

18/9/2019

K.M.

A78

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10866-10867 OF 2010

IN THE MATTER OF: -

M. Siddiq (D) Thr. Lrs.

... Appellant

VERSUS

Mahant Suresh Das & Ors. etc. etc.

... Respondents

AND

OTHER CONNECTED CIVIL APPEALS

NOTE ON WITNESS STATEMENTS IN SUIT 5 OF
1989

BY

DR. RAJEEV DHAVAN, SENIOR ADVOCATE

ADVOCATE-ON-RECORD: EJAZ MAQBOOL

NOTE ON WITNESS STATEMENTS IN SUIT 5 OF 1989

A. INTRODUCTION

1. The Plaintiffs in Suit 5 have produced 19 witnesses, which can be categorized as follows:-

I. Witness on Facts:

- i. OPW 1 Mahant Paramhans Ram Chandra Das
- ii. OPW 2 Shri Devaki Nandan Agarwal
- iii. OPW 4, Harihar Prasad Tewari
- iv. OPW 5 Shri Ram Nath Mishra Alias Banarsi Panda
- v. OPW 6 Shri Housila Prasad Tripathi
- vi. OPW 7 Ram Surat Tewari
- vii. OPW 12 Shri Kaushal Kishore Mishra
- viii. OPW 13 Narad Saran

II. Witness in relation to Vishnu Hari Inscriptions

- i. OPW 8 Ashok Chandra Chatterjee
- ii. OPW 10 Dr. K.V. Ramesh
- iii. OPW 15 Dr. M.N. Katti

III. Expert Witness- Historians

- i. OPW 9 Dr. T.P. Verma
- ii. OPW 11 Dr. Satish Chandra Mittal

IV. Expert Witness- Religious Matters

- i. OPW 16 Jagadguru Ramanandacharya- Swami Ram Bhadracharya Ji

V. Expert Witness- Archaeologists

- i. OPW 3 Dr. S.P. Gupta
- ii. OPW 14 Dr. Rakesh Tewari
- iii. OPW 17 Dr. R. Nagaswami
- iv. OPW 18 Sri Arun Kumar Sharma
- v. OPW 19 Sri Rakesh Dutta Trivedi

2. The next section provides a detailed chart, evaluating the testimonies given by each of these witnesses. The expert witnesses- Archaeologists, mentioned in V above, will be dealt with by Ms. Meenakshi Arora, Senior Advocate while addressing the issues pertaining to ASI.

B. DETAILED CHART ON WITNESSES

RELIED FOR	COMMENTS
I. WITNESS ON FACTS	
1. OPW 1 MAHANT PARAMHANS RAM CHANDRA DAS: (Date of Examination in Chief – 22.12.1999) <ul style="list-style-type: none"> ❖ Examination in Chief: Pg. 2, Volume 16 ❖ Cross: Pg. 13, Volume 16 • Aged 90 years, Sadhu of Ramanandi Sect, born in Bihar, came to Ayodhya when he was 14-15 years old. [Pgs, 2-3/Vol. 16] 	
Has been produced as a witness of facts.	<p>The following portions of his testimony maybe relevant:-</p> <ul style="list-style-type: none"> a) On December 22/23, 1949, an idol of Lord Ram appeared in the early hours of the morning. After this miraculous development at the place, the idol installed on Ram Chabutara was removed and shifted to 'Garbh Grih.' [Pg. 10/Vol. 16] b) Idol of only Ram Lalla was installed at Ram Janam Bhoomi [Pg. 24/Vol. 16]. It is submitted that this statement is in contradiction of the statement made by several other witnesses who have stated that other idols were also installed. [See DW 3/1 at pg. 8801/ Vol. 51] c) There was no idol of Ram Lalla below the top when it fell down. [Pg. 36/Vol. 16] <i>This shows that the demolition of the disputed structure which was in utter violation of the order passed by this Hon'ble Court, was also pre-planned, just like the desecration on December 22-23, 1949.</i> d) First states that the whole of Parikrama was under the 'Garbha Griha' [Pg. 37/Vol. 16], later says Parikrama was on the outer side. [Pg. 50/Vol. 16]
2. OPW 2 SHRI DEVAKI NANDAN AGARWAL: (Date of Examination in Chief – 16.06.2001 to 18.06.2001) <ul style="list-style-type: none"> ❖ Examination in Chief: Pg. 309, Volume 17 ❖ Cross: Pg. 369, Volume 17 • Aged 80 years- next friend of the Plaintiff deities. [Pg. 309/Vol. 17] 	
Next friend of the Plaintiff Nos. 1 & 2.	<p>The following points from his testimony are relevant:-</p> <ul style="list-style-type: none"> a) About VHP & Nvas <ul style="list-style-type: none"> i. VHP has started a movement to liberate the Ram Janam Bhoomi, in connection with the movement a meeting was organized, which he also attended and thereupon he decided that it would be proper on the basis of religion and morality to construct a temple by removing the structure which was

	<p>built by a tyrant after demolishing the temple which earlier existed there. [Pg. 313/Vol. 17]</p> <p>ii. He further states that Nyas is connected with the Vishwa Hindu Parishad. (Pg. 389/Vol. 17)</p> <p>iii. <i>It is relevant to mention that as per the plaint it is this Nyas which has been entrusted with the right to construct the temple. [Para 15-16 of the Plaint @ pgs. 240-242/Vol. 72-Pleadings Volume].</i></p> <p>iv. <i>It is further relevant to note that VHP had a role in inciting the crowd for demolition of the disputed structure. [See para 6 at pg. 379 of Ismail Faruqui v. Union of India (1994)6 SCC 360]</i></p> <p>b) About shifting of idol:-</p> <p>i. The vigrah of Ram Lalla was seated in a cradle and installed on Ram Chabutra. This vigrah was movable and therefore in accordance with the wishes of the Devotees, it was shifted from Ram Chabutara and installed under the central dome. [Pg. 347/Vol. 17]</p> <p>ii. Till December 22,1949, the idols were not inside the disputed building. [Pg. 428/Vol. 17]</p> <p>iii. There was an idol of Ram Lalla at the chabootara which was later placed under the dome in the disputed place. [Pg. 447.Vol. 17]</p> <p>c) States about the presence of Wakf Inspector and his two reports submitted on 10.12.1949 and 23.12.1949. [Pg. 365/Vol. 17]</p> <p>❖ <i>It is submitted that these are the same reports which though relied upon by the Hindu Parties, they have stated that it was not proved before the High Court. It is submitted that the only reason as to why it was not proved was because the Muslim witnesses had been unable to confirm the presence of the Wakf Inspector at the disputed site [Para 3104 @ pg. 1743/Vol. II of the Impugned Judgment].</i></p> <p>❖ <i>However, since this witness has himself confirmed the presence of the Wakf Inspector, it is submitted that the finding of the Hon'ble High Court qua the reports of the Wakf Commissioner ought to be reversed.</i></p> <p>d) <u>Not a worshipper:-</u>He states that he never did idol worship (Pg. 371/Vol. 17) and that there was no place of worship (puja ghar) at his house (Pg. 369/Vol. 17). He has further stated that – I am not a kind of a devotee w who goes to have 'darshan' with a mind full of devotion, rather I had gone to ascertain what the dispute was about (Pg. 395/Vol. 17). <i>It is submitted that this</i></p>
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	<p>witness who claims to be a- next friend/ well-wisher of the idol (Plaintiff No. 1) had never even worshipped an idol.</p> <p>e) Unable to tell the idol is of which deity:-He states that in 1984-85 he had darshan of the idol from outside the grills, however he is unable to tell the number of idols kept there nor is he able to recall as to which deity's idol was kept there. [Pg. 394/Vol. 17]</p> <p>f) On belief:- The tradition of calling the place, beneath the middle as 'garbh grih' has started on the basis of the belief there was garbh grih at that place of that temple which was demolished and at whose place, the disputed structure was built. My belief is based on hearsay, I have not read about it anywhere. [Pg. 448-449/Vol. 17]</p> <p>g) About the Janamsthan Temple on the Northern side:- The Janamsthan Temple, which is now situated on the northern side of the disputed site, was earlier the part of the same plot as the disputed site, but later the British built a road and therefor subsequently another plot number was allotted to the Janamsthan Temple on the northern side. Since the Janamsthan Temple earlier existed in the same courtyard, some devotees started worshipping that as the birthplace of Lord Ram. [Pg. 449/Vol. 17]</p> <p>h) He states that it is necessary that the person who is going to install an idol should be the owner of the land where idol is to be installed. [Pg. 407/Vol. 17]</p>
<p>3. OPW 4 HARIHAR PRASAD TEWARI: (Date of Examination in Chief – 1.08.2002)</p> <p>❖ Examination in Chief: Pg. 808, Volume 19</p> <p>❖ Cross: Pg. 813, Volume 19</p> <ul style="list-style-type: none"> Aged 85 years- Born in 1917-came to Ayodhya in 1938- lived in Ayodhya for 4 years to study Ayurveda. [Pg. 808/Vol. 19] Used to visit Shri Ram Janambhoomi Temple daily. [Para 2 @ pg. 809/Vol. 19] 	
To prove that the disputed site was believed to be the birthplace of Lord Ram.	<p>The following portions of his testimony are relevant:-</p> <p>i. Regarding Faith & Belief:-</p> <p>a) The faith the disputed site is Ram Janam Bhoomi, is not based on any religious book but is based on hearing from old aged persons. [Pg. 824/Vol. 19]</p> <p>b) I had such faith since the time I gained consciousness. [Pg. 824/Vol. 19]</p> <p>ii. Never went inside the building:-</p> <p>a) Whenever I went to the disputed site and had Darshan of the platform and Sita Rasoi, I did not go inside the building because it was locked. [Pg. 825/Vol. 19]</p> <p>b) After 1938, the place at the disputed site was locked, entry was forbidden there but arrangement of darshan</p>

	<p>of Bhagwan was done at the Chabutara. [Pg. 839/Vol. 19]</p> <p>c) <i>It is submitted that these statements are in consonance with the report of the Wakf Commissioner who states that the Masjid was locked (though the keys remained with Muslim persons) and the Masjid was opened on Friday for 3-4 hours for the Friday Namaz. [See pgs. 1742-43/Vol. II of the Impugned Judgment]</i></p> <p>iii. Not able to identify the pictures of the disputed site: He was shown about 18 pictures of the disputed site but he was unable to state if those pictures related to any part of the disputed site. [Pgs. 827-829/Vol. 19]</p>
<p>4. OPW 5 SHRI RAM NATH MISHRA ALIAS BANARSI PANDA: (Date of Examination in Chief –6.08.2002)</p> <p>❖ Examination in Chief: Pg. 855, Volume 19</p> <p>❖ Cross: Pg. 863, Volume 19</p> <p>• Aged 91 years, married at Ayodhya to the daughter of a pandit in Ayodhya. [Pg. 855 @ para 1/Vol. 19]</p>	
<p>To prove that the disputed site was believed to be the birthplace of Lord Ram.</p>	<p>The following points from his testimony are relevant:-</p> <ol style="list-style-type: none"> Accepts the presence of the pujaris of the Nirmohi Akhara at the disputed site [Para 11 @ pg. 861/Vol. 19;Pg. 869/Vol. 19; Pg. 908/Vol. 19]. <i>This shows that it was Nirmohi who has been acting as the Shebait of the idol, and in the absence of any pleadings in Suit 5 that the Shebait was acting against the interests of the deity, there can be no occasion for the next friend to represent the deity in the present proceedings.</i> The temple of Lord Rama's period is still there and the Janambhoomi temple is the very same temple. [Pg. 882/Vol. 19] The witness is shown over 50 photographs of the disputed site and he is either unable to state whether they relate to the disputed site or he identifies the photographs incorrectly. For instance:-Upon seeing one picture, he states that the railings were inside the disputed building, when shown the photographs of pillars,the witness is unable to state whether those pillars belonged to the disputed structure or not. [Pgs. 889-900/Vol. 19] <i>This shows that the witness had never visited the disputed site, as he is unable to correctly identify any photos of the disputed site that were shown to him.</i> In 1990, a monkey caused the collapse of the disputed building. The building was solid and could not have been demolished by even thousands of people. The whole

	building was razed by just one monkey. [Pg. 906-907/Vol. 19]
5. OPW 6 SHRI HOUSILA PRASAD TRIPATHI: (Date of Examination in Chief –13.08.2002) ❖ Examination in Chief: Pg. 948, Volume 19 ❖ Cross: Pg. 956, Volume 19 • Aged 80 years, Ayodhya is 30-35 kms from his village Pahunti, came to Ayodhya for the first time in December 1935 when he was 12-13 years old. [Pg. 855 @ para 1/Vol. 19]	
To prove that the disputed site was <i>believed</i> to be the birthplace of Lord Ram.	i. <u>About Faith & Belief:-</u> a) At pg. 951/Vol. 19, he states that he has the faith and belief that Lord Ram was born in Ayodhya and that place was famous as Sri Ram Janambhoomi. b) However, at pg. 959/Vol. 19, he states that he is a complete atheist. ii. <u>About the incident of December 22-23,1949:</u> I had heard that in 1949 under the middle shikhar o the disputed building, idols were placed, then clarifies that – <i>I had not heard that idols were placed , but the Ram Lalla made his appearance.</i> [Pg. 1031/Vol. 20] iii. When shown photos (over 10 photos) of the disputed site, the witness is unable to identify as to which part of the disputed site do they relate to – but later states that since the photos are being shown now, they must be related to the disputed site. [Pg. 1037-1040/Vol. 20] iv. I have heard that in 1934, some fish incarnation (Matsya) avatar demolished the disputed building. [Pg. 1041/Vol. 20]
6. OPW 7 RAM SURAT TEWARI: (Date of Examination in Chief – 19.09.2002) ❖ Examination in Chief: Pg. 1105, Volume 20 ❖ Cross: Pg. 1113, Volume 20 • Aged 73 years, Vaishnav, his village is situated 8 kms away from Ayodhya. [Pg. 1105 @ para 1/Vol. 20] • On the western side of Ram Chabootra there existed a lattice wall, inside which there was a room having three domes, his elder brother told him that this was the birthplace of lord ram and the Hindus believed that Lord Ram had been born under the middle dome- which was called Garbh Griha. [Pg. 1107-08 @ para 7/Vol. 20] • After visiting the Ram Chabootra, the pilgrims and visitors used to go through the lattice wall to the three domed building where they got darshn of Garbh Griha. [Pg. 1108 @ para 7/Vol. 20]	
Belief that the place below the middle dome in the disputed structure was being worshipped as the birthplace of Lord Ram.	Relevant to note that this witness states:- a) I went to Ram Chabutara before 15.12.1949. I have never had darshan of Garbha Griha inside the disputed building between the year 1942 to 15.12.1949.[Pg. 1114/Vol. 20] b) None of the idlos were there in the Garbh Griha inside the disputed building. I had been offering flowers/prasad etc from outside the lattice wall. [Pg. 1114/Vol. 20]

	<p>c) On December 22-23, 1949, the idol of Ram Lalla emerged by itself. [Pg. 1114-1115/Vol. 20]</p> <p>d) Wrongly written in FIR that certain people entered the mosque and placed the idol there- truth is that on December 22/23, 1949, Ram Lalla got incarnated in the disputed structure. [Pg. 1117/Vol. 20]</p> <p>e) I heard that on December 22-23, 1949 the Lord Ram Lalla had got incarnated but later heard that the idol of Ram Lalla kept in Chabootra had been kept in 'Garbh Girha'. [Pg. 1145/Vol. 20]</p> <p>f) First states that Parikrama Marg is on the rear side – western side [Pg. 1151/Vol. 20], later says that he did Parikrama of Ram Chabootara [Pg. 1166/Vol. 20]</p> <p>g) States that no human image, image of any gatekeeper or of any God/Goddess is visible on the pillars. [Pgs. 1176/Vol. 20]</p> <p>h) States that he had seen the photograph of Gurudutt Singh, City Magistrate under the southern dome. [Pg. 1189/Vol. 20]</p> <p>i) I believe that Hanuman Ji had motivated people for demolition of the disputed building and I may not be able to tell whether Hanumanji knew about the <i>status quo</i> imposed by the Hon'ble Supreme Court. [Pg. 1205/Vol. 20]</p>
<p>7. OPW 12 SHRI KAUSHAL KISHORE MISHRA: (Date of Examination in Chief – 19.09.2002)</p> <p>❖ Examination in Chief: Pg. 2210, Volume 24</p> <p>❖ Cross: Pg. 2215 Volume 24</p> <p>• Aged 75 years, resident of Ayodhya, he is an Archarya and he belongs to a family of priests and claims that his family belonged to 'Preceptor Vashishthas' lineage, who were the family priest of King Dasrath [Pg. 2210-2211 @ para 1-2/Vol. 24]</p>	
<p>Belief that the place below the middle dome in the disputed structure was being worshipped as the birthplace of Lord Ram.</p>	<p>The following portions of his testimony are relevant:-</p> <p>a) About belief that Lord Ram was born under the Central Dome:-</p> <ol style="list-style-type: none"> In examination in chief, he asserts that it was the belief of Hindu people that Lord Ram was born under the middle dome. [Para 6 @ pg 2212/Vol. 24] In his cross examination he states that it is the full faith of mine and other sadhus and saints that Lord Ram got birth and appeared on this Chabootara (Ram Chabootara) of the disputed premise. [Pg. 2295/Vol. 25]. <i>It is submitted that Ram Chabootara is in the outer courtyard.</i> <p>b) Contradicts himself :-</p> <ol style="list-style-type: none"> He first states that he started performing worship at Ram Janambhoomi since, the age of 14-15 (i.e 1941-42) and started getting Daskhina for it and since then he continued with the said job. He stated that he used to accompany his father and grandfather to the Ram Janambhoomi and saw

	<p>the pilgrims praying <i>inter alia</i> at the sanctum sanctorum i.e. below the middle dome of the disputed structure where Lord Ram was allegedly born. [Para 5-6 @ pgs. 2211-2212/Vol. 24]</p> <p>ii. Thereafter he states that in 1934 he did not go inside the disputed building but only till the Chabutara; but then he again states that he had been going in the three domed building since 1934 [Pg. 2269/Vol. 25]</p> <p>iii. He then states that he took the devotees inside for worship only after 1949 till 1986 and for this purpose he used to orally take permission from the Receiver. [Pg. 2278/Vol. 25]</p> <p>iv. After stating in his examination in chief that he had seen the pilgrims praying inside at the sanctum sanctorum of the disputed building [Para 5-6 @ pgs. 2211-2212/Vol. 24], he later states that the idol therein was only kept on December 22-23, 1949 [Pg. 2282-83/Vol. 25] and also accepts that there is no other public temple lacking an idol in its sanctum sanctorum [Pg. 2280/Vol. 25].</p> <p>c) Has been involved in a series of illegal acts:-</p> <p>i. He accepts in his examination in chief that he alongwith the Bairagis, together scared the Muslims away when they attempted to enter the disputed structure. [Para 9 @ pg. 2212-13/Vol. 25]</p> <p>ii. States that his father was present in the night of December 22/23, 1949, when the idol was kept under the Central Dome. [Pg. 2283/Vol. 25]</p> <p>d) About the idol being duly consecrated:-</p> <p>First states that his father had informed him that when the idol was installed under the middle dome, it was installed with accepted procedures [Pg. 2285/Vol. 25] but later states that the procedure of Pran-prathishta takes time about 9 days to complete. [Pg. 2289/Vol. 25]</p> <p>e) My memory has become weak for the last 5-6 years. My memory is not sound. [Pg. 2293/Vol. 25]</p>
8. OPW 13 NARAD SARAN: (Date of Examination in Chief – 27.01.2003)	
❖ Examination in Chief: Pg. 2306, Volume 25	
❖ Cross: Pg. 2309, Volume 25	
• Aged 76 years, came to Ayodhya in 1946, was initially the disciple of Ram Manohar Saran ji, and after his demise he succeeded him as the Mahant to Saraju Kund in 1979. [Pgs. 2306 @ para 1/Vol. 25]	
Belief that the place below, the middle dome in the disputed	The following points are relevant:-

<p>structure was being worshipped as the birthplace of Lord Ram.</p>	<p>i. He accepts that the idol was shifted from the Ram Chabutara to the place below the central dome on the night of December 22-23, 1949. [Pgs. 2312-13/Vol. 25]</p> <p>ii. When he is confronted with the pictures of inscriptions wherein "Allah" is written he states that he cannot tell if anything is written in Urdu or Arabi and states that these inscriptions are leaves and flowers only. He further states that these designs can be in the temple also but Allah cannot be written there. He further clarifies that if Allah is written this wall cannot be the wall of the temple. [Pg. 2335/Vol. 25] <i>It is submitted that in view of the report of the Commissioner, Shri Bashir Ahmad, it is clear that the word Allah was written at several places in the Mosque [Please see submission A54 tendered on 3.9.2019]. It is further relevant to note that even in the 1885 suit the judgment dated 24.12.1885 records that the word Allah was inscribed on the wall of the mosque. In such circumstances, there could not have been a temple at the disputed site. [See pg. 33/Vol. 1 of the Impugned judgment]. It is submitted that an argument was advanced before this Hon'ble Court that at Hindu temples can co-exist with a Muslim place of worship but not vice-versa. However, this witness has himself clarified that if Allah is written on the wall, it cannot be of the temple, this shows that the disputed building was never used as temple.</i></p> <p>iii. He states that he cannot confirm as to whether Muslims offered Namaz in the disputed building on the days that he did not visit the disputed building. [Pg. 2346/Vol. 25]</p> <p>iv. As mentioned above, he admits that the idol was placed under the central dome only on 22/23.12.1949, but he also states that the common belief in Ayodhya was that there was sanctum sanctorum below the middle dome. When asked about the basis of his belief, he states that the same is because people throng to this place for worship & parikrama during festivals. [Pg. 2365/Vol. 25]</p>
<p align="center">II. WITNESSES RELATING TO THE VISHNU HARI INSCRIPTIONS</p>	
<p>9. OPW 8 ASHOK CHANDRA CHATTERJEE: (Date of Examination in Chief – 3.10.2002)</p> <ul style="list-style-type: none"> ❖ Examination in Chief: Pg. 1224, Volume 20 ❖ Cross: Pg. 1231, Volume 20 • Aged 52 years, residing in Faizabad since birth, completed BSc, LLB and is a partner in the firm with the name of Majestic Automobiles; also the owner of Majestic Talkies. [Pg. 1224 @ para 1/Vol. 20] 	

<ul style="list-style-type: none"> Was present at the time of demolition of the disputed structure on December 6, 1992 and had seen the slab (which was later found to have the Vishnu-Hari inscriptions) in the ruins of the disputed structure. [Pgs. 1226-1228 @ paras 7-10/Vol. 20] 	
<p>The slab containing the Vishnu Hari inscriptions had fallen from the disputed structure.</p>	<p>In respect of the slab containing Vishnu Hari inscriptions, the following points are relevant to note:-</p> <ol style="list-style-type: none"> He states in his examination in Chief Affidavit that he was standing on the western side of the disputed building at the time of demolition. [Pg. 1226- para 7/Vol. 21] He states in his cross that he was standing on the southern side of the disputed building at the time of demolition and that nothing was clearly visible because of the dust. [Pg. 1263/Vol. 21] Despite the above, he claims to have seen the slab containing the inscription falling. [Pg. 1228/Vol. 21] He then states that on the next day after demolition, he along with Dr. Sudha Mallaya and Dr. S.P. Gupta went to click pictures of the inscriptions, which had been collected at one place by the Kar Sevaks. [Para 13 at pg. 1229/Vol. 21] Further, Dr. S.P. Gupta who is OPW 3 in the present matter has accepted that he has been a member of RSS since before 1975. [Pg. 597/Vol. 18] Further Dr. K.V. Ramesh, who is OPW 10 has stated that he had the occasion of sitting with Dr. S.P. Gupta and others in the Delhi office of Archaeological Society of India- which was headed by Dr. S.P. Gupta, and at that time they discussed this inscription. [Pgs. 1830-31/Vol. 23] <i>It is therefore submitted that translation of the inscriptions in question was done at the behest of Plaintiff No. 3 of suit 5 and was done in consultation with OPW 3 who is a member of RSS. Further the method of discovery of the inscription, by a random journalist, who is unable to even clarify as to which side of the disputed structure was he standing, makes the entire process of recovery and translation of the inscription doubtful.</i> The witness is not able to identify the pictures of the disputed site: <ul style="list-style-type: none"> ❖ It is not clear to me from the 2 photographs whether this is the western portion of the boundary wall or not because I have visited this place only once in my lifetime. [Pgs. 1316/Vol. 21] ❖ In respect photograph 54, he stated- <i>I cannot say whether this is a photograph of the disputed premises or not.</i> [Pg. 1318/Vol. 21] He first states that the rock inscription slab had fallen from the western wall of the southern dome. [Pg. 1326/Vol. 21] However, subsequently after seeing the picture of the western wall of the southern dome, he states that the rock/inscription

	<p>slab which was available after the demolition of the structure does not appear to be fixed on the wall. [Pg. 1336/Vol. 21]</p> <p>j) In respect of Parikrama he states:-</p> <ul style="list-style-type: none"> ❖ No one has done Parikrama of the disputed building in my presence till this day. [Pg. 1359/Vol. 21] ❖ My parents with whom I had started visiting the disputed building had never done Parikrama of the disputed building. I have also never done/seen Panchkosi/Chaudah Kosi Parikrama in Ayodhya. [Pg. 1360/Vol. 21] <p>k) If the idol of lord Ram has not been consecrated by established procedures it will be only an idol and not a vigrah. [Pg. 1396/Vol. 21]</p> <p>l) If a place of worship is damaged by people of some other community by forcibly entering it, then it is improper. [Pg. 1398/Vol. 21]</p>
<p>10. OPW 10 DR. K.V. RAMESH (Date of Examination in Chief – 11.11.2002)</p> <ul style="list-style-type: none"> ❖ Examination in Chief: Pg. 1813, Volume 23 ❖ Cross: Pg. 1819, Volume 23 • Aged 67 years. He is the Epigraphist who translated the Vishnu Hari Inscriptions [Para 1-2 @ pg. 1813/Vol. 23 and Paras 6-15 @ pgs. 1816-1818/Vol. 23] 	
<p>Relied to prove the translations of the Vishnu Hari Inscriptions, which translation was done by this witness.</p>	<p>The following points are relevant:-</p> <p>a) In the translation at Verse 27- the incarnation of Lord Vishnu is mentioned and 4 avatars-Narsimha, Krishna, Vamana & Rama are mentioned. [Para 13 @ pg. 1817/Vol. 23] <i>This is important as no specific importance or focus on Lord Ram has been made in the inscription.</i></p> <p>b) He mentions that he is not a historian of Northern India [Pg. 1820/Vol. 23] and also states that it is not possible to interpret inscriptions until the epigraphist knows contemporary history. [Pg. 1828/Vol. 23]</p> <p>m) He has stated that he had the occasion of sitting with Dr. S.P. Gupta and others in the Delhi office of Archaeological Society of India- which was headed by Dr. S.P. Gupta, and at that time they discussed this inscription. [Pgs. 1830-31/Vol. 23]</p> <p>n) He has also stated that he devoted 10-12 hours to decipher the inscription at the office of Indian Archaeological Society of India- which was headed by Dr. S.P. Gupta- and whose office adjoins the house of Dr. S.P. Gupta. [Pg. 1841/Vol. 23]</p> <p>o) It is relevant to mention that Dr. S.P. Gupta who is OPW 3 in the present matter has accepted that he has been a member of RSS since before 1975. [Pg. 597/Vol. 18]. <i>In view of this admission, bias cannot be ruled out.</i></p> <p>c) He clarifies that at page 9 of his report verse 5 – line 4 & 5 by making a reference to the noble family, he has translated the Janam Bhumi as the birth place of valour- meaning the birth place of the Royal Kshatriya family of the dynasty. He further clarifies that the members of this valourous kshatriya family later became chieftains of Saketa Mandala during the time of</p>

	<p>Meghasuta. [Pg. 1855/Vol. 23] <i>This shows that the reference to Janambhumi was not to the birthplace of Lord Ram but birthplace of the royal dynasty at the time.</i></p> <p>d) He states that Verse 27 in para 13 of this report is in the praise of Lord Vishnu. [Pg. 1866/Vol. 23] <i>Thus, again no specific mention to Lord Rama has been made.</i></p>
11. OPW 15 DR. M.N. KATTI (Date of Examination in Chief – 31.3.2003)	<p>❖ Examination in Chief: Pg. 2459, Volume 25</p> <p>❖ Cross: Pg. 2465, Volume 25</p> <p>• Aged 64 years. He is the Epigraphist who prepared Estampages of the inscriptions on the stone slab and stone pillar, in February 1994. [Pg. 2459 and Pgs. 2462-2463 /Vol. 25]</p>
He deposed to prove the Estampages.	<p>It is relevant to note that :-</p> <p>a) The witness has stated that he does not claim to be a historian. (Pg. 2470/Vol. 25)</p> <p>b) He states that estampage of the inscriptions were first taken by him (Pg. 2472-73/Vol. 25) and then at a later date the same were taken by some others (Pg. 2474/Vol. 25).</p> <p>c) He states that he had accidentally met Dr. K.V. Ramesh (OPW 10) in Delhi and there he had preliminary discussions- at this time Dr. Ajay Mitra and Dr. T.P Verma were also present. However, he states that he has never heard the name of Dr. Sudha Mallaya as an epigraphist. [Pgs. 2474-2475/Vol. 25] It is relevant to note that when OPW 10- Dr. K.V. Ramesh mentions the same meeting he states that Dr. Sudha Mallaya was also present. [Pg. 1830/Vol. 23]</p> <p>d) He states that he does not remember any detail regarding the recovery of the inscribed stones. [Pg. 2506/Vol. 25]</p> <p>e) It is pertinent to mention that this witness had also separately translated the said Vishnu Hari inscriptions and his report on the same has been severely criticized by Dr. K.V. Ramesh (OPW 10). The relevant portion of his testimony are as follows:-</p> <p>❖ Mr. Katti agreed with me on decipherment of the inscription in question, but tried to approach beyond the literal meaning of inscription with which I did not agree. [Pg. 1852/Vol. 23]</p> <p>❖ Mr. Katti had ridiculously suggested that the word 'Mame' appears to be a mistake for 'Rame' [Pg. 1852/Vol. 23]</p> <p>❖ I do not agree with Mr. Katti's observation made on page 4 of his report that the inscription ends abruptly with the word Ayusya Chandra and further portion could have been engraved on another slab. [Pg. 1854/Vol. 23]</p> <p>❖ I have not seen or deciphered the word Kshitipo as the last word of the inscription like Mr. Katti. [Pg. 1854/Vol. 23]</p>
III. EXPERT WITNESSES- HISTORIANS	

<p>12. OPW 9 DR. T.P. VERMA (Date of Examination in Chief – 31.10.2002)</p> <p>❖ Examination in Chief: Pg. 1424, Volume 21</p> <p>❖ Cross: Pg. 1433, Volume 21</p> <p>• Aged 69 years, historian, obtained post-graduation degree in Ancient Indian History Culture and Archaeology in 1958 and obtained Ph. D. degree in Indian numismatics from Kashi Hindu Vishwavidyalaya Varanasi. Also did post-graduate diploma in numismatics from the same University. The subject of his Ph. D. thesis was the “Paleography of Brahmi” [Pg. 1424/ Vol. 21 and Para 2/ pg. 1425@ Vol. 23]</p>	
<p>He has appeared as an expert-Historian and has deposed that Lord Rama was born at the disputed place at Ayodhya where a mosque was constructed after demolishing a temple. However, the disputed place has continuously been worshiped by Hindus having a special and peculiar importance. [Para 13 @ pg. 1427-28/Vol. 21]</p> <p><i>Relevant to note that he was substituted as Plaintiff No. 3 in Suit 5 after the demise of Devaki Nandan Agarwal.</i></p>	<p>It is relevant to note that :-</p> <p>a) The witness has stated that he has obtained post graduate degree in Ancient History [Para 2 @ pg. 1425/Vol. 21]. He further states that he is a student of ancient history and possesses just a scanty knowledge of medieval history. [Pg. 1636/Vol. 22]. It is therefore submitted that the witness is not competent to depose on the facts pertaining to medieval history and his statement in this respect cannot be considered to be opinion of an Expert, which can be treated to be relevant under Section 45 of the Evidence Act. Even the Hon’ble High Court expresses certain doubt his position as an expert witness as well as on the reliability of his statement. [Para 3631 @ pgs. 2100-2103/Vol. 2 of the Impugned Judgment]</p> <p>b) This witness states in his examination in chief affidavit that Salar Masood came during 1032-33 AD and demolished the Janamshtan Mandir. [Para 15 @ pg. 1429/Vol. 21]. Subsequently he gives detailed description of Salar Masood having come to Ayodhya. [Pg. 1438-1441/Vol. 21] However later he states that he does not agree with his statement that Salar Masood had come to Ayodhya in 1032-33 and damaged the Janamsthan Mandir. [Pg. 1809/Vol. 23]</p> <p>c) The impugned judgment at Para 3630 notes that OPW 9 admitted that Salar Masood never came to Ayodhya and he mistook the place 'Ajudhan' with 'Ayodhya' though 'Ajudhan' is in the State of Punjab. That being so, his statement that demolition was made by Salar Masood at Ayodhya in 1032-33 has proved wrong. [Pg. 2100 @ para 3630/Vol. 2 of the Impugned Judgment]</p> <p>d) He relies on Tieffenthaler and Montgomery Martin to state that despite the demolition of the temple and construction of the Mosque at the Ram Janambhoomi, Hindus continued to worship there. [Pg. 1428/Vol. 21]</p> <p>❖ Re Tieffenthaler: It is relevant to note that Tieffenthaler also mentions a bedi (cradle) and states that it was on this where Beshan (Vishnoo) was born in the form of Ram. [Pg. 4119-4120 @ pg. 4120 of Vol. III of Impugned Judgment]</p>

	<p>❖ It is relevant to note that DW 3/18 (witness on behalf of Nirmohi Akhara) has stated that Ram Chabutara was also called Bedi. This shows that the Hindu belief was that Lord Ram was born on Chabutara. [Pg. 10663/Vol. 58]</p> <p>e) Further this witness was confronted with the following passage of Thornton's Gazetteer:- <i>A quadrangular coffer of stone, whitewashed, five ells long, four broad and protruding five or six inches above ground is pointed as the cradle in which Rama was born as the seventh avatar of Vishnu and is accordingly abundantly honored by the pilgrimages and devotions of the Hindus.</i></p> <p>f) In respect of this cradle, the witness states:- <i>"There is no mention of the Chabootra in the gazetteer, rather there is a mention of a cradle and there is a possibility that there might have been a cradle at the place of Chabootra. There is a possibility that there might have been a cradle at the place of Chabootra. There is a possibility that the words quadrangular coffer of stone would have been used for cradle also. It has been mentioned in this gazetteer that people of those days believed that Ramchandrajai was born in this cradle only. Such a popular belief was prevalent amongst the people during the year 1850. Possibility the cradle would have been kept at the place where Ram Chabootra existed till the year 1992."</i> [Pg. 1678-1679/Vol. 22] It is submitted that this shows that the Witness accepts that there was a belief that Lord Ram was born in the cradle outside at the Chabootra.</p>
<p>13. OPW 11 DR. SATISH CHANDRA MITTAL (Date of Examination in Chief – 25.11.2002)</p> <p>❖ Examination in Chief: Pg. 1883, Volume 23</p> <p>❖ Cross: Pg. 1892, Volume 23</p> <p>• Aged 65 years, historian, obtained post graduate degree in History in 1959 from Agra University and in Political Science in 1962 from Punjab University, Chandigarh. Did PhD in History in 1972 from Kurukshetra University, Kurukshetra. [Para 1 @ Pg. 1883/Vol. 23]</p>	
<p>He is a historian who appeared as an expert witness to establish that Babur demolished an existing temple to build the Babri Mosque.</p>	<p>a) It is submitted that this witness in para 2 of his examination in chief, states that he is a modern historian- <i>"The subject of my study & teaching had been Modern Indian History."</i> [Para 2 @ pg. 1883/Vol. 23]. This shows that he has no expertise with respect to the period during which he alleged that the said disputed building was constructed. Thus, his statement in this respect cannot be considered to be opinion of an Expert, which can be treated to be relevant under Section 45 of the Evidence Act. Even the Hon'ble High Court at para 3633 @ pg. 2104/Vol. II of the Impugned Judgment has taken the view</p>

	<p><i>that OPW 11, being a modern historian cannot be considered to be an expert witness.</i></p> <p>b) Additionally, he has himself stated during corss examination that the period during 1526-1707 comes under the medieval period and that he possesses only a general and <i>not special</i> knowledge of this period. He further clarifies that he has read the books mentioned in his affidavit in order to know the history of this period. [Pg. 1905/Vol. 23]</p> <p>c) He further states that he has not mentioned any other book on medieval history other than those mentioned in his affidavit [Pg. 1905/Vol. 23]. A perusal of his affidavit [Para 8 & 9 @ pg.1885-1886/Vol. 23] shows that he has only read accounts of those traveller's and gazetteers which have been exhibited in the present case.</p> <p>d) He has also states that- "<u>gazetteer, census, reports, papers and magazines cannot be the source of knowing 16th century history. In order to know the history of 16th century, 'travel accounts' and books which were written in 17th and 18th century cannot be deemed to be initial sources, but only the secondary sources.</u>" [Pg. 1904/Vol. 23]</p>
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IV. EXPERT WITNESS- RELIGIOUS MATTERS

<p>14. OPW 16 JAGADGURU RAMANANDACHARYA- SWAMI RAM BHADRACHARYA JI (Date of Examination in Chief – 15.7.2003)</p> <p>❖ Examination in Chief: Pg. 2538, Volume 26</p> <p>❖ Cross: Pg. 2546, Volume 26</p> <p>• Aged 54 years, blind- belongs to Ramanandi Sect and has done in-depth study of the revered God of the Ramanandi Sect- Lord Rama. [Para 1 @ pg. 2538 and Para 12 @ pg. 2540/Vol. 26]</p>	
<p>Appeared as an expert witness on religious matters</p>	<p>The following portions of his testimony are relevant:-</p> <p>a) In his examination in Chief Affidavit he states that disputed site at Ayodhya is the birthplace of Lord Ram, from times immemorial and as per traditions and faith. [Pgs. 2541-42/Vol. 26]</p> <p>b) However, in his cross, he states as follows:-</p> <p>❖ Both Yajurveda and Ramtapuniyopanished- which are mentioned in his examination in chief affidavit- do not provide any particular place of birth of Lord Rama and mention that Lord Ram was born in Ayodhya. [Pg. 2573/Vol. 26]</p> <p>❖ In the fifth couplet (in Ramcharitanmanas)- Janambhoomi stands for the whole city and not for any particular site. [Pg. 2579/Vol. 26]</p> <p>❖ Neither in Skand purana nor in Ayodhya Mahatmaya- the distance of any other place from the birthplace has been mentioned. [Pg. 2586/Vol. 26]</p>

	<p>❖ First in his examination in chief affidavit he reproduces certain shlokas from Bal Kand (Valmiki Ramayana) and states that these shlokas describe the disputed structure as the birthplace [Para 23 @ Pg. 2543/Vol. 26]. However, later he states that the Shlokas in Para 23 of my affidavit, have nothing to do with Janamsthan or Janambhoomi. [Pg. 2592/Vol. 26]</p> <p>c) He states that he is unaware of any Ram Chabutara, Charanchinh and Chatti Pooja outside the place. [Pg. 2554-55/Vol. 26]</p> <p>d) On Swyamabhu-There is no other Hindu shrine in India, where without any idol or prints or figure or Linga-only the place is worshipped. [Pg. 2555/Vol. 26] <i>This supports the claim of the Muslim Parties that the concept of Janmsthan being a swayambhu deity was invented for the first time in Suit 5.</i></p> <p>e) On Pranprathishtha:-Those idol are worshipped which have pran prathishtha and the ritual of pran prathsihta lasts for 5 days. [Pg. 2556/Vol. 26] <i>This shows that the idol which was installed in the disputed site was not duly consecrated as the said process would have taken atleast 5 days.</i></p>
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V. EXPERT WITNESS- ARCHAEOLOGISTS

The following archaeologists have deposed as expert witnesses, and their testimonies will be dealt with by Ms. Meenakshi Arora, Senior Advocate when she argues the issues relating to ASI Report:

- i. OPW 3 Dr. S.P. Gupta
- ii. OPW 14 Dr. Rakesh Tewari
- iii. OPW 17 Dr. R. Nagaswami
- iv. OPW 18 Sri Arun Kumar Sharma
- v. OPW 19 Sri Rakesh Dutta Trivedi

At this stage it is only relevant to mention that OPW 17 in his cross examination has admitted that the temple at Ayodhya which was built in 11th Century AD was a classical temple and not a swayambu. [Pg. 2909-2910 @ pg. 2910/Vol. 27]

C. CONCLUSION

As demonstrated above, the statements made by the witnesses on behalf of Plaintiffs of Suit 5 are unreliable and are unable to demonstrate that the place beneath the central dome is the birthplace of Lord Rama or that the same was believed to be so by Hindus. Further, the fact that next friend who is the Plaintiff No. 3 in the present suit, was not even an idol worshipper, raises doubts on his ability to be a next friend and/or represent a deity. In addition to the foregoing, the testimony of the witnesses pertaining to the Vishnu Hari inscriptions, raises serious doubts about the discovery of the slab on which the inscriptions were found and even the process of its translation. Lastly, the expert historians produced

by the Plaintiffs (Suit 5) were not Medieval historians and therefore their statement cannot be considered to be opinion of an Expert under Section 45 of the Evidence Act

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