama Nand sect of Bairagis and as such is a religious denomination following its religious faith and per suit according to its own custom.”	Concur with Agrawal, J	799. We accordingly, in view of the above discussion, decide the issue no. 17 (Suit-3) in favour of the plaintiffs by holding that Nirmohi Akhara, plaintiff no. 1 is a Panchayati Math of Ramanandi Sect of Vairagi and as such is a religious denomination following its religious faith and pursuit according to its own custom. We however further hold that its continuance in Ayodhya find sometimes after 1734 AD and not earlier thereto. @ 751	Thus, on the basis of the testimony of these two witnesses and when there is no proper challenge on the part of the defendants, I hold that Nirmohi Akhara is a Panchayati of Ramanandi sect of Baragies and as such is religious denomination. The custom has already been registered in the year 1949. Issue no. 17 is decided in favour of the plaintiff and against the defendants. @ 3496

SUMMARY OF FINDINGS IN OS-4

OOS No.4 of 1989 (earlier registered as Regular Suit No.12 of 1961)

PLAINTIFF	DEFENDANTS																				
<ul style="list-style-type: none"> - Sunni Central Board of Waqfs, U.P., Lucknow (hereinafter referred to as “Sunni Board”) through Shah Ghyas Alam, it's Secretary and nine others, namely, Molvi Mohammad Qasim, Haji Mohammad Ehtaram Ali, Molvi Mohammad Faiq, Molvi Mohammad Naseer, Shahabuddin, Mohd. Hashim, Vakiluddin, Mahmud Ahmad and Zahoor Ahmad were impleaded as Plaintiffs no. 2 to 10 respectively. - Haji Mohammad Ehtaram Ali, Molvi Mohammad Faiq and Molvi Mohammad Naseer died and were not substituted. Therefore, their names have been struck off/deleted under the orders of the Hon'ble High Court. Plaintiff no. 2, Molvi Mohammad Qasim, Plaintiff no. 6, Shahabuddin, Plaintiff no. 8, Vakiluddin and Plaintiff no. 10, Zahoor Ahmad have also died and in their place Mohd. Siddiq, Ziauddin, Maulana Mahfoozur Rahman and Farooq Ahmad have been impleaded as Plaintiffs no. 2/1, 6/1, 8/1 and 10/1 respectively; - Accordingly, besides Sunni Central Waqfs Board, presently, there were, at the time of the High Court judgement, only six more plaintiffs. 	<p>10 defendants were impleaded initially but thereafter many have been added, substituted and deleted. The defendants before the Hon'ble High Court were as follows:</p> <table> <tr> <td>1. Sri Gopal Singh Visharad</td><td>11. President, Maha Pradeshik Sabha</td></tr> <tr> <td>2. Mahant Suresh Das</td><td>12. President, All India Sanatan Dharm Sabha,</td></tr> <tr> <td>3. Nirmohi Akhara</td><td>13/11. Dharam Das</td></tr> <tr> <td>4. Mahanth Nirmohi Akhara</td><td>14. Pundrik Misra</td></tr> <tr> <td>5. The State of Uttar Pradesh</td><td>17. Ramesh Chandra Tripathi</td></tr> <tr> <td>6. The Collector, Faizabad</td><td>18. Mahant Ganga Das</td></tr> <tr> <td>7. The City Magistrate, Faizabad</td><td>19. Shri Swami Govindacharya</td></tr> <tr> <td>8. The Superintendent of Police, Faizabad</td><td>20. Madan Mohan Gupta</td></tr> <tr> <td>9. B. Priya Dutt</td><td>22. Umesh Chandra Pandey</td></tr> <tr> <td>10. President, All India Hindu Maha Sabha</td><td></td></tr> </table>	1. Sri Gopal Singh Visharad	11. President, Maha Pradeshik Sabha	2. Mahant Suresh Das	12. President, All India Sanatan Dharm Sabha,	3. Nirmohi Akhara	13/11. Dharam Das	4. Mahanth Nirmohi Akhara	14. Pundrik Misra	5. The State of Uttar Pradesh	17. Ramesh Chandra Tripathi	6. The Collector, Faizabad	18. Mahant Ganga Das	7. The City Magistrate, Faizabad	19. Shri Swami Govindacharya	8. The Superintendent of Police, Faizabad	20. Madan Mohan Gupta	9. B. Priya Dutt	22. Umesh Chandra Pandey	10. President, All India Hindu Maha Sabha	
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Suit in representative capacity: *Vide order dt.08.08.1962, an order was passed permitting the **Plaintiffs to sue in their representative capacity on behalf of Muslims and Defendants Nos.1 to 4 were also permitted to be sued in the representative capacity on behalf of Hindus.***

Reliefs sought for:

(i) 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 'Babari Masjid' and that the land adjoining the mosque shown in the sketch map by letters E F G H is a public Muslim grave yard as specified in para 2 of the plaint may be decreed.

(ii) That in case in the opinion of the Court **delivery of possession** is deemed to be the proper remedy, a decree for delivery of possession of the mosque and graveyard in suit by removal of the idols and other articles which the Hindus may have placed in the mosque as objects of their worship be passed in plaintiff's favour, against the defendants.

(iii) That the statutory Receiver be commanded **to hand over the property** in dispute described in the Schedule 'A' of the Plaint by removing the unauthorised structures erected thereon.

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
<p>Issue No. 1 :- Whether the building in question described as mosque in the sketch map attached to the plaint (hereinafter referred to as the building) was a mosque as claimed by the plaintiffs? If the answer is in the affirmative –</p> <p>(a) When was it built and by whom-whether by Babar as alleged by the plaintiffs or by Meer Baqui as alleged by defendant No. 13?</p>	<p>Accordingly, in such scenario the only finding which may be recorded is that till 1934 Muslims were offering regular prayers and since 1934 till 22.12.1949 only Friday prayers in the premises in dispute. However, offering of only Friday prayers is also sufficient for continuance of possession and use. @ 100</p>	<p>1682. ... The plaintiffs have failed to prove that the building in dispute was built by Babar. Similarly defendant no.13 has also failed to prove that the same was built by Mir Baqi. The further question as to when it was built and by whom cannot be replied with certainty since neither there is any pleadings nor any evidence has been led nor any material has been placed before us to arrive at a concrete finding on this aspect. However, applying the principle of informed guess, we are of the view that the building in dispute may have been constructed, probably, between 1659 to 1707 AD i.e. during the regime of Aurangzeb. @ 1100-1101</p> <p>3404 - 3409. - Building in dispute always known as 'mosque' @ 1930-1932</p>	<p>that on the basis of revenue records also and other documents, it can conclusively be said that Janmasthan was taken into consideration. Thus, on the basis of the opinion of the experts, evidence on record, circumstantial evidence and historical account from all or any angle, it transpires that the temple was demolished and the mosque was constructed at the site of the old Hindu temple by Mir Baqi at the command of Babur. Issue Nos. 1 and 1(a) are decided in favour of the defendants and against the plaintiffs. @3243</p>
<p>Issue No. 1 (b) Whether the building had been constructed on the site of an alleged Hindu temple after demolishing the same as alleged by defendant no. 13? If so, its effect?</p>	<ul style="list-style-type: none"> - No temple was demolished for constructing the mosque @103 - Until Mosque was constructed, said site was not considered as birth place of Lord Ram @103 - Very large area was considered to be the birth place @103 - For sometime before 1949, Hindus started believing that exact place of birth was below the central dome @104 	<p>4055. The ultimate inference, which can reasonably be drawn by this Court from the entire discussion and material noticed above, is:</p> <p>(i) The disputed structure was not raised on a virgin, vacant, unoccupied, open land.</p> <p>(ii) There existed a structure, if not much bigger than at least comparable or bigger than the disputed structure, at the site in dispute.</p> <p>(iii) The builder of the disputed structure knew the details of the erstwhile structure, its strength, capacity, the size of the walls etc. and therefore did not hesitate in using the walls etc. without any further improvement.</p> <p>(iv) The erstwhile structure was religious in nature and that too non-Islamic one.</p> <p>(v) The material like stone, pillars, bricks etc. of the erstwhile structure was used in raising the disputed structure.</p> <p>(vi) The artefacts recovered during excavation are mostly such as are non-Islamic i.e. pertaining to Hindu religious places. Even if we accept that some of the</p>	<p>it can conclusively be held that the disputed structure was constructed on the site of old structure after the demolition of the same. There is sufficient evidence to this effect that the structure was a Hindu massive religious structure. Accordingly, issue no. 1(b) is decided in favour of the defendants and against the plaintiffs. @2970</p>

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
		<p>items are such which may be used in other religions also. Simultaneously no artefacts etc., which can be used only in Islamic religious place, has been found.</p> <p>4056. The claim of Hindus that the disputed structure was constructed after demolishing a Hindu temple is pre-litem and not post-litem hence credible, reliable and trustworthy. ...</p> <p>4057. This belief is existing for the last more than 200 years from the date the property was attached and therefore, having been corroborative by the above it can safely be said that the erstwhile structure was a Hindu temple and it was demolished whereafter the disputed structure was raised.</p> <p>4058. ... The de facto position is that after demolition, a building was constructed in the shape of a mosque. It is also de facto position that despite construction of such building in the shape of the mosque, it was used and continued to be visited by Hindus for offering worship, Puja and Darshan since according to their belief, they treated it to be the birth place of Lord Rama in respect where to there was no alternative and according to their belief, the piety and reverence, the place is permanent and not liable to be disturbed in any manner by any such act.</p> <p>@2507-2508</p>	
<p>Issue No. 1-B(a) Whether the building existed at Nazul plot no. 583 of the Khasra of the year 1931 of Mohalla Kot Ram Chandra known as Ram Kot, City Ayodhya (Nazul estate?) Ayodhya? If so its effect thereon?"</p>	<p>As the structure standing at the time of filing of suit has been demolished, question of identification of the property and plot does not arise. Now site is to be ascertained by the possession of the present makeshift temple constructed on 6/7 December, 1992 under the Central Dome and property shown by letters A-F in map prepared by Commissioner in suit No.1 is premises in question @109</p>	<p>4455. Despite the fact that building is shown to continued as Nazul plot no. 583 of Khasra of the year 1931 of Mohalla Kot Ram Chandra, we find that it will not make any impact upon the claim of the various parties of the two communities since the State of U.P. is not claiming any right over the property in dispute and has specifically taken a stand of no contest. @2836-2837</p>	<p>Thus the revenue entries may be presumed to be correct as none of the parties adduced any evidence against them. The property could not be demarcated, but it is admitted that the same was acquired. In view of the aforesaid circumstances, it can be said that the property existed on Nazul plot No. 583. Issues no. 1-B(a) is decided accordingly. @2971</p>

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
Issue No. 1-B(b) :- Whether the building stood dedicated to almighty God as alleged by the plaintiffs?	<ul style="list-style-type: none"> - Valid mosque @107 - Dedication by way of user in the name of God @ 107 <p>It is a Sunni Waqf @ 108</p>	3429. - Left unanswered as being irrelevant. @ 1938	Thus, in view of the circumstances referred to above, issue no. 1-B(b) is decided against the plaintiffs and this Court is of the view that the building was not dedicated to the almighty as alleged by the plaintiffs contrary to the injunctions of Quran and other religious material referred to above. @2976
Issue no. 1-B (c):- Whether the building had been used by the members of the Muslim community for offering prayers from times immemorial ? If so, its effect? Issues relating to graveyard alleged to exist around the premises in dispute (i.e. issue No.1-A, 1-B(d) of Suit No.4) were deleted by order of HC dated 23.02.1996 in view of Supreme Court judgment in Dr. M. Ismail Farooqi v. Union of India, 1994 (6) S.C.C. 360 wherein the Supreme Court confined the dispute only to the premises in dispute.	Accordingly, in such scenario the only finding which may be recorded is that till 1934 Muslims were offering regular prayers and since 1934 till 22.12.1949 only friday prayers in the premises in dispute. However, offering of only friday prayers is also sufficient for continuance of possession and use. @ 100	3448. ... members of both communities had been visiting the building in dispute in the inner courtyard. Regarding the visit of Hindus, the evidence which we have, commences from the second half of 18 th century i.e. from the Tieffnthaller travels account and so far as the muslims are concerned, such evidence is available since 1860, the issue is answered accordingly. Since both the parties have been using the building in dispute in accordance with their system of worship, belief and faith, both continuing for last more than eighty years before filing of the first suit i.e. Suit-1 and therefore, it can be said that the premises within the inner courtyard and the building in dispute was not restricted for user of any one community. @1975-1976	Thus a mosque if adversely possessed by a Non-Muslim, it will loose its sacred character as a mosque. The plaintiffs are not in possession over the property in suit and filed the suit for recovery of the possession. There is no reliable evidence that the prayers were offered by Muslims from times immemorial. Plaint averments are contrary to the same. Issue No. 1-B(c) is decided against the plaintiffs. @2976
Issue No. 2:- Whether the plaintiffs were in possession of the property in suit upto 1949 and were dispossessed from the same in 1949 as alleged	Both parties were/are joint title holders in possession @107	3076. ... Suits-1 and 3 were confined to the premises covered by the inner courtyard of the disputed site. Suit-4 relates to the entire premises, i.e., inner and outer courtyard both. @ 1691 3107. ... prior to 1855, there is no evidence of possession by Muslims of the property in suit. They	The plaintiffs have failed to prove that they were in exclusive possession of the property in suit up to 1949 and they were dispossessed from the same in the year 1949. Hindus have proved that they were regularly making prayers at the birth place of Lord Ram and they were in exclusive possession of the outer courtyard and visiting inner court yard for

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
in the plaint ?		<p>did not have possession of the premises in outer Courtyard atleast since 1856-57 when the dividing wall was raised by the Britishers. They at the best might have enjoyed only the right of passage so as to enter the inner courtyard. The entry in the outer courtyard using part of the premises as passage would not constitute 'possession'. ... The possession in the outer courtyard was open and to the knowledge of Muslim parties, inasmuch, a person, claimed himself to be the Mutwalli of the Mosque in dispute, made several complaints, as is evident from the documents of 1858 and onwards, but the fact remains that those structures continued in the said premises and the entry of Hindus and their worship also continued. <u>In this context, the claim of the plaintiffs that the entire property in dispute i.e. the outer and inner courtyard had been in their possession upto 1949 cannot be accepted.</u></p> <p>3108. ... so far as the inner courtyard is concerned, though it cannot be said that the muslims never visited the premises in the inner courtyard or no Namaj ever was offered therein till 1949, but that by itself would not constitute possession of the property in dispute in the manner the term 'possession' is known in law. This is a beneficiary enjoyment by the plaintiffs muslim parties shouldering with their Hindu brethren and visiting premises within the inner courtyard for the purpose of worshipping in their own way.</p> <p>3109. ... The status of Hindus and Muslims both, in visiting the place in dispute is common i.e. worshippers. The only difference is that Hindus visit entire property while for Muslims it was confined to inner courtyard.</p> <p>3110. - Plaintiffs have failed to prove that suit property was in their possession up to 1949.</p> <p>3111. - So far as dispossession from the property in</p>	<p>offering prayers. Muslims have failed to prove that they were in possession over the property in suit from 1528 A.D. continuously, openly and to the knowledge of the defendants and Hindus in general. The defendant no. 3 has also failed to prove that he was in exclusive possession of the disputed site, but Hindus were in exclusive possession of the outer courtyard i.e. part of the disputed site.</p> <p><u>In view of my findings referred to above, issue nos. 2, 4, 10, 15 and 28 are decided against the plaintiffs. @3378</u></p>

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
		suit in 1949 is concerned, we are of the view that the question of dispossession of plaintiffs from outer courtyard does not arise since it was not in their possession in 1949 and prior thereto, as we have already discussed. So far as the inner courtyard is concerned they have discontinued with the possession atleast from 23 rd December, 1949 and onwards while possession of Hindus which was earlier enjoyed by them alongwith members of Muslim communities is continue. So far as dispossession is concerned, neither the plaintiffs have alleged that they were dispossessed at any point of time nor have proved the same. Issue No.2 is therefore answered in negative and against the Plaintiffs. @ 1745-1746	
Issue No. 3:- Is the suit within time?	Not barred @ 87	<p>2395. - Article 142 doesn't apply.</p> <p>2396. - Article 144 doesn't apply. @ 1452</p> <p>2414 & 2430 & 2439 - Suit governed by Article 120; no continuing cause of action. @ 1457, 1460, 1461</p> <p>2443. - Plaintiffs' title threatened many times and the period was allowed to lapse repeatedly which was more than the statutory period of limitation. @ 1463-1464</p> <p>2452. - Suit is barred under Article 120. @ 1466</p> <p>2554 & 2555 & 2564. - With respect to outer courtyard, Suit-4 is barred by limitation. @ 1507, 1508 & 1513</p> <p>2558. - Inner courtyard not in exclusive possession of Muslims; virtually used jointly by members of both communities; no occasion for dispossession of Muslims to attract Article 142. @ 1508</p>	In view of the discussions, referred to above, it transpires that the claim of the plaintiffs is governed by Article 120 of the Limitation Act, 1908 and not by Articles 142 and 144 of the Limitation Act, 1908. Therefore, the suit could only be filed within 6 years, therefore, the suit is barred by limitation. Issue No. 3 is decided against the plaintiffs and in favour of the defendants. @2998
Issue No. 4:- Whether the Hindus in general and the devotees of 'Bhagwan Sri Ram in particular have perfected right of prayers at the site by adverse and	<p>Both parties were/are joint title holders in possession @107</p> <p>As both parties were found in joint possession, this question not decided @109</p>	<p>3115. ... so far as the outer courtyard is concerned, it may be said that the right of prayer by Hindus had perfected having continued exclusively for more than a century but the same would not apply so far as the premises within the inner courtyard is concerned, which has been used by both the sides may be more frequently by Hindus and occasionally or</p>	The plaintiffs have failed to prove that they were in exclusive possession of the property in suit up to 1949 and they were dispossessed from the same in the year 1949. Hindus have proved that they were regularly making prayers at the birth place of Lord Ram and they were in exclusive possession of the outer courtyard and visting inner court yard for

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
continuous possession as of right for more than the statutory period of time by way of prescription as alleged by the defendants?		intermittently by muslims. @ 1747	<p>offering prayers. Muslims have failed to prove that they were in possession over the property in suit from 1528 A.D. continuously, openly and to the knowledge of the defendants and Hindus in general. The defendant no. 3 has also failed to prove that he was in exclusive possession of the disputed site, but Hindus were in exclusive possession of the outer courtyard i.e. part of the disputed site.</p> <p>In view of my findings referred to above, issue nos. 2, 4, 10, 15 and 28 are decided against the plaintiffs. @3379</p>
Issue No. 5(a):- Are the defendants estopped from challenging the character of property in suit as a waqf under the administration of plaintiff No.1 in view of the provision of 5(3) of U.P. Act 13 of 1936 ? (This issue has already been decided in the negative vide order dated 21.4.1966 by the learned Civil Judge)	Concur with Agarwal, J	1068. - Stood decided on 21.04.1966. @ 830	This issue has already been decided in the negative vide order dated 21.4.1966 by the learned Civil Judge. @2998
Issue No.5(b):- Has the said Act no application to the right of Hindus in general and defendants in particular, to the right of their worship?	Concur with Agarwal, J	<p>1139. In our view, since 1936 Act does not provide or control the right of worship of Hindu or Muslims, the rival dispute between the persons who are not Muslims, in the matter of an immovable property, whether it is waqf or not would not be governed by the provisions of 1936 Act but it would be open to non-muslim party to stake his claim without being affected in any manner by the provisions of 1936 Act. @ 861</p> <p>1150. ... Moreover, in this particular case since the</p>	Consequently, U.P. Act No. 13 of 1936 has no application to the right of Hindus about their worship. Issue No. 5(b) is decided against the plaintiffs and in favour of the defendants. @2998

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
		notification itself has been held invalid so far as the property in question is concerned, meaning thereby, in the eyes of law, there was no notification under Section 5(1) of 1936 Act and, therefore, also the restriction or benefit if any under the Act would not be applicable to either of the parties. No further provision has been shown to us from 1936 Act to affect rights of Hindus in general ... @866	
Issue No.5(c):- Were the proceedings under the said Act conclusive? (This issue has already been decided in the negative vide order dated 21.04.1966 by the learned civil Judge.)	Concur with Agarwal, J	1068. - Stood decided on 21.04.1966. @ 830	This issue has already been decided in the negative vide order dated 21.4.1966 by the learned Civil Judge. @2998
Issue No.5(d):- Are the said provision of Act XIII of 1936 ultra-vires as alleged in written statement? (This issue was not pressed by counsel for the defendants, hence not answered by the learned Civil Judge, vide his order dated 21.04.1966).	Concur with Agarwal, J	1068. - Stood decided on 21.04.1966. 1069. - Issue 5(d) was not pressed. @ 830	This issue was not pressed by counsel for the defendants, hence not answered by the learned Civil Judge, vide his order dated 21.4.1966. @2999
Issue No.5(e):- Whether in view of the findings recorded by the learned Civil Judge on 21.04.1966 on issue no.17 to the effect that, "No valid notification under section 5(1) of the Muslim Waqf Act (No. XIII of 1936) was ever made in respect of the property in dispute", the	Concur with Agarwal, J	1166. - In agreement with <i>Anjuman Islamia v. Najim Ali and others</i> , AIR 1982 MP 17. 1167. ... Suit-4 cannot be said to be not maintainable provided the issue regarding the very nature of the disputed property whether it is a waqf or not is decided in favour of the plaintiffs (Suit-4) i.e. subject to the issue as to whether the disputed property is a waqf or not (relates to finding on Issue 6 in suit 3 as to whether the alleged mosque dedicated by Emperor Babar for worship by Muslims in general and made a public waqf property, was held in the negative) ... @ 870-871	In view of the finding of issue no. 5(e) it transpires that since the Waqf Board has no right to maintain the present suit, the suit was not maintainable under U.P. Muslim Waqfs Act, 1960 also. The plea that under Section 19(q) of Waqf Act, the suit could be filed by the Board is of no avail for the reasons that the property was not validly registered by complying with the provisions of Section 5(1) of Muslim Waqf Act, 1936. Issue No. 5(e) and 5(f) are decided against the plaintiffs. @3020

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
plaintiff Sunni Central Board of Waqf has no right to maintain the present suit?		See para 3124@1749; para 3296 @ 1878; Para3331@1908; para 3335@1909; para 3337@1901; 3345@1913; 3411@1932	
Issue No.5(f):- Whether in view of the aforesaid finding, the suit is barred on account of lack of jurisdiction and limitation as it was filed after the commencement of the U.P. Muslim Waqf Act, 1960?	Concur with Agarwal, J	<p>1201. ... It is true that notification issued under Section 5(1) of 1936 Act has been held to be invalid so far as the property in dispute is concerned but in case the property in dispute is found to be waqf, no provision in U.P. Act XVI of 1960 has been shown which may deprive the Sunni Central Waqf Board or other plaintiffs of Suit-4 to maintain the suit in respect to a property which they claim to be a 'waqf property' and to claim its possession in case it is not otherwise impermissible in law.</p> <p>1202. In view of above, we do not find any substance and decide issue 5 (f) (Suit-4) against the defendants and in favour of the plaintiffs (Suit-4) holding that the suit in question is not barred having been filed after the commencement of U.P. Act No.XVI of 1960. @ 881-882</p>	
Issue No. 6:- Whether the present suit is a representative suit, plaintiffs representing the interest of the Muslims and defendants representing the interest of the Hindus?	Concur with Agarwal, J	<p>1277. ... It is not disputed by learned counsel for the parties that the Civil Judge passed order dated 08.08.1962 under Order 1 Rule 8 CPC permitting plaintiffs to represent the interest of Muslims and the defendants to represent the interest of Hindus. The relevant part of the order says: <i>"I therefore allow appln 4-C and reject the objections 77-C & 97-C. The pltffs are permitted to sue representing the entire Muslim community and the pltffs are also permitted to sue the defdts no. 1 to 4 on behalf of and for the benefit of the entire Hindu community."</i> None has made any submission otherwise. The issue is answered accordingly in affirmance. @ 906</p>	<p>Accordingly, I hold that the present suit is a representative suit and plaintiff's are representing the interest of Muslims and defendants have been arrayed representing the interest of Hindus. On behalf of defendants no legal remedy was availed challenging the order passed by the learned Civil Judge dated 8.8.62 through which the permission to institute the suit was granted in terms of the provisions of Order 1 Rule 8 C.P.C. Issue no. 6 is accordingly decided in favour of plaintiff's and against the defendants. @3020</p>
Issue No. 7:- 7(a) Whether Mahant Raghubar Dass, plaintiff of Suit No. 61/280 of	Not res judicata @87,88 However, judgement of 1885 suit, admissions and assertions made or omitted to be made in the	874. ... we answer Issue No. 7 (a) (Suit-4) in negative and hold that there is nothing to show that Mahant Raghubar Das filed Suit-1885 on behalf of Janamsthan and whole body of persons interested in	Accordingly I hold that Mahant Raghubar Das filed the suit in his personal capacity. Issue no. 7(a) is decided against the plaintiffs and in favour of the defendants. @3021

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
1885 had sued on behalf of Janma-Sthan and whole body of persons interested in Janma-Sthan?	pleading of the said suits are admissible under Section 42 Evidence Act as well as Section 13 r/w Section 42 of Evidence Act @90	Janamsthan. @ 771	
Issue No.7(b):- Whether Mohammad Asghar was the Mutwalli of alleged Babri Masjid and did he contest the suit for and on behalf of any such mosque?		1066. ... It is thus matter of record that in Suit-1885 Mohammad Asghar was allowed to pursue the matter as Mutawalli of Babari Masjid. No party has disputed this factum which is purely a matter of record. ... The only issue before us whether he was impleaded and pursued Suit-1885 as Mutawalli of Babari Masjid which is a fact derived from the record of Suit-1885 and, therefore, has to be decided in affirmance particularly in view of the fact that nothing has been said by the defendants (Suit-4) to disprove or contradict it. @ 830	Thus, it may conclusively be said that the plaintiffs have failed to point out that Mohd. Asghar was contesting the case in representative capacity, but on the other hand he was contesting the case in his personal capacity. Issue No. 7(b) is also decided against the plaintiffs and in favour of the defendants. @3022
Issue No. 7(c):- Whether in view of the judgment in the said suit, the members of the Hindu community, including the contesting defendants, are estopped from denying the title of the Muslim community, including the plaintiffs of the present suit, to the property in dispute? If so, its effect?		Same as Issue 8	Consequently, the question of issue estoppel or of filing a suit in representative capacity is not evident from the facts of the case and plaintiffs have failed to discharge his onus to provide any material to substantiate his version before this Court. Accordingly, issue no. 7(c) is decided against the plaintiffs. @3022
Issue No. 7(d):- Whether in the aforesaid suit, title of the Muslims to the property in dispute or any portion thereof was admitted by plaintiff of that suit? If so, its effect?		876. ... We do not find any such admission therein nor such indication is discernible from the three judgments of the three Courts, namely, the Court of Sub Judge, Faizabad; the District Judge, Faizabad and Judicial Commissioner, Lucknow (Oudh). The learned Counsels for the defendants (Suit-1), namely, Sri Jilani and Sri Siddiqui also could not place anything wherefrom it can be said that Mahant Raghubar Das at any point of time admitted the title of Muslims to	Thus, with no stretch of imagination he can be said to be predecessor in suit. Consequently, admissions if any made in R.S. No. 61/280 of 1885, Mahant Raghubar Das v. Secretary of State of India would not bind the defendants. @3025

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
		the property in dispute or any portion thereof in Suit-1885. In the circumstances, we hold that the aforesaid issue to this extent has to be answered in negative that there is no admission by Mahant Raghubar Das, plaintiff of Suit-1885 about the title of Muslims to the property in dispute or any portion thereof. In absence of any such admission, the question of considering effect thereof does not arise. @ 771	
Issue No. 8:- Does the judgment of case No.61/280 of 1885, Mahant Raghubar Dass v. Secretary of State and others, operate as res judicata against the defendants in suit?		1059. ... the conclusion is inevitable that in no manner, it can be said that anything in Suit-1885 may be construed or taken as to operate as res judicata in the suits up for consideration before us. In fact, neither the principles of res judicata nor estoppel is attracted in any manner as the conditions precedent for attracting the said principles are completely lacking. It cannot be said that either the suits are barred by principle of res judicata or that Suit-1885 was filed on behalf of the whole body of persons interested in Janam Asthan and, therefore, all the Hindus are barred by the same. It also cannot be said that the defendants are estopped from denying the title of Muslim community including the plaintiff of Suit-4 to the property in dispute in view of the judgments of Suit-1885. @ 828	Consequently, the plaintiffs have failed to substantiate that the earlier judgment shall operate as res judicata against the defendants in the suit. Issue No. 8 is decided accordingly against the plaintiffs. @3035
Issue No.9 of Suit No.4 relating to service of valid notice under Section 80, C.P.C. has been deleted through order of Court dated 22/25.05.1990.	Deleted vide order dated May, 22/25, 1990). @3035		
Issue No. 10:- Whether the plaintiffs have perfected their rights by	As both parties were found in joint possession, this question not decided @109	3112. - covered by our findings already recorded in relation to issues 7 (Suit-1), 3 and 8 (Suit-3) and 2 (Suit-4)	The plaintiffs have failed to prove that they were in exclusive possession of the property in suit up to 1949 and they were dispossessed from the same in

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
adverse possession as alleged in the plaint?		Issue answered in negative and against the Plaintiffs and Muslims in general. @ 1746	<p>the year 1949. Hindus have proved that they were regularly making prayers at the birth place of Lord Ram and they were in exclusive possession of the outer courtyard and visting inner court yard for offering prayers. Muslims have failed to prove that they were in possession over the property in suit from 1528 A.D. continuously, openly and to the knowledge of the defendants and Hindus in general. The defendant no. 3 has also failed to prove that he was in exclusive possession of the disputed site, but Hindus were in exclusive possession of the outer courtyard i.e. part of the disputed site.</p> <p>In view of my findings referred to above, issue nos. 2, 4, 10, 15 and 28 are decided against the plaintiffs. @3379</p>
Issue No. 11:- Is the property in suit the site of Janam Bhumi of Sri Ram Chandraji?	<p>No temple was demolished for constructing the mosque @103</p> <p>Until Mosque was constructed, said site was not considered as birth place of Lord Ram @103</p> <p>Very large area was considered to be the birth place @103</p> <p>For sometime before 1949, Hindus started believing that exact place of birth was below the central dome @104</p>	<p>4407. ... for all practical purposes, this is the place of birth of Lord Rama. @ 2805</p> <p>4408. ... Can it be said that it is the entire premises at the site in dispute which can be said to be the place of birth of Lord Rama or within this premises there is a smaller area which actually believed by Hindus to be the place of birth. ... @ 2805</p> <p>4409. ... Hindu parties have virtually interchangeably used two terms which have different meaning, i.e., Birthplace temple and the birthplace. ... @ 2805</p> <p>4410. In other words, the precise issue, in terms of the "birthplace", as we could understand, is in the following terms:</p> <p>I. According to faith and belief of Hindus, a particular smallest area in Ayodhya which they treat as the sanctum sanctorum i.e 'Garbh Grah' that is where Lord Rama was born.</p> <p>II. A temple constructed in the area which included sanctum sanctorum and the place covered by that temple which is termed as 'Janam Bhumi temple' or</p>	<p>it is established that the property in suit is the site of Janm Bhumi of Ram Chandra Ji and Hindus in general and the defendants in particular had the right to worship Charan, Sita Rasoi, other idols and other object of worship existed upon the property in suit. It is also established that Hindus have been worshipping the place in dispute as Janm Sthan i.e. a birth place and visiting it as a sacred place of pilgrimage as a right since times immemorial. After the construction of the disputed structure it is not proved the deities were installed inside the disputed structure before 22/23.12.1949, but the place of birth is a deity. It is also proved that in the outer courtyard was in exclusive possession of Hindus and they were worshipping throughout and in the inner courtyard (in the disputed structure) they were also worshipping. It is also established that the disputed structure cannot be treated as a mosque as it came into existence against the tenets of Islam.</p>

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
		<p>'Ram Janam Bhumi temple.</p> <p>III. There is a complete unanimity amongst all Hindu parties as also deposed by their witnesses that under the central dome lie the sanctum sanctorum, i.e. 'Garbh-Grah' since lord Rama was born thereat and it was part of a bigger holy structure, i.e., a temple, which was constructed and known as "Janam Bhumi temple" or "Ram Janam Bhumi temple" which included the rest of the area occupied by the disputed structure. @ 2805</p> <p>4412. ... clear and categorical that the belief of Hindus by tradition was that birthplace of Lord Rama lie within the premises in dispute and was confined to the area under the central dome of three domed structure, i.e., the disputed structure in the inner courtyard. @ 2827</p> <p>4413. ... When the Hindu parties have referred to the entire disputed site as a place of birth, this Court can always find out and record a finding for, instead of the entire area, a smaller area within the same premises. The pleadings are not to be read in a pedantic manner but the Court has to find out substance therein as to whether the parties knew their case or not. The evidence adduced by the parties and what the witnesses have said on behalf of Hindu parties fortify the case set up by the defendants. @ 2827</p> <p>4418. ... the place of birth as believed and worshipped by Hindus is the area covered under the central dome of three domed structure, i.e., the disputed structure, in the inner courtyard of the premises in dispute. @ 2828</p>	<p>In view of the above findings issues No. 11, 13, 14, 19-a and 19-c are decided against the plaintiffs. @3454</p>
Issue No. 12:- Whether idols and objects of worship were place inside the building in the night intervening	<p>idols were kept on the pulpit inside the constructed portion/mosque for the first time in the night of 22nd/23rd December, 1949 @105</p>	<p>2108. The plaintiffs (Suit-4) have failed to prove that idols and objects of worship were placed inside the building as described in plaint by letters ABCD read with the map appended to the plaint in the night intervening 22nd/23rd December, 1949. Consistent</p>	<p>Thus, on the basis of evidence available on record, it transpires that right from the report of Vakil Commissioner in O.S. No. 61/280 of 1985 and also O.S. No. 2/1950 (O.O.S. 1 of 1989) it is established that inside the disputed structure no idol was found</p>

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
22 nd and 23 rd December, 1949 as alleged in paragraph 11 of the plaint or they have been in existence there since before? In either case effect?		<p>with the pleadings in plaint (Suit-4), the building denoted by the area ABCD of the map appended to the plaint (Suit-4), the idols and object of worship were existing even prior to 22nd December 1949 at Ram Chabutara, in the outer courtyard.</p> <p>2109. We accordingly answer Issue No.12 in the negative. @ 1299</p> <p><i>[*NOTE: It is respectfully submitted that this finding may require a closer examination. It appears that the Ld. Judge's view is that the idols and objects of worship existed prior to 22nd December, 1949 at the Ram Chabutra in the outer courtyard. Therefore the earlier part of the finding that "The plaintiffs (Suit-4) have failed to prove that idols and objects of worship were placed inside the building as described in plaint by letters ABCD read with the map appended to the plaint in the night intervening 22nd/23rd December, 1949" appears to be in the context of placing the idol, already existing in the outer courtyard, under the central dome in the inner courtyard, and not with regard to existence of the idol itself within the premises before such date.]</i></p>	<p>by Vakil Commissioner even in the year 1950. Thus, the contention of defendant no. 3 that the deities continued to exist is incorrect. The plaintiffs have proved that idols and object of worship were installed in the building in the intervening night of 22/23rd December, 1949. The effect of installation will be considered while considering the finding on other issues.</p> <p>Issue No. 12 is decided accordingly. @3243-3244</p>
Issue No. 13:- Whether the Hindus in general and defendants in particular had the right to worship the Charans and 'Sita Rasoi' and other idols and other objects of worship, if any, existing in or upon the property in suit?	Both parties were/are joint title holders in possession @107	4070. ... in the outer courtyard there were certain religious structures of Hindus which they were worshipping since long i.e. before 1885. The plaintiffs (Suit-4) having lost their right to interfere in such right of Hindus which has continued for such a long time, therefore, in respect to those religious structures, the answer would be affirmative. So far as the inner courtyard is concerned, there the idols were kept for the first time on 22/23 rd December, 1949. But that itself makes no difference for the reason that the place of birth of lord Rama, we have already been held to be a Swayambhu deity and worship of this place is continuing for the past several centuries, as we have already discussed while considering issues relating to site as birthplace and the existence of temple as also the issues pertaining	it is established that the property in suit is the site of Janm Bhumi of Ram Chandra Ji and Hindus in general and the defendants in particular had the right to worship Charan, Sita Rasoi, other idols and other object of worship existed upon the property in suit. It is also established that Hindus have been worshipping the place in dispute as Janm Sthan i.e. a birth place and visiting it as a sacred place of pilgrimage as a right since times immemorial. After the construction of the disputed structure it is not proved the deities were installed inside the disputed structure before 22/23.12.1949, but the place of birth is a deity. It is also proved that in the outer courtyard was in exclusive possession of Hindus and they were worshipping throughout and in the inner courtyard (in the disputed structure)
Issue No. 14:- Have the Hindus been worshipping the place in dispute as Sri Ram Janam Bhumi or Janam Asthan	No temple was demolished for constructing the mosque @103 - Until Mosque was		

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
and have been visiting it as a sacred place of pilgrimage as of right since times immemorial? If so, its effect?	<p>constructed, said site was not considered as birth place of Lord Ram @103</p> <ul style="list-style-type: none"> - Very large area was considered to be the birth place @103 - For sometime before 1949, Hindus started believing that exact place of birth was below the central dome @104 	to possession therefore, Hindus in general had been entering the premises within the inner courtyard, as a matter of right for the last several century, cannot be denied this right after such a long time. We therefore, answer issues 13 and 14 (Suit 4) in affirmative. @ 2521	<p>they were also worshipping. It is also established that the disputed structure cannot be treated as a mosque as it came into existence against the tenets of Islam.</p> <p>In view of the above findings issues No. 11, 13, 14, 19-a and 19-c are decided against the plaintiffs. @3454</p>
Issue No. 15:- Have the Muslims been in possession of the property in suit from 1528 A.D. Continuously, openly and to the knowledge of the defendants and Hindus in general? If so, its effect?	<p>Both parties were/are joint title holders in possession @107</p> <p>As both parties were found in joint possession, this question not decided @109</p>	3112. - covered by our findings already recorded in relation to issues 7 (Suit-1), 3 and 8 (Suit-3) and 2 (Suit-4). Issue answered in negative and against the Plaintiffs and Muslims in general. @ 1746	In view of my findings referred to above, issue nos. 2, 4, 10, 15 and 28 are decided against the plaintiffs. @3379
Issue No. 16:- To what relief, if any, are the plaintiffs or any of them, entitled?	<p>That in view of the above both the parties are declared to be joint title holders in possession of the entire premises in dispute and a preliminary decree to that effect is passed with the condition that at the time of actual partition by meets and bounds at the stage of preparation of final decree the portion beneath the Central dome where at present make sift temple stands will be allotted to the share of the Hindus.</p> <p>Order:-</p>	4553. - the question of entitlement of any relief to the plaintiff does not arise as the suit itself is liable to be dismissed. @ 2867	plaintiffs are not entitled for the relief claimed and the suit is liable to be dismissed, but defendants have failed to point out the circumstances under which they are entitled for special costs. @3474

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
	Accordingly, all the three sets of parties, i.e. Muslims, Hindus and Nirmohi Akhara are declared joint title holders of the property/premises in dispute as described by letters A B C D E F in the map Plan-I prepared by Sri Shiv Shanker Lal, Pleader/Commissioner appointed by Court in Suit No.1 to the extent of one third share each for using and managing the same for worshipping. A preliminary decree to this effect is passed. @116		
Issue No. 17:- Whether a valid notification under section 5(1) of the U.P. Muslim Waqf Act No.XIII of 1936 relating to the property in suit was ever done? If so, its effect? (This issue has already been decided by the learned Civil Judge by order dated 21.04.1966)	Concur with Agarwal, J	1068. - Stood decided on 21.04.1966. Held, "no valid notification under Section 5(1) of U.P. Moslim Waqf Act No. XIII of 1936 was ever made so far relating to the specific disputed property of the present suits at-hand. The alleged Government Gazette Notification paper No. 243/C read with the list paper No. 243/1A do not comply with the requirements of a valid notification in the eyes of law and equity" @ 830	This issue has already been decided by Civil Judge, Faizabad on 21.4.66. The finding has become final between the parties and is binding on the parties. @3035
Issue No. 18:- What is the effect of the judgment of their Lordships of the Supreme Court in Gulam Abbas and others v. State of U.P. and others, A.I.R.. 1981 Supreme Court 2198 on the finding of the learned Civil Judge recorded on 21 st April, 1966 on issue no. 17?	Concur with Agarwal, J	1176. ... the Apex Court, in fact, did not rely on the notification dated 26.2.1944 but instead held it to be of doubtful validity and probative value having not been issued in accordance with the procedure prescribed under Section 5 of 1936 Act. In our view, instead of upsetting the judgment of the learned Civil Judge, it, in fact, strengthened the said decision which has held that the notification dated 26 th February 1944 was not a valid notification in respect to property in dispute. In view of the above discussion, we have no manner of doubt that the Apex Court's decision in Gulam Abbas (supra) does not affect the finding of the learned Civil Judge on	Thus there is no effect of the judgment of Ghulam Abbas's case on the finding of Civil Judge recorded on 21.4.1966 on issue no. 17. Issue no. 18 is decided accordingly in favour of the defendants and against the plaintiffs. @3036

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
		Issue No. 17 (Suit-4) as contained in his judgement dated 21.4.1966, but on the contrary, support and strengthen his said finding. @ 875	
Issue No. 19 (a):- Whether even after construction of the building in suit deities of Bhagwan Sri Ram Virajman and the Asthan Sri Ram Janam Bhumi continued to exist on the property in suit as alleged on behalf of defendant No. 13 and the said places continued to be visited by devotees for purposes of worship? If so, whether the property in dispute continued to vest in the said deities?	<ul style="list-style-type: none"> - No temple was demolished for constructing the mosque @103 - Until Mosque was constructed, said site was not considered as birth place of Lord Ram @103 - Very large area was considered to be the birth place @103 - For sometime before 1949, Hindus started believing that exact place of birth was below the central dome @104 <p>Ram Chabutra and the Sita Rasoi were there before the visit of Tiffenthaler in 1766 @105</p> <p>Both parties were/are joint title holders in possession @107</p>	4488 - 4495. - A place can be a deity and a Swayambhu deity; but to suggest that the entire property in dispute shall vest in the deity without there being any specificity regarding the area would neither be just nor rational; the premises which constitute the place of birth of Lord Rama, continue to vest in the deities, but so far as the Hindu religious structures existing in the outer courtyard are concerned, the same cannot be said to be the property of the plaintiffs (Suit-5), i.e., the deity of Bhagwan Sri Ram Virajman and Sthan Sri Ram Janambhumi as claimed by the defendant no. 13. @ 2847 - 2853	<p>it is established that the property in suit is the site of Janm Bhumi of Ram Chandra Ji and Hindus in general and the defendants in particular had the right to worship Charan, Sita Rasoi, other idols and other object of worship existed upon the property in suit. It is also established that Hindus have been worshipping the place in dispute as Janm Sthan i.e. a birth place and visiting it as a sacred place of pilgrimage as a right since times immemorial. After the construction of the disputed structure it is not proved the deities were installed inside the disputed structure before 22/23.12.1949, but the place of birth is a deity. It is also proved that in the outer courtyard was in exclusive possession of Hindus and they were worshipping throughout and in the inner courtyard (in the disputed structure) they were also worshipping. It is also established that the disputed structure cannot be treated as a mosque as it came into existence against the tenets of Islam.</p> <p>In view of the above findings issues No. 11, 13, 14, 19-a and 19-c are decided against the plaintiffs. @3454</p>
Issue No. 19 (b):- Whether the building was land-locked and cannot be reached except by passing through places of Hindu worship? If so, its effect?	Concur with Agarwal, J	4066 - 4067. - the building was landlocked and could not be reached except by passing through the places of Hindu worship. However, this by itself was of no consequences. @ 2520	<p>Since the structure has already been demolished but the report of Commissioner is available on record. Accordingly, the disputed structure cannot be deemed to be a mosque according to the tenets of Islam. Thus, Issue no. 19(b) is decided in favour of the defendants and against the plaintiffs. @3038</p>
Issue No. 19 (c):- Whether any portion of the property in suit was used as a place or	<ul style="list-style-type: none"> - No temple was demolished for constructing the mosque @103 	4521. ... according to faith, belief and tradition amongst Hindus it is the area covered under the central dome of the disputed structure which they believe to be the place of birth of Lord Rama and	<p>it is established that the property in suit is the site of Janm Bhumi of Ram Chandra Ji and Hindus in general and the defendants in particular had the right to worship Charan, Sita Rasoi, other idols and</p>

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
worship by the Hindus immediately prior to the construction of the building in question? If the finding is in the affirmative, whether no mosque could come into existence in view of the Islamic tenets at the place in dispute?	<ul style="list-style-type: none"> - Until Mosque was constructed, said site was not considered as birth place of Lord Ram @103 - Very large area was considered to be the birth place @103 - For sometime before 1949, Hindus started believing that exact place of birth was below the central dome @104 	<p>worship thereat continuously. Therefore, in the absence of anything otherwise, it can safely be said that only this was the part of the property in dispute which was used as a place of worship by Hindus immediately prior to the construction of the building in question. ...</p> <p>4522. So far as the second part is concerned, we do not find that it has any relevance being as a hypothetical question ...</p> <p>@ 2860</p>	<p>other object of worship existed upon the property in suit. It is also established that Hindus have been worshipping the place in dispute as Janm Sthan i.e. a birth place and visiting it as a sacred place of pilgrimage as a right since times immemorial. After the construction of the disputed structure it is not proved the deities were installed inside the disputed structure before 22/23.12.1949, but the place of birth is a deity. It is also proved that in the outer courtyard was in exclusive possession of Hindus and they were worshipping throughout and in the inner courtyard (in the disputed structure) they were also worshipping. It is also established that the disputed structure cannot be treated as a mosque as it came into existence against the tenets of Islam.</p> <p>In view of the above findings issues No. 11, 13, 14, 19-a and 19-c are decided against the plaintiffs.</p> <p>@3454</p>
Issue No. 19 (d):- Whether the building in question could not be a mosque under the Islamic Law in view of the admitted position that it did no have minarets?	<ul style="list-style-type: none"> - Valid mosque @107 - Dedication by way of user in the name of God @ 107 - It is a Sunni Waqf @ 108 	<p>3432. For the purpose of public namaz, Adhan (Ajan) is necessary but we have not been shown that a mosque, if constructed without having a 'Minar', that would not be a masque and against the tenets of Shariyat. Similarly, namaz before graves is not permitted except of limited purpose but it is not shown to us that a mosque cannot be constructed or if constructed, may subsequently loose its status of a mosque if in a vicinity thereof there exist graveyard or the same are made later on. @ 1942</p>	<p>there is a strong circumstance that without any minaret there cannot be any mosque. Issue no. 19(d) is decided accordingly, against the plaintiffs and in favour of the defendants. @3039</p>
Issue No. 19 (e):- Whether the building in question could not legally be a mosque as on plaintiffs own showing it was surrounded by a grave-yard on three sides.			<p>the building in question could not be legally a mosque and was constructed against the tenets of Islam. Issue no. 19(e) is decided against the plaintiffs. @3046</p>
Issue No. 19 (f):- Whether the pillars inside and outside the	No temple was demolished for constructing the mosque @103	3443 - 3447. - Despite existence of certain images on some of the pillars, inside and outside the building in question of Hindu Gods and Goddesses, the	In view of the above referred tenets of Islam, it transpires that the pillars which contain images of Hindu God and Goddesses which were found inside

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
building in question contain images of Hindu Gods and Goddesses? If the finding is in affirmative, whether on that account the building in question cannot have the character of Mosque under the tenets of Islam.	Until Mosque was constructed, said site was not considered as birth place of Lord Ram @103 Very large area was considered to be the birth place @103 For sometime before 1949, Hindus started believing that exact place of birth was below the central dome @104	character of the building in dispute as a matter of fact would remain unaffected. @ 1975	the mosque go to show that they remained part of Hindu Temple. Thus, the disputed structure lacks the character of Mosque under the tenets of Islam. Issue No. 19(f) is decided against the plaintiffs and in favour of the defendants. @3048
Issue No. 20 (a):- Whether the waqf in question cannot be a Sunni Waqf as the building was not allegedly constructed by a Sunni Mohammedan but was allegedly constructed by Meer Baqi who was allegedly a Shia Muslim and the alleged Mutwalis were allegedly Shia Mohammedans? If so, its effect?	Valid mosque @107 Dedication by way of user in the name of God @ 107 It is a Sunni Waqf @ 108	4540 - 4542. - nature of the waqf whether Sunni or Shia would not cause any impact upon the issues raised by the defendants Hindu parties in these cases. Therefore, for the purpose of suits in question, issue 20(a) (Suit-4) is wholly irrelevant and need not to be answered. @ 2865 - 2866	Sunni Central Board of Waqf has not right to maintain the present suit. The point of notification was not considered in the aforesaid suits. Consequently, the finding of issue no. 17 recorded by learned Civil Judge on 21.4.1966 has become final. Accordingly, its effect is that without any notification under Muslim Waqf Act even Sunni Waqf Board cannot maintain a suit. Issue No. 20(a) is decided accordingly against the plaintiffs. @3049
Issue No. 20 (b):- Whether there was a Mutwalli of the alleged Waqf and whether the alleged Mutwalli not having joined in the suit, the suit is not maintainable so far as it relates to relief for possession?	Concur with Agarwal, J	4505. ... at the time of attachment of the building or when the suit in question was filed, Javvad Hussain was Mutawalli but in his absence or any other Mutawalli succeeding him, relief of possession cannot be allowed to the plaintiffs (Suit-4) who have come before this Court in the capacity of worshipers and not the person who can claim possession of waqf i.e. a Mutawalli. @ 2856	In this regard this Court is of the view that in view of the finding recorded by the learned Civil Judge on 21.4.1966 on issue no. 17 without any valid notification, the Board was also not competent to institute the suit. Accordingly, the suit as framed is not maintainable in accordance with law. Issue No. 20(b) is decided accordingly. @3049
Issue No. 21:- Whether the suit is bad for non-joinder of alleged	Suit cannot be dismissed – Defect if any stand cured as all suits are consolidated and deity	2129 - 2131. Suit is not bad for non-joinder of deities. @ 1303	Thus, to my mind no effective relief can be granted without arraying the deities as parties in this suit and no effective decree can be passed against the

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
deities?	adequately represented @108		deities, who are installed and worshipped prior to the filing of the suit. Suit is bad for non-joinder of the necessary parties. Issue no. 21 is decided accordingly in favour of the defendant and against the plaintiff. @3060
Issue No. 22:- Whether the suit is liable to be dismissed with special costs?	Concur with Agarwal, J	1278. ... we answer Issue no. 22 in negative i.e. no special costs need be awarded. @ 906	Plaintiffs are not entitled for the relief claimed and the suit is liable to be dismissed, but defendants have failed to point out the circumstances under which they are entitled for special costs. @3474
Issue No. 23:- If the waqf Board is an instrumentality of state? If so, whether the said Board can file a suit against the state itself?	Concur with Agarwal, J	1243. ... We hold that neither the Waqf Board is "an Instrumentality of the State" nor it suffers any disability of filing a suit against State Government or its authorities nor there is anything wrong in the Waqf Board to file a suit representing the cause of Muslim community particularly for protection of a property which it claims to be a "waqf property". ... Even if the Waqf Board is treated to be an "other authority" under Article 12 of the Constitution and covered by the term 'State' as defined under Article 12 of the Constitution, there is no impediment in the way of Sunni Central Waqfs Board in maintaining its suit. @ 891	Thus, issues no. 23 & 24 are decided accordingly that the Waqf Board is under the law is competent to institute the suit. However, it may be clarified that for want of valid notification under Section 5(1) of the Muslim Waqf Act, 1960 and the United Provinces Muslim Waqfs Act, 1936, the property cannot be deemed to be a Waqf Property. Accordingly the suit on this count is not maintainable. Issues No. 23 & 24 are decided against the plaintiffs. @3060-3061
Issue No. 24:- If the waqf Board is state under Article 12 of the constitution ? If so, the said Board being the state can file any suit in representative capacity sponsoring the case of particular community and against the interest of another community.	Concur with Agarwal, J		
Issue No. 25:- "Whether demolition of the dispute structure as claimed by the plaintiff, it can still be called a mosque and if not whether the claim of the plaintiffs is liable to be dismissed as no longer maintainable?"	Concur with Agarwal, J	4542 - 4546. - as a result of the demolition of disputed structure, Suit-4 of the plaintiffs muslim parties cannot be said to be not maintainable. @ 2866	it transpires that the case of the defendants that they adversely possessed the property in suit leave no room for doubt that the property in suit lost its sacred character as a Mosque. Moreover, the disputed structure has already been demolished. Accordingly, this place cannot be called as a Mosque and Muslims can not use the open place as a Mosque to offer prayers. Issues No. 25 & 26 are decided against the plaintiff and in favour of the defendants. @3062
Issue No. 26:- "Whether Muslims can use the open site as mosque to	Concur with Agarwal, J		

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
offer prayer when structure which stood thereon has been demolished?"			
Issue No. 27:- Whether the outer court yard contained Ram Chabutra, Bhandar and Sita Rasoi? If so whether they were also demolished on 06.12.1992 along with the main temple?"	Ram Chabutra and the Sita Rasoi were there before the visit of Tiffenthaler in 1766 @105	4421. While discussing the issues relating to limitation and possession, as also issue no. 24 (Suit-5), it is already held that at the premises in the outer courtyard, there existed <i>Ram Chabutara, Bhandar and Sita Rasoi</i> , which stand confirmed from the two maps also i.e. of 1885 and 1950 (Appendix Nos. 3 and 2). The parties also admit during the course of argument that all these three structures were demolished on 06.12.1992 when the disputed structure was demolished. @ 2828	I hold that the outer courtyard contained Ram Chabutra, Rasoi Bhandar and Sita Rasoi in the disputed premises which were demolished on 6.12.1992 along with disputed structure. Issue no. 27 is decided accordingly. @3062
Issue No. 28:- "Whether the defendant No. 3 has ever been in possession of the disputed site and the plaintiffs were never in its possession?"	Both parties were/are joint title holders in possession @107	3113 & 3114. - Since the plaintiffs have already failed to prove their possession of the disputed premises as we have said while considering issue no. 2 (Suit-4), the further question whether the plaintiffs were never in possession does not arise. The defendant no. 3, has also failed to prove its possession of the disputed site (i.e., outer and inner courtyard including the disputed building) in its entirety ever. @ 1746-1747	The plaintiffs have failed to prove that they were in exclusive possession of the property in suit up to 1949 and they were dispossessed from the same in the year 1949. Hindus have proved that they were regularly making prayers at the birth place of Lord Ram and they were in exclusive possession of the outer courtyard and vising inner court yard for offering prayers. Muslims have failed to prove that they were in possession over the property in suit from 1528 A.D. continuously, openly and to the knowledge of the defendants and Hindus in general. The defendant no. 3 has also failed to prove that he was in exclusive possession of the disputed site, but Hindus were in exclusive possession of the outer courtyard i.e. part of the disputed site. In view of my findings referred to above, issue nos. 2, 4, 10, 15 and 28 are decided against the plaintiffs. @3379

SUMMARY OF FINDINGS IN OS-5

O.O.S. No. 5 of 1989 (earlier registered as Regular Suit No. 236 of 1989) filed in the Court of Civil Judge, Faziabad on 1.7.1989

PLAINTIFF	DEFENDANTS				
<p>(1) Bhagwan Shri Rama Virajman at Shri Rama Janam Bhumi, Ayodhya, represented by next friend Sri Deoki Nandan Agarwala,</p> <p>(2) Asthan Shri Rama Janama Bhumi, Ayodhya represented by next friend Sri Deoki Nandan Agarwala and</p> <p>(3) Sri Deoki Nandan Agarwala himself</p>	Initially there were 27 defendants but for one or the other reasons some of the defendants have been deleted or substituted and the defendants before the Hon'ble High Court were as under (not arranged according to the serial number of the defendants' arrays):				
	1. Sri Rajendra Singh	6. Sri Mohammad Ahmad	11. The President, All India Hindu Mahasabha, New Delhi	16. Shri Ram Dayal Saran	21. Prince Anjum Quder, President All India Shia Conference
	2. Param Hans Mahant Ram Chandra Das of Digambar Akhara, Ayodhya	7. State of U.P. through the Secretary, Home Department, Civil Secretariat, Lucknow	12. The President, All India Arya Samaj, Dewan Hall, Delhi	17. Shri Ramesh Chandra Tripathi	22. All India Shia Conference, through Sri S.Mohammad Hasnain Abidi, Honorary General Secretary
	3. Nirmohi Akhara Mohalla Ram Ghat, Ayodhya through its present Mahant Jagannath Das	8. The Collector and District Magistrate, Faizabad	13. The President, All India Sanatan Dharma Sabha, Delhi	18. Sri Umesh Chandra Pandey	23. Hafiz Mohd. Siddiqui, General Secretary Jainaitul Ulema Hind, U.P.
	4. Sunni Central Board of Waqfs, U.P	9. The City Magistrate, Faizabad	14. Sri Dharam Das, Chela Baba Abhiram Das	19. Shri Ram Janam Bhumi Nyas	24. Vakeeluddin.
	5. Sri Mohammad Hashim	10. The Senior Superintendent of Police, Faizabad	15. Sri Pundarik Misra	20. Shia Central Board of Waqfs, U.P. Lucknow	

Reliefs sought for:

- (i) Declaration that the entire premises of Shri Ramjanambhumi at Ayodhya, as described by Annexures I, II and III belong to plaintiff Deities;
- (ii) A permanent injunction against the defendants prohibiting them from interfering with or raising any objection to, or placing any obstruction in the construction of the new Temple building at Shri Ramjanambhumi, Ayodhya

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
Issue No. 1 :- Whether the plaintiffs 1 and 2 are juridical persons?	Idol is a deity capable of holding property. Thus, suit is maintainable on behalf of plaintiff No.1. @108	1949. We, therefore, answer Issue No. 1 (Suit-5) insofar as it relates to plaintiff no. 2 (Suit-5) that it is juridical persona and can sue or be sued through a next friend. However, this is subject to our further answer to the issues relating to birthplace of Lord Rama at disputed site in affirmance which we shall discuss separately. @1221 2110. The Issue No. 1 (suit-5) is, also, accordingly, answered in its entirety, in affirmance. It is held that the plaintiffs 1 and 2 both are juridical person. @1299	In view of the discussion referred to above, I hold that plaintiff nos. 1 and 2 are juridical persons and deities can be represented through plaintiff no. 3, as next friend, who is worshipper and he is also entitled and is competent to act on their behalf. Issue nos. 1,2 and 6 are decided in favour of plaintiffs and against the defendants. @3532
Issue No. 2 Whether the suit in the name of deities described in the plaint as plaintiffs 1 and 2 is not maintainable through plaintiff no.3 as next friend?		2141. In view of the above discussion, we are of the view that Suit-5 cannot be held not maintainable merely on account of some defects in pleading with respect to the status of the next friend or Shebait. We decide Issues no. 2 and 6 (Suit-5) in negative i.e. in favour of the plaintiffs (Suit-5). We hold that the suit is maintainable and plaintiff no. 3 can validly represent plaintiffs no. 1 and 2 as their next friend and is competent on this account. @1305	
Issue No.3(a):- Whether the idol in question was installed under the central dome of the disputed building (since demolished) in the early hours of December 23,1949 as alleged by the plaintiff in paragraph 27 of the plaint as clarified on 30.04.92 in their statement under order 10 Rule 2 C.P.C.?	idols were kept on the pulpit inside the constructed portion/mosque for the first time in the night of 22 nd /23 rd December, 1949 @105	2110. Issue No. 3 (a) Suit-5 is answered in affirmance i.e. in favour of the plaintiffs (Suit-5). It is held that the idol (s) in question was/were installed under central dome of the disputed building (since demolished) in the earlier hours of 23 rd December 1949 as alleged by the plaintiff in para 27 of the plaint and clarified by the plaintiffs in the statement under Order X Rule 2 C.P.C. @1299	In view of the aforesaid circumstances it transpires that deities were placed definitely in violation of the orders of the Court dated 14.8.1989, 7.11.1989 and 15.11.1991 by the Karsevaks, who were not the parties in any of the proceedings and plaintiffs of OOS No. 4 of 1989 have also not filed any application of contempt against them. The plaintiffs of OOS No. 4 of 1989 have also not adduced any evidence to rebut the assertion that the deities were re-installed on the Chabutra after the demolition of the disputed structure on 6.12.1992. Thus, it is established from the record that the deities were installed under the Central Dome in the intervening night of 22/23-12-1949 or at the early hours of 23.12.1949 and the same idols were re-installed at the same place on the
Issue No.3(b):- Whether the same idol was reinstalled at the same	Concur with Agarwal, J	4534. In view thereof we answer issues no. 3(b) and (d) (Suit-5) in affirmative and issue no. 3(c) (Suit-5)	

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
place on a chabutra under the canopy?		in negative. @2864	<p>Chabutra under the canopy on 6.12. 1992.</p> <p>It further transpires from the record that deities which were shifted from Ram Chabutra on 23.12.1949 were movables and the movable deities were re-installed at the disputed site, that is, on Chabutra under the canopy on 6.12.1992 to a place which was earlier known as central dome of the disputed building. Thus, the deities which were worshipped earlier and moved from one place to another have to be presumed as deities and their divinity cannot be presumed to be changed.</p> <p>On behalf of defendant no. 3 it has been urged that attachment which was made in the year 1949 is only in respect of the main building of Garbh Grih carrying Shikhars wherein deity of Bhagwan Sri Ram was installed by Nirmohi Akhara from the times beyond human memory and since then is under the management and possession of defendant no. 3. It appears not to be based on record. Firstly, for the reasons that Sunni Waqf Board and others have filed O.O.S. No. 4 of 1989 alleging that the mosque was attached and deities were installed in the intervening night of 22/23/12/1949 and secondly, there is overwhelming evidence to this effect that in the disputed structure there was no deity installed at any point of time prior to 22/23/12/1949.</p> <p>I have already perused the oral evidence of the witness D.W.3/to D.W.3/20 on the basis of their testimony. They do not support the case of defendant no. 3. Thus, the defendant no. 3 has failed to establish that idols in question had been in existence under the Shikhar prior to 22/23.12.1949. It further transpires from the written statement of defendant no. 3 that he has set up different case in his written statement and has further failed to establish his</p>
<p>Issue No. 3(c):- "Whether the idols were placed at the disputed site on or after 6.12.92 in violation of the courts order dated 14.8.1989, 7.11.1989 and 15.11.91.</p>	Concur with Agarwal, J		
<p>Issue No. 3(d):- If the aforesaid issue is answered in the affirmative whether the idols so placed still acquire the status of a deity?"</p>	Concur with Agarwal, J		
<p>Issue No. (4):- Whether the idols in question had been in existence under the "Shikhar" prior to 6.12.92 from time immemorial as alleged in paragraph-44 of the additional written statement of defendant no.3?</p>	<p>idols were kept on the pulpit inside the constructed portion/mosque for the first time in the night of 22nd/23rd December, 1949 @105</p>	<p>Issue No. 4 (Suit-5) is answered in negative, as the idols in question did remain under the <i>Sikhar</i> prior to 6th December, 1992, but not from time immemorial and, instead, were kept thereat in the night of 22nd/23rd December, 1949. @2854</p>	

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
			claim alleged in para 44 before this Court. Issue Nos. 3(a), 3(b), 3(c) 3(d) and 4 are decided accordingly in favour of the plaintiffs and against the defendants. @3553-3554
Issue No. (5):- Is the property in question properly identified and described in the plaint?	No temple was demolished for constructing the mosque @103 Until Mosque was constructed, said site was not considered as birth place of Lord Ram @103 Very large area was considered to be the birth place @103 For sometime before 1949, Hindus started believing that exact place of birth was below the central dome @104	4458. ...the property in dispute against which now the Court is required to consider whether the plaintiffs are entitled for relief or not is well identified and known to all the parties, there is no ambiguity. Issue No. 5 is answered in affirmative i.e. in favour of the plaintiffs. @2837	Thus, the land in question is identifiable. Issue No. 5 is decided in favour of the plaintiffs and against the defendants. @3533
Issue No. (6):- Is the plaintiff No.3 not entitled to represent the plaintiffs 1 and 2 as their next friend and is the suit not competent on this account?	Concur with Agarwal, J	2141. In view of the above discussion, we are of the view that Suit-5 cannot be held not maintainable merely on account of some defects in pleading with respect to the status of the next friend or Shebait. We decide Issues no. 2 and 6 (Suit-5) in negative i.e. in favour of the plaintiffs (Suit-5). We hold that the suit is maintainable and plaintiff no. 3 can validly represent plaintiffs no. 1 and 2 as their next friend and is competent on this account. @1305	In view of the discussion referred to above, I hold that plaintiff nos. 1 and 2 are juridical persons and deities can be represented through plaintiff no. 3, as next friend, who is worshipper and he is also entitled and is competent to act on their behalf. Issue nos. 1,2 and 6 are decided in favour of plaintiffs and against the defendants. @3532
Issue No. (7):- Whether the defendant no. 3 alone is entitled to represent plaintiffs 1 and 2, and is the suit not competent on that account as alleged in paragraph 49 of the additional written statement of defendant no. 3?	Concur with Agarwal, J	4507. ... We have already held while considering issue no. 10 (Suit-3), that objection regarding notice under Section 80 CPC cannot be taken by a private defendant, if no such objection has been raised and pressed by the State authorities. In view of our discussion and findings recorded in respect to issue no. 10 (Suit-3), we hold that the objection under para 49 of the additional written statement of defendant no. 3 is of no consequence. 4508. Coming to the first part of the issue that the	Thus, defendant no. 3 Nirmohi Akhaa is not Shebait of Bhagwan Shri Ram installed in the disputed structure and also not competent to maintain the present suit in which as per his request plaintiff no. 1 should be transposed as defendant. On the contrary, the plaintiff no. 3 has proved before this Court that he may be permitted to represent the idols, plaintiffs no. 1 and 2 as he is worshipper and idols are in the position of a minor and their interest cannot be left in a lurch. Opposite Party No. 3 is a person

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
		defendant no. 3 alone is entitled to represent plaintiffs 1 and 2 in the absence of any material to show that the defendant no. 3 was in possession of the property within the inner courtyard and looking after and managing the affairs as Shebait, no such right can be claimed by the defendant no. 3. On this aspect the case of defendant no. 3, i.e., Nirmohi Akhara has already been considered by us while discussing the issues relating to adverse possession. For the reasons thereof and as discussed, issue 7 (Suit-5) in its entirety is answered in negative. @2856	interested in the worship of the idols. Thus, at least he has ad hoc power of representation to protect the interest of the deities. Thus, in view of the submissions, plaintiff no. 3 is entitled to maintain the suit and defendant no. 3 is not competent to represent plaintiffs no. 1 and 2, the deities. In view of the discussion referred to above issue nos. 7 and 8 are decided against the defendant no. 3 and in favour of the plaintiff nos. 1 to 3. @3535
Issue No. (8):- Is the defendant Nirmohi Akhara the "Shebait" of Bhagwan Sri Rama installed in the disputed structure?	Concur with Agarwal, J	4537. In these peculiar facts and circumstances and the stand of Nirmohi Akhara, we have no option but to hold that so far as the idols of Bhagwan Sri Ram installed in the disputed structure i.e. within the inner courtyard is concerned, the defendant Nirmohi Akhara cannot said to be Shebait thereof. 4538. Issue No. 8 (Suit-5) is accordingly answered against Nirmohi Akhara defendant No. 3 (Suit-5). @2865	
Issue No. (9):- Was the disputed structure a mosque known as Babri Masjid.	Accordingly, in such scenario the only finding which may be recorded is that till 1934 Muslims were offering regular prayers and since 1934 till 22.12.1949 only friday prayers in the premises in dispute. However, offering of only friday prayers is also sufficient for continuance of possession and use. @ 100	3409. In the absence of any material to show otherwise we are inclined to answer both the issues in positive. Issue no. 1 (Suit-4) is answered in favour of plaintiffs and issue no. 9 (Suit-5) is answered against the plaintiffs (Suit-5). @1932	In view of the finding on issues no. 1, 1(a), 1(b), 1-B(b), 11, 19(d), 19(e) and 19(f) (in OS-4) no separate finding is required as the issues are identical issues in this case. These issues no. 9, 10, 14 and 22 are decided accordingly. @3514 <i>[OS-4: that on the basis of revenue records also and other documents, it can conclusively be said that Janmsthan was taken into consideration. Thus, on the basis of the opinion of the experts, evidence on record, circumstantial evidence and historical account from all or any angle, it transpires that the temple was demolished and the mosque was constructed at the site of the old Hindu temple by Mir Baqi at the command of</i>
Issue No. (10):- Whether the disputed structure could be treated to be a mosque on the allegations contained in	Valid mosque @107 Dedication by way of user in the name of God @ 107 It is a Sunni Waqf @ 108	4511. We have discussed similar issues in the category of those relating to characteristics of mosque, dedication, valid waqf etc. In the light of the findings recorded therein we answer issues 10 and 11 (Suit-5) in affirmative. @2858	

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
paragraph-24 of the plaint?			<i>Babur. Issue Nos. 1 and 1(a) are decided in favour of the defendants and against the plaintiffs. @3243]</i>
Issue No. (11):- Whether on the averments made in paragraph-25 of the plaint no valid waqf was created in respect of the structure in dispute to constitute is as a mosque?	Valid mosque @107 Dedication by way of user in the name of God @ 107 It is a Sunni Waqf @ 108		Since the registration of the waqf was made in contravention of the provisions of Waqf Act, 1936 and there was no valid notification, accordingly the submissions of learned counsel for the plaintiffs are in accordance with law that no valid Waqf was created or could be created regarding the property of deities or about the deities as Ram Janm Bhumi, plaintiff no. 2 itself is a deity. Thus, no valid waqf could be created or was ever created with respect to the disputed property. Issue no. 11 is decided accordingly against the defendants and in favour of the plaintiffs. @3562
Issue No.12 in Suit No.5 related to shifting of the mosque (if the structure in question was held to be a mosque)	Deleted through the order of date 23.02.1996.		
Issue No. (13):- Whether the suit is barred by limitation?	Not barred @ 87	2737. ... Neither the plaintiffs 1 and 2 were disturbed at any point of time in 1949 or even prior thereto. The only one occasion which at the best could have been there of disturbance is the structure of the temple which is said to have been disturbed sometimes in the late 17 th century or early 18 th century. However, that disturbance does not appear to have caused any interference in the maintenance of worship of the place in dispute and that is how the worshippers continued to be benefited. This has continued even when the property was attached on 29 th December, 1949 but it was ensured that the worship by Hindus shall continue. We, therefore, find no period of commencement wherefrom it can be said that the suit stand barred by limitation. Mere filing of some	To sum up I hold that plaintiff nos. 1 and 2 are infant juridical persons and they are entitled for the benefit of Section 6 of the Limitation Act. Accordingly the suit is not barred by limitation. Issue no. 13 is decided in favour of the plaintiffs and against defendants. @3585

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
		<p>other suit by some other persons, in which the deity is not impleaded, cannot necessarily give a cause of action to the deity necessarily to file a suit or to suffer the cause of limitation.</p> <p>2738. In the entirety of the matter, we are of the view that suit in question cannot be dismissed on the ground of limitation. The Issue No. 13 (Suit-5) is answered in negative i.e. in favour of the plaintiffs. The suit is not barred by limitation. @1565</p>	
<p>Issue No. (14):- Whether the disputed structure claimed to be Babri Masjid was erected after demolishing Janma-Sthan temple at its site.</p>	<p>No temple was demolished for constructing the mosque @103</p> <p>Until Mosque was constructed, said site was not considered as birth place of Lord Ram @103</p> <p>Very large area was considered to be the birth place @103</p> <p>For sometime before 1949, Hindus started believing that exact place of birth was below the central dome @104</p>	<p>4056. The claim of Hindus that the disputed structure was constructed after demolishing a Hindu temple is pre-litem and not post-litem hence credible, reliable and trustworthy. Till late, no person of any other religion except the Hindus have been continuously staking their claim over the site in dispute on the ground that this is the place of birth of Lord Rama and there was a temple. In normal course, there could not have been any reason for such persistent attachment to the site had there been no basis or substance for the same particularly when this kind of persistence is continuing for the last hundreds of years. ... @2507</p> <p>4057. This belief is existing for the last more than 200 years from the date the property was attached and therefore, having been corroborative by the above it can safely be said that the erstwhile structure was a Hindu temple and it was demolished whereafter the disputed structure was raised. @2507</p> <p>4059. Accordingly, we answer both the issues i.e. Issue No. 1(b) (Suit-4) and Issue No. 14 (Suit-5) in affirmative. @2508</p>	<p>In view of the finding on issues no. 1, 1(a), 1(b), 1-B(b), 11, 19(d), 19(e) and 19(f) (in OS-4) no separate finding is required as the issues are identical issues in this case. These issues no. 9, 10, 14 and 22 are decided accordingly. @3514</p> <p><i>[OS-4: that on the basis of revenue records also and other documents, it can conclusively be said that Janmsthan was taken into consideration. Thus, on the basis of the opinion of the experts, evidence on record, circumstantial evidence and historical account from all or any angle, it transpires that the temple was demolished and the mosque was constructed at the site of the old Hindu temple by Mir Baqi at the command of Babur. Issue Nos. 1 and 1(a) are decided in favour of the defendants and against the plaintiffs. @3243]</i></p>
<p>Issue No. 15:- Whether the disputed structure claimed to be Babri</p>	<p>Accordingly, in such scenario the only finding which may be recorded is that till 1934 Muslims</p>	<p>That being so, the question of offering Namaj in the disputed structure since 1528 AD does not arise at all. With respect to the question as to whether</p>	<p>In view of the finding on issue no. 1B-(c), 2, 4, 12, 13, 14, 15, 19(a), 19(b), 19(c), 27 and 28 (in OS-4) no separate finding is required as the</p>

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Masjid was always used by the Muslims only regularly for offering Namaz ever since its alleged construction in 1528 A.D. to 22 nd December 1949 as alleged by the defendant 4 and 5?	were offering regular prayers and since 1934 till 22.12.1949 only friday prayers in the premises in dispute. However, offering of only friday prayers is also sufficient for continuance of possession and use. @ 100	Namaj was ever offered in the building in dispute we find that this aspect has also been discussed and answered in issues no. 15 (Suit-4), 1-B(c) (Suit-4) and 2 (Suit-4) wherein it has been held that the evidence which we have on record shows that atleast from 1860 and onwards Namaj has been offered in the building in dispute in the inner courtyard and the last Namaj was offered on 16 th December, 1949. Accordingly issue 15 (Suit-5) is answered. We observe that though it is not proved that Namaj was offered in the building in dispute since 1528 AD, simultaneously it is also not proved that any Namaj was offered in the building in dispute after 16 th December, 1949. However, we hold that between 1860 and up to 16th December, 1949 if not regularly, occasionally, intermittently Friday prayers, i.e., Jumma Namaj was offered in the disputed structure which was commonly known as Babri Masjid. @2854	issues are identical issues in this case. Issues no. 15, 16 & 24 are decided accordingly. @3514 [OS-4: <i>There is no reliable evidence that the prayers were offered by Muslims from times immemorial. Plaintiff averments are contrary to the same. Issue No. 1-B(c) is decided against the plaintiffs. @2976]</i>
Issue No. 16:- Whether the title of plaintiff 1 & 2, if any, was extinguished as alleged in paragraph 25 of the written statement of defendant no.4? If yes, have plaintiffs 1 & 2 re-acquired title by adverse possession as alleged in paragraph 29 of the plaint? Issues relating to graveyard alleged to exist around the premises in dispute (i.e. Issue No.17 of Suit No.5) were deleted by order of HC dated 23.02.1996 in	As both parties were found in joint possession, this question not decided @109	3123. In this context we are not inclined to admit the claim of the plaintiffs 1 and 2 which is based on the situation which has arisen, amongst other also, due to the judicial orders. We, therefore, answer issue no. 16 (Suit-5) by observing that in this case plea of adverse possession is not attracted either for the plaintiffs 1 or 2 or as claimed by defendant no. 4 and, therefore, relying on the plea of adverse possession neither there was any occasion of extinction of title, if any, of plaintiffs 1 and 2 nor reacquisition thereof. Issue no. 16 (Suit-5) is answered accordingly. @ 1749	In view of the finding on issue no. 1B-(c), 2, 4, 12, 13, 14, 15, 19(a), 19(b), 19(c), 27 and 28 (in OS-4) no separate finding is required as the issues are identical issues in this case. Issues no. 15, 16 & 24 are decided accordingly. @3514 [OS-4: <i>Thus a mosque if adversely possessed by a Non-Muslim, it will loose its sacred character as a mosque. The plaintiffs are not in possession over the property in suit and filed the suit for recovery of the possession. There is no reliable evidence that the prayers were offered by Muslims from times immemorial. Plaintiff averments are contrary to the same. Issue No. 1-B(c) is decided against the plaintiffs. @2976]</i>

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view of Supreme Court judgment in Dr. M. Ismail Farooqi v. Union of India, 1994 (6) S.C.C. 360 wherein the Supreme Court confined the dispute only to the premises in dispute.			
Issue No. 18:- Whether the suit is barred by section 34 of the Specific Relief Act as alleged in paragraph 42 of the additional written statement of defendant no.3 and also as alleged in paragraph 47 of the written statement of defendant no.4 and paragraph 62 of the written statement of defendant no.5?	Concur with Agarwal, J	4478. No authority is cited by learned counsels to persuade us to take a different view. The suit in question cannot be held barred by Section 34 of Act 1963. The issue 18 (Suit-5) is accordingly answered in negative, i.e., against the defendants no. 3, 4 and 5. @2846	Having regard to the circumstances of the case, the defendants have failed to demonstrate that the suit is barred by Section 34 of the Specific Relief Act. Issue no. 18 is decided in favour of the plaintiffs and against the defendants. @3553
Issue No. 19:- Whether the suit is bad for non-joinder of necessary parties, as pleaded in paragraph 43 of the additional written statement of defendant No.3?	Concur with Agarwal, J	4516. ... Issue 19 (Suit-5) is answered in negative. @2859	Thus, from all or any angle the suit is not bad for non-joinder of defendant no 3. The plaintiff no. 3 as a worshipper has right to maintain the suit. Issue no. 19 is decided accordingly. @3536
Issue No. 20:- Whether the alleged Trust, creating the Nyas defendant no. 21, is void on the facts and grounds stated in paragraph 47	Concur with Agarwal, J	1294. ... The question as to whether the alleged trust is void or not would have no material bearing on the matter to the relief sought in Suit-5 which has been filed on behalf of two deities through next friend. We, therefore, find no reason to answer the aforesaid issue in the present case. Issue no. 20	Thus, the object of the trust is not forbidden by law and the trust is valid. Issue no. 20 is decided in favour of the plaintiffs and against the defendant no. 3. @3537

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of the written statement of defendant no. 3?		(Suit-5), therefore, remain unanswered since it is unnecessary for the dispute in the present case to adjudicate on the said issue. The learned counsel for defendant no. 3 (Suit-5) also could not make any submission persuading us to take a different view. @910	
Issue No. 21:- Whether the idols in question cannot be treated as deities as alleged in paragraphs 1,11,12,21,22,27 and 41 of the written statement of defendant no.4 and in paragraph 1 of the written statement of defendant no.5?	Concur with Agarwal, J	2110 ... Issue No. 21 (Suit-5) is answered in negative, i.e., against the defendants no. 4 and 5. [Also see finding on issue 1 above]	... it transpires that images, idols are the symbols of Supreme Being. They are worshipped as Supreme deity. In these circumstances Ram Janm Bhumi is also a deity. Thus, plaintiff nos. 1 and 2 are deities and the averments made in the written statement by defendant nos. 4 and 5, contrary to the averments of the plaint, are not tenable in accordance with the provisions of Hindu Law, Hindu rituals and other Hindu sacred books. Thus, I hold that plaintiff nos. 1 and 2 are deities. Issue no. 21 is decided in favour of the plaintiffs and against the defendants no. 4 and 5. @3547
Issue No. 22:- Whether the premises in question or any part thereof is by tradition, belief and faith the birth place of Lord Rama as alleged in paragraphs 19 and 20 of the plaint? If so, its effect?	No temple was demolished for constructing the mosque @103 Until Mosque was constructed, said site was not considered as birth place of Lord Ram @103 Very large area was considered to be the birth place @103 For sometime before 1949, Hindus started believing that exact place of birth was below the central dome @104	4418. ...we are satisfied and hold that the place of birth as believed and worshipped by Hindus is the area covered under the central dome of three domed structure, i.e., the disputed structure, in the inner courtyard of the premises in dispute. We answer all the three issues, i.e., issues no. 11(Suit-4), 1 (Suit-1) and 22 (Suit- 5) accordingly. @2828	In view of the finding on issues no. 1, 1(a), 1(b), 1-B(b), 11, 19(d), 19(e) and 19(f) (in OS-4) no separate finding is required as the issues are identical issues in this case. These issues no. 9, 10, 14 and 22 are decided accordingly. @3514 [OS-4: that on the basis of revenue records also and other documents, it can conclusively be said that Janmsthan was taken into consideration. Thus, on the basis of the opinion of the experts, evidence on record, circumstantial evidence and historical account from all or any angle, it transpires that the temple was demolished and the mosque was constructed at the site of the old Hindu temple by Mir Baqi at the command of Babur. Issue Nos. 1 and 1(a) are decided in favour of the defendants and against the

Issue	Findings of Hon'ble Justice Khan	Findings of Hon'ble Justice Agarwal	Findings of Hon'ble Justice Sharma
			plaintiffs. @3243]
<p>Issue No. 23:- Whether the Judgment in suit no.61/280 of 1885 filed by Mahant Raghuber Das in the Court of Special Judge, Faizabad is binding upon the plaintiffs by application of the principles of estoppel and res judicata as alleged by the defendants 4 and 5?</p>	<p>Not res judicata @87,88.</p> <p>However, judgement of 1885 suit, admissions and assertions made or omitted to be made in the pleading of the said suits are admissible under Section 42 Evidence Act as well as Section 13 r/w Section 42 of Evidence Act @90</p>	<p>1059. The discussion made above as also in the light of the principles of law laid down in the various precedents, some of which are discussed above, the conclusion is inevitable that in no manner, it can be said that anything in Suit-1885 may be construed or taken as to operate as res judicata in the suits up for consideration before us. In fact, neither the principles of res judicata nor estoppel is attracted in any manner as the conditions precedent for attracting the said principles are completely lacking. It cannot be said that either the suits are barred by principle of res judicata or that Suit-1885 was filed on behalf of the whole body of persons interested in Janam Asthan and, therefore, all the Hindus are barred by the same. It also cannot be said that the defendants are estopped from denying the title of Muslim community including the plaintiff of Suit-4 to the property in dispute in view of the judgments of Suit-1885. @828</p> <p>1063. We answer the Issues No. 5 (d) (Suit-1), 7(c) and 8 (Suit-4), and 23 (Suit-5) in negative. @829</p>	<p>In view of the finding on issue no. 8 in O.O.S. No. 4 of 1989, the leading case, the issue is decided against the defendants and in favour of the plaintiffs. @3515</p> <p><i>[Consequently, the plaintiffs have failed to substantiate that the earlier judgment shall operate as res judicata against the defendants in the suit. Issue No. 8 is decided accordingly against the plaintiffs. @3035]</i></p>
<p>Issue No. 24:- Whether worship has been done of the alleged plaintiff deity on the premises in suit since time immemorial as alleged in paragraph 25 of the plaint?</p>	<p>No temple was demolished for constructing the mosque @103</p> <p>Until Mosque was constructed, said site was not considered as birth place of Lord Ram @103</p> <p>Very large area was considered to be the birth place @103</p> <p>For sometime before 1949, Hindus started believing that exact place of birth was below the central dome @104</p>	<p>4072. Here also we remind that for the purpose of Suit-5, the property in dispute comprises of inner and outer courtyard, both. There are two plaintiff Deities. Plaintiff 1 is the idol. We have already held that the idol of Ramlala or Lord Rama kept earlier on Ram Chabutara in the outer courtyard and was being worshipped by Hindus since long time, i.e. almost a century, was shifted and placed under the central dome of the disputed structure in the inner courtyard in December, 1949.</p> <p>4073. So far as the plaintiff 2 is concerned, we have discussed above that it was also being worshipped since long as noticed by Joseph Tieffenthaler in the</p>	<p>In view of the finding on issue no. 1B-(c), 2, 4, 12, 13, 14, 15, 19(a), 19(b), 19(c), 27 and 28 (in OS-4) no separate finding is required as the issues are identical issues in this case. Issues no. 15, 16 & 24 are decided accordingly. @3514</p> <p><i>[...it is established that the property in suit is the site of Janm Bhumi of Ram Chandra Ji and Hindus in general and the defendants in particular had the right to worship Charan, Sita Rasoi, other idols and other object of worship existed upon the property in suit. It is also established that Hindus have been worshipping</i></p>

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		middle of the 18 th century and thereafter in several gazetteers etc.. Worship of both the plaintiffs was going on for such a long time which satisfy the term "time immemorial". Issue No. 24 (Suit-5) therefore is also answered in affirmative. @2521	<i>the place in dispute as Janm Sthan i.e. a birth place and visiting it as a sacred place of pilgrimage as a right since times immemorial.@3454]</i>
Issue No. 25:- Whether the Judgment and decree dated 30 th March 1946 passed in suit no.29 of 1945 is not binding upon the plaintiffs as alleged by the plaintiffs?	Concur with Agarwal, J	4519. Admittedly, the plaintiffs of suit in question were not party in the said suit. The judgment, therefore, cannot be said to be binding upon the plaintiffs. No authority on this question has been placed before us which is binding upon us to take a different view. Issue 25 (Suit-5) is accordingly answered holding that the judgment and decree dated 30.03.1946 in Suit No. 29 of 1945 is not binding upon the plaintiffs (Suit-5). @2859	Accordingly judgment in O.O.S. No. 29 of 1945 was not judgment in rem., accordingly it is not covered under Section 41 of the Evidence Act but is covered under Section 43 of the Evidence Act and is also binding between Shia and Sunni Central Waqf board and not on the plaintiffs, who were not arrayed as parties. Issue no. 25 is decided in favour of the plaintiffs against the defendants. @3549
Issue No. 26:- Whether the suit is bad for want of notice under section 80 C.P.C. as alleged by the defendants 4 and 5?	Concur with Agarwal, J	668. Both the issues No. 26 and 27 of Suit 5 are answered in negative in view of our findings on Issue No. 10(b) (Suit-3) and therefore, we hold that Suit 5 is not bad for want of notice under Section 80 C.P.C. since no such objection has either been raised or pressed before us by the State Government or its authorities. The defendants no. 4 and 5 being private parties cannot raise such an objection. In fact, during the course of argument, learned Counsels for the defendants have not advanced any submission on these two issues in respect to Suit-5. Thence also the plaintiffs (Suit-5) cannot be non suited on this ground. Both the issues are decided in favour of plaintiffs (Suit-5). @676	Thus, neither it is possible for defendant nos. 4 and 5 to raise the plea that the suit is bad for want of notice under Section 80 C.P.C. nor is barred by Section 80 C.P.C. For the reasons referred to above, issue nos. 26 and 27 are decided against defendant nos. 4 and 5. @3548
Issue No. 27:- Whether the plea of suit being bad for want of notice under section 80 C.P.C. can be raised by defendants 4 and 5?	Concur with Agarwal, J		
Issue No. 28:- Whether the suit is bad for want of notice under section 65 of the U.P. Muslim Waqfs Act, 1960 as alleged by defendants 4 and 5? If so, its effect.	Concur with Agarwal, J	1247. From a bare reading of Section 65 of 1960 Act it is evident that the same would apply where a suit is filed questioning the validity of any action of the Waqf Board. @892 1249. Since the provisions itself is not applicable, as we have said, the question of considering its effect does not arise. The issue is answered accordingly. @892	Thus, looking to the case from all or any angle, it transpires that without any valid notification under Section 17 the Waqf could not be registered, accordingly, even if waqf has been arrayed as a party, the suit is not bad for want of any notice as no valid waqf could be created about the property in suit in which plaintiff no. 2 is a deity. Waqf Board was guilty in not arraying the plaintiff nos. 1 and 2 as party in O.S. No. 12

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			of 1961 Thus, in this case notice under Section 65 of Muslim Waqf Act was not required. Issue No. 28 is decided in favour of the plaintiffs and against defendants no. 4 and 5. @3551
Issue No. 29:- Whether the plaintiffs are precluded from bringing the present suit on account of dismissal of suit no.57 of 1976 (Bhagwan Sri Ram Lala v. state) of the Court of Munsif Sadar, Faizabad.	Concur with Agarwal, J	1065. It is not disputed that Suit No. 57 of 1978 was dismissed for non compliance of Court's order with respect to payment of Court fees. Neither any issue was raised nor argued nor decided by the said Court. Therefore, bar of res judicata is not at all attracted by the order dismissing Suit 57 of 1978 inasmuch as the said order dismissing the suit on technical ground does not come within the purview of judgment or a decision or issue as defined in Section 2 (9) CPC. The issue no. 29 (Suit-5) is therefore answered in negative and in favour of plaintiffs. @829	Thus, in view of the provisions of Section 11 C.P.C. the plea as raised by the defendants that the plaintiffs are precluded from bringing the present suit is not acceptable and they have failed to demonstrate before this Court the reasons that may preclude the plaintiffs from filing the present suit. They have also failed to establish that the case falls within the ambit of Section 11 C.P.C. Issue No. 29 is decided in favour of the plaintiffs and against the defendants. @3550
Issue No. 30:- To what relief, if any, are plaintiffs or any of them entitled.	That in view of the above both the parties are declared to be joint title holders in possession of the entire premises in dispute and a preliminary decree to that effect is passed with the condition that at the time of actual partition by meets and bounds at the stage of preparation of final decree the portion beneath the Central dome where at present make sift temple stands will be allotted to the share of the Hindus. Order:- Accordingly, all the three sets of parties, i.e. Muslims, Hindus and Nirmohi Akhara are declared joint title holders of the property/premises in dispute as described by letters A B C D E F in	4566. In the light of the above and considering overall findings of this Court on various issues, following directions and/or declaration, are given which in our view would meet the ends of justice: (i) It is declared that the area covered by the central dome of the three domed structure, i.e., the disputed structure being the deity of Bhagwan Ram Janamsthan and place of birth of Lord Rama as per faith and belief of the Hindus, belong to plaintiffs (Suit-5) and shall not be obstructed or interfered in any manner by the defendants. This area is shown by letters AA BB CC DD is Appendix 7 to this judgment. (ii) The area within the inner courtyard denoted by letters B C D L K J H G in Appendix 7 (excluding (i) above) belong to members of both the communities, i.e., Hindus (here plaintiffs, Suit-5) and Muslims since it was being used by both since decades and centuries. It is, however, made clear that for the purpose of share of plaintiffs, Suit-5 under this direction the area which is covered by (i)	In view of the aforesaid circumstances, the plaintiffs are entitled for the relief claimed. Order Plaintiffs' suit is decreed but with easy costs. It is hereby declared that the entire premises of Sri Ram Janm Bhumi at Ayodhya as described and delineated in annexure nos. 1 and 2 of the plaint belong to the plaintiff nos. 1 and 2, the deities. The defendants are permanently restrained from interfering with, or raising any objection to, or placing any obstruction in the construction of the temple at Ram Janm Bhumi Ayodhya at the site, referred to in the plaint. @3586

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	<p>the map Plan-I prepared by Sri Shiv Shanker Lal, Pleader/Commissioner appointed by Court in Suit No.1 to the extent of one third share each for using and managing the same for worshipping. A preliminary decree to this effect is passed.</p> <p>@116</p>	<p>above shall also be included.</p> <p>(iii) The area covered by the structures, namely, Ram Chabutra, (EE FF GG HH in Appendix 7) Sita Rasoi (MM NN OO PP in Appendix 7) and Bhandar (II JJ KK LL in Appendix 7) in the outer courtyard is declared in the share of Nirmohi Akhara (defendant no. 3) and they shall be entitled to possession thereof in the absence of any person with better title.</p> <p>(iv) The open area within the outer courtyard (A G H J K L E F in Appendix 7) (except that covered by (iii) above) shall be shared by Nirmohi Akhara (defendant no. 3) and plaintiffs (Suit-5) since it has been generally used by the Hindu people for worship at both places. (iv-a) It is however made clear that the share of muslim parties shall not be less than one third (1/3) of the total area of the premises and if necessary it may be given some area of outer courtyard. It is also made clear that while making partition by metes and bounds, if some minor adjustments are to be made with respect to the share of different parties, the affected party may be compensated by allotting the requisite land from the area which is under acquisition of the Government of India.</p> <p>(v) The land which is available with the Government of India acquired under Ayodhya Act 1993 for providing it to the parties who are successful in the suit for better enjoyment of the property shall be made available to the above concerned parties in such manner so that all the three parties may utilise the area to which they are entitled to, by having separate entry for egress and ingress of the people without disturbing each others rights. For this purpose the concerned parties may approach the Government of India who shall act in accordance with the above directions and also as contained in</p>	

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		<p>the judgement of Apex Court in Dr. Ismail Farooqi (Supra).</p> <p>(vi) A decree, partly preliminary and partly final, to the effect as said above (i to v) is passed. Suit-5 is decreed in part to the above extent. The parties are at liberty to file their suggestions for actual partition of the property in dispute in the manner as directed above by metes and bounds by submitting an application to this effect to the Officer on Special Duty, Ayodhya Bench at Lucknow or the Registrar, Lucknow Bench, Lucknow, as the case may be.</p> <p>(vii) For a period of three months or unless directed otherwise, whichever is earlier, the parties shall maintain status quo as on today in respect of property in dispute. @2871</p>	