

Case Description (/court-case/ayodhya-title-dispute)

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 30 Arguments: 21 August 2019

The Supreme Court is hearing an appeal to the 2010 Allahabad High Court judgment, which divided the disputed title equally among the Nirmohi Akhara, Lord Ram and the Sunni Waqf Board. Yesterday, CS Vaidyanathan submitted documentary and oral evidence in support of Ram Lala's claims.

Today, CS Vaidyanathan concluded his arguments, reiterating that the disputed land is itself a deity and hence cannot be possessed. He added that a second reason the land cannot be possessed is that it is a public temple and hence is not subject to the claims of private parties. Finally, he disputed the claims of the Nirmohi Akhara and the Sunni Waqf Board.

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At at the end of the day, arguments on behalf of the lay worshipper Gopal Visharad began.

Morning Session

At 10.53 AM, CS Vaidyanathan resumed his arguments. He submitted that the Allahabad High Court had held the suits of Nirmohi Akhara and Sunni Waqf Board to be barred by limitation. Yet it had yet granted them relief. He questioned the decision's standing in law.

2.25 No private party can claim possession of a public temple

He then cited case law to submit that no private party can claim possession of a public temple, as this would alter its religious nature. He argued that the temple at the disputed site is a public temple. Hence, he submitted that it is *res extra commercium* - meaning that none of the parties could claim the right to the property title. He also reminded the court of his earlier claim that the property is *res nullius* because the property itself is a juridical entity.

2.26 The disputed property is a deity and external ownership cannot be claimed

Adverse possession is the claim to someone else's property through exclusive and continuous hostile possession. Note that neither Nirmohi Akhara nor Sunni Waqf Board are claim adverse possession. Both parties argue that they own the land . However, CS Vaidyanathan equated their claims to adverse possession, arguing that the ownership is with Lord Ram.

Justice Bobde and Justice Chandrachud directed CS Vaidyanathan to cite case law in support of his arguments that the property of a deity is inalienable. He cited a Privy Council judgment.

Next, he added that the property cannot be claimed by adverse possession, since the deity is a perpetual minor in law.

Justice Bobde asked if claims of adverse possession can exist if the property is owned by a lunatic and whether it could be alienated.

Justice Nazeer asked if adverse possession could be claimed over property owned by a Waqf.

CS Vaidyanathan argued that the court in Ismail Faruqui held that the law of limitation would apply to Waqf property. He added that no party can claim possession of land which itself is a deity, or is owned by a deity.

Chief Justice Gogoi summarised CS Vaidyanathan's position as : 'the disputed property is itself a deity and hence it cannot be possessed nor have its title claimed.'

CS Vaidyanathan proceeded to clarify his *res extra commercium* argument. He submitted that the site is a public temple because devotees have historically performed worship there . He said that it was hence not subject to private title claims. He argued

that a mosque was illegally constructed at the site and that this could not grant the Sunni Waqf Board any claims since the character of the deity and the sanctity of the deity is perpetual and indestructible.

Justice Chandrachud sought a clarification and asked whether there was authority to substantiate that the assumed temple was *res extra commercium* and could not be subject to possession claims. CS Vaidyanathan submitted that no one can destroy the character of a temple or an idol. Justice Chandrachud then asked whether this simply amounted to his first argument, namely that no one can claim possession of a deity. Vaidyanathan submitted that it was a different argument about the character of a temple.

2.27 Inalienability of mosques and temples

Vaidyanathan stressed that a temple, by its very character, is not subject to commercial claims - it cannot be traded or possessed. Justice Chandrachud asked him to cite relevant case law. Before Vaidyanathan could proceed, Justice Bobde asked him to clarify the court's holding in the Ismail Faruqui case on the inalienability of mosques. The judgment held that the right to worship at the site of a mosque ceases, when it is destroyed.

CS Vaidyanathan clarified for Justice Bobde that the Faruqui judgment draws from Indian Mohamedan Law and prior judgments from the Lahore High Court, Privy Council and Supreme Court. He submitted that Mohamedan Law does not consider the land on which a mosque is built as inalienable.

Justice Bobde stated that Vaidyanathan had failed to answer Justice Nazeer's earlier question. He re-stated the question as follows: if a property is voluntarily dedicated to God, does it become inalienable forever or can a human act destroy its inalienable character?

Justice Bobde narrowed the question - can the trustee of a Waqf property sell it? CS Vaidyanathan affirmed that a trustee could sell Waqf property'. He submitted that Hindu and Mohammedan law differed on this issue. He argued that in Hindu law, the trustee of a shebiat can transfer the title of the property, only if such transfer does not destroy the character of the temple or deity. However, he argued that this was not the rule Mohamedan law.

CS Vaidyanathan submitted that if the land on which a mosque lies is adversely possessed, then the right to worship at the mosque ceases. He proceeded to read from the Ram Janaki case.

Justice Chandrachud presented the example of a court allowing the transfer of an idol in *Keshav Chandra Ghoshi*, after considering the valid circumstances in that case.

CS Vaidyanathan responded to Justice Chandrachud by submitting that an idol cannot be alienated, but the property held by the idol can. He distinguished between 'property as a deity', the abode of a deity and property held by a deity. He submitted that only the property held by a deity could be alienated under Hindu law.

CS Vaidyanathan then read extracts from *Shaheed Ganj*, where the Privy Council held that a mosque could be adversely possessed. The Waqf's right to title was held to be extinct under section 28 and Article 144 of the Limitation Act, 1908 as no attempt had been found to drive out those who had adversely possessed the property. CS Vaidyanathan submitted that the Privy Council reached its judgment without deciding whether a Muslim institution can be regarded as a juristic person, in response to Justice Bobde's question about the same.

Justice Bobde stated that the comparison between Hindu and Muslim law in this regard was misleading, as Islam does not consider any property divine (in Islam nothing but God is divine). CS Vaidyanathan agreed that Islam only considered God divine. The Chief Justice asked him to return to his central argument.

2.28 Rights of debutters

CS Vaidyanathan proceeded to case law pertaining to right of debutters. He submitted that it is the duty of the court to protect the interests of idols and sustain proper proceedings for the express benefit of trustees. He emphasised that in the present dispute, a temple cannot be built in a new place as the place itself is divine.

Justice Bobde posited the hypothetical where unauthorized idols are placed in a road, to prevent road widening. He said that he did not want Vaidyanathan's principle to apply in such cases. Vaidyanathan submitted that in such cases, the principle would not apply as the land itself is not divine.

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CS Vaidyanathan proceeded to read case law which distinguishes between a private and public debutter.

Next, he disputed the Nirmohi Akhara's claim of possession by submitting case law holdings that a trustee's possession can never become adverse to the idol or temple's claim. He further submitted that a perpetual minor (deity), cannot suffer adverse possession.

CS Vaidyanathan read extracts from a 1953 Allahabad High Court judgment which clarifies the circumstances under which section 110 (<https://indiankanoon.org/doc/390107/>) of the Evidence Act, 1872 can be invoked. Section 110 places the burden of proof on the person who claims not to be the owner to substantiate such claim.

He proceeded to argue that the Nirmohi Akhara's rights to manage the temple are not vested rights. He submitted that the right to receive offerings is incidental to the service rendered by the *archaka* (priest). He argued that the shebait cannot claim any independent rights.

He submitted that the Nirmohi Akhara sought an injunction order, but subsequently received joint possession of the title, despite their right not being established.

Next, he quoted case law that states public gazetteers can be relied on to clarify historical facts on public issues. He sought to establish that the evidence he had earlier relied on was valuable.

The court broke for lunch at 12.57 PM.

Afternoon Session

2.29 Churches are not juridical persons

Justice Bobde had asked, in the morning session, whether churches are treated as juridical persons. If so, what specifically is treated as the juridical person - the building, the congregation, etc?

The bench reassembled at 2.15 PM. CS Vaidyanathan read out the judgment in *MV Elizabeth* to respond to Justice Bobde's question of whether a church was ever held to be juridical person. CS Vaidyanathan stated that to the best of his knowledge, a church was not held to be a juridical person.

2.31 Nirmohi Akhara's claim is adverse to Lord Ram

Chief Justice Gogoi requested CS Vaidyanathan to conclude. CS Vaidyanathan proceeded to first dispute the Akhara's and the Sunni Waqf Board's claim. He submitted that the Nirmohi Akhara is explicitly claiming the title in conflict with Lord Ram. Therefore, he argued that they should not have been granted a relief by the Allahabad High Court, as Lord Ram was not made a defendant to their suit.

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Citing the 2010 Allahabad High Court judgment, Vaidyanathan also submitted that the Waqf property was not registered and that their title was not found on the revenue records.

He further argued that the 1885 judgment could not apply *res judicata*, as the idol was not a party. Recall that the 1885 judgment relied on the land division established in 1855, which awarded the inner courtyard to the Muslims and the outer courtyard to the Hindus.

He submitted that his suit is maintainable.

2.32 Allahabad High Court ruled in favour of Lord Ram in most issues

Finally, he stated that the Allahabad High Court judgment ruled most issues in the case in favor of Lord Ram. He stated that the Allahabad High Court's judgment was reached by a 3 judge bench which had thoroughly heard the case and perused all evidence. He requested the court to be 'reluctant in interfering' with the Allahabad High Court's judgment, submitting that it should only interfere if the High Court's findings are so unreasonable that they conflict with the findings of the lower court.

Next, the court heard PN Mishra who represents defendant 20 in suit number 4. In the civil appeal, he represents the plaintiff in suit number 5.

3.1 Mosque land is not inalienable

Mishra first responded to Justice Nazeer's earlier question directed to CS Vaidyanathan about the position of Islamic law on the alienability of land on which mosques are built. He argued that Mohammad Hanifa's disciples held that the land on which a dilapidated or seldom used mosque exists can be sold with the permission of the Qazi. He contended that the court is the present day equivalent to a Qazi. He added that Islamic law requires the proceeds from the sale to be used for building a mosque elsewhere with a significant Muslim population.

3.2 Evidence of worship through Hindu scriptures

PN Mishra stated he would take the court through Hindu scriptures providing evidence for the sanctity, and worship by devotees, at Ayodhya, reasoning that essential religious practice questions must be decided on doctrine. He submitted he would rely on the Atharva Veda, Skand Purana and Valmiki Ramayana, among other scriptures.

3.2.1 Atharva Veda

He began to read out Sanskrit verses from the Atharva Veda, which describe Ayodhya as a city of gods housing a temple with three doors and therefore, he submitted, meaning three domes.

Chief Justice Gogoi inquired whether these documents had already been placed on the record. Mishra submitted that the Allahabad High Court had examined these documents.

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Justice Bhushan said that Mishra's arguments had already been submitted by CS Vaidyanathan. He asked Mishra to summarise his main argument. Mishra submitted that Hindus have continuously worshipped the Janmabhoomi and have never been dispossessed.

Justice Chandrachud asked PN Mishra to bear in mind that no party was contested the genuineness of Hindu faith in the site. He told Mishra that he need not prove something which has not been disputed. Mishra responded that the Sunni Waqf Board has questioned whether Lord Ram was born at the disputed site.

3.2.2 Skanda Purana

PN Mishra submitted that the Skand Purana provides the exact location of the Ram Janmasthan. He submitted that the scripture describes the course of worship devotees must undertake: bathing in river Sarayu, then performing worship of Pindaru, then performing worship at Vigneshwar. He submitted that the scripture states that to north-east of the Vigneshwar is Ram's birthplace. He argued that this matches the current location of the disputed site.

Justice Bhushan asked when the Skand Purana was written. PN Mishra submitted the following genealogy: Sage Narad tells Skand (the son of Vishnu), who recounts to Agasthya, who recounts to Ved Vyasa. Ved Vyasa wrote and edited the Purana, an oral tradition until then, around 5,000 years ago. Justice Bhushan asked when the published work first came to light. PN Mishra submitted that British researchers trace

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the written text to the Gupta period in the 4th or 5th century. However, the Purana in oral form dated centuries and millenia prior. He emphasised that oral traditions rather than written texts were the norm in ancient India.

Justice Bhushan stated that the period of the Purana's codification as a written text was very relevant, relative to the archaeological evidence of structures at the site.

Rajeev Dhavan submitted that the text was first written in the 8th century in Nepal and that rivers change course, making it difficult to extrapolate the location of Ram's birthplace based on the description in the scripture. He also stated that the explanations to the meanings of the verse made by PN Mishra were not presented before the Allahabad High Court judgment.

Justice Chandrachud said that religious texts are primarily evidence of faith. He repeated that the faith of worshippers was not being disputed by any party. He requested PN Mishra to briefly present evidence relating to the faith of worshippers and proceed to detailed submission of objective evidence.

Justice Bobde asked PN Mishra to show the bench the exact location of Vigneshwar on a map as a claim of presenting objective evidence.

Chief Justice Gogoi also asked PN Mishra to show the court objective evidence. He suggested that if the same was not ready, he should allow another party to argue first and prepare his evidence in the meantime.

PN Mishra continued to read from Skanda Purana verse. Chief Justice Gogoi asked him to show the reference to the verse in the Allahabad High Court judgment. PN Mishra responded after some delay, paragraph 4304 of volume 2.

Justice Bobde again requested Mishra to show the locations of places mentioned in the scripture on a map. Chief Justice Gogoi stressed that PN Mishra should only proceed if he had anything new to add to Vaidyanathan's submissions.

3.2.3 *Ain-i-Akbari*

PN Mishra then cited text written in the *Ain-i-Akbari* by Abul Fazl. He asserted that the *Ain-i-Albari* mentioned Lord Ram's birth in Ramkot but made no mention of a mosque. He argued that if a mosque was built by Emperor Babur (Akbar's grandfather), surely this would be mentioned in Akbar's biography. Justice Bobde asked whether the High Court had considered this contention, requesting reference to the specific page number.

Justice Bhushan said that this evidence was exhibited before the High Court, but he questioned whether the judgment had relied on it. PN Mishra read from an excerpt of Justice Agarwal's opinion which stated that Ain-i-Akbari mentioned a temple but not a mosque and that such a mosque would have been mentioned if it were constructed by Babur.

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Justice Chandrachud clarified that the excerpt is from Justice Agarwal's reflection on whether the mosque was built by Babur or Aurangzeb. Justice Chandrachud said that Justice Agarwal's educated guess was not relevant to the present case.

Chief Justice Gogoi directed PN Mishra to prepare a note of all the evidence he sought to submit. Further he stated that PN Mishra should organise his evidence with references. He stressed that any references to physical locations should correlate to the map being relied upon by the Bench.

Next, Chief Justice Gogoi called upon **VN Sinha who is appearing on behalf of the President of the Hindu Mahasabha (defendent 11 in suit 5).**

4.1 No mosque or structure could be built without British consent

VN Sinha submitted that from 1861 to the date of the first suit, no mosque or other structure could be built without first receiving the approval of the British government since the land was of nazul character after annexation of Oudh by the British. He submitted that Lord Canning annexed the territory of Oudh in 1861 and that the Proclamation of the Governor General vested all titles with the State.

Justice Bhushan said that the proclamation meant that sovereignty was assumed by the British, not that all land titles were transferred to the State. VS Sinha was relying on a document to draw the inference questioned by Justice Bhushan.

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Justice Bobde asked Sinha not to rely on any evidence which has not been placed on the record. After being reprimanded by the Chief Justice, VS Sinha said that he had not placed the document relied upon before the bench, as he was not yet prepared to argue, assuming that his suit would not come up today.

Chief Justice Gogoi inquired whether any appeal arising out of suit number 5 was ready to be heard. SK Jain (for plaintiff in suit no 3) interrupted to say that he was ready to be heard.

Chief Justice Gogoi said the Bench would hear Ranjit Kumar on behalf of the plaintiff in suit number 1. The plaintiff is the son of Gopal Visharad (deceased) who worshipped at the site.

Ranjit Kumar sought to read the plaint in Hindi, submitting that the English translation is not correct. Chief Justice Gogoi reprimanded him for not placing the correct English translation before the bench. He said that neither him nor Justice Nazeer would be able to follow and directed Sinha to read it in English.

It appeared that Sinha was relying on a different English translation than the Bench. Upon being corrected by the bench, he read out the accurate English translation of the plaint.

The Bench rose at 3.57 PM. Ranjit Kumar will continue tomorrow.

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