

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

# Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

## Day 31 Arguments: 22 August 2018

Yesterday, Sr. Adv. C.S. Vaidyanathan, the counsel for Ram Lalla, concluded his argument that the disputed site is itself a deity and hence cannot be possessed by anyone.

Today, the court heard the counsel for Gopal Visharad. He had filed a suit (numbered as suit 1, for ease of reference) in 1950 as a devotee after being denied entry to the central dome by state authorities. He sought to be able to freely pray at the site and for a permanent injunction against removing the idols, which were placed in the mosque in 1949. As Gopal Visharad is now deceased, he is represented by his son, Rajendra Singh, whose counsel is Sr. Adv. Ranjit Kumar.

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After arguments for Visharad concluded, the court heard Sr. Adv. S.K. Jain appearing for the Nirmohi Akhara. On 7 August (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-23-arguments-live>), the court had directed him to present evidence substantiating the Akhara's claims. Today, instead of presenting evidence, Sr. Adv. S.K. Jain sought to dispute Ram Lala's claims. The bench expressed dissatisfaction and stated that he was contradicting the Nirmohi Akhara's written statement.

### Morning Session

Sr. Adv. Ranjit Kumar opened arguments at 10.33 am. He read the prayers from the 1950 original suit, which sought that Hindu worship and *darshan* continue without any interference at the site.

#### *5.1 The site itself is a deity*

He adopted Sr. Adv. K. Parasaran and C.S. Vaidyanathan's arguments that the site itself is a deity. He argued that as the site is a deity, citizens have a civil right to worship at it, which cannot be curtailed in any manner.

He submitted that the Sunni Waqf Board conceded that Friday *namaz* had ceased at the site after 16 December 1949.

#### *5.2 Reliance on affidavits to determine continued Hindu worship*

Next, Sr. Adv. Ranjit Kumar presented the court with evidence that had not been considered by the courts below. He presented 14 affidavits containing witness statements of 20 persons.

Justice Chandrachud stated that if the persons had not been cross-examined before a court, their statements could not be relied upon as fact. He stressed that this applied even if the statements are in the public record, as public affidavits.

Sr. Adv. Ranjit Kumar submitted that the witnesses were not cross-examined as trial took place long after the written statements were made. Chief Justice Gogoi asked why they had not challenged the dismissal of the affidavits by the trial court. Sr. Adv. Ranjit Kumar responded that the trial court disregarded the affidavits in the judgment, and not in an interim order that he could have challenged.

#### *5.2.1 Hindu worship did not cease despite construction of a mosque*

Sr. Adv. Ranjit Kumar read out the statement of Abdul Ghani, who attested that Hindu worship did not cease, despite the construction of a mosque. Justice Bobde asked whether Ghani was a Shia or Sunni Muslim, to which Sr. Adv. Ranjit Kumar was unable to respond. He then read the statements of Hasnoor and Ghali Mohammed, both of whom stated that 'Muslims built a mosque on Ram Janmasthan' and that both Hindus and Muslims worship at the site.

He clarified that all the affidavits were filed after the state receiver took over the property in January 1950 as per the attachment order under Section 145 of the Code of Criminal Procedure.

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He continued to read witness statements from the affidavits which attested that Muslims neither performed *namaz* at the site after 1950, nor did they object to Hindus worshipping at the site.

Justice Bobde inquired whether the Faizabad Magistrate who passed the attachment order had considered these affidavits. Sr. Adv. Ranjit Kumar submitted that the Allahabad High Court had considered the affidavits. He added that the affidavits were placed on record after a verification of the persons (Note that he did not state that affidavits were verified by the Faizabad magistrate.).

He informed the court that an application had been made in the Allahabad High Court to transfer the case out of the Faizabad district Magistrate's jurisdiction, which was subsequently rejected.

#### *5.2.2 Statements in affidavits can be considered as verified facts*

Justice Bhushan questioned how the statements in the affidavits could be relied upon as verified facts. Justice Bhushan said that at best, the only fact established is that such statements were made in affidavit.

Sr. Adv. Ranjit Kumar pointed to Section 37 (<https://indiankanoon.org/doc/1525862/>) of the Indian Evidence Act, 1872 ([https://indiacode.nic.in/bitstream/123456789/6819/1/indian\\_evidence\\_act\\_1872.pdf](https://indiacode.nic.in/bitstream/123456789/6819/1/indian_evidence_act_1872.pdf)), which lists what in the public record is considered a 'relevant fact' in law. Sr. Adv. Ranjit

Kumar also submitted that the affidavits were placed on record after an authority verified the identity and the statements of the persons. He added that the persons were all residents of Ayodhya, who had answered a notice published in newspapers.

Justice Bhushan questioned how statements made under Section 145 of the Code of Criminal Procedure could be relied upon by a civil court. Ranjit Kumar cited Section 35 (<https://indiankanoon.org/doc/1034981/>) of the Indian Evidence Act, which states that if a public servant or a person in performance of a duty makes an entry that states a fact in a public or official book, register or electronic record, the same is a relevant fact.

Justice Bobde stated that no court could go into whether the statements made in the affidavits are facts, as none of the persons are available for cross-examination.

Sr. Adv. Ranjit Kumar requested the court to draw an inference from the statements, given the absence of any objections to the affidavits by other parties. He requested the court to simply consider the statements in the affidavits without regarding them as 'the gospel truth'.

### *5.2.3 Affidavits cannot be relied on as none of the witnesses were cross-examined*

Justice Bobde inquired how the affidavits had been placed on record and whether the High Court had cross-examined the persons making the statements.

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Justice Chandrachud said that from a perusal of the record, the bench could only deduce that they were preserved in court under the Section 145 CrPC case. Sr. Adv. Ranjit Kumar disagreed, stating that the affidavits were taken on judicial record as part of the case that went up to the Allahabad High Court.

Justice Bobde asked who had filed the affidavits before the High Court. Sr. Adv. Ranjit Kumar submitted that he himself had, to which Justice Bobde asked why he had not made sure the persons were cross-examined.

The 14 affidavits, containing the statements of 20 persons, all state that the temple was destroyed. Sr. Adv. Ranjit Kumar contended that all 14 affidavits were exhibited before the High Court.

Justice Bhushan read from paragraph 120 of the High Court's judgment, which stated that the High Court had summoned the affidavits from the Faizabad district magistrate.

Chief Justice Gogoi then asked Sr. Adv. Ranjit Kumar to produce the application he had made for placing the affidavits as evidence before the High Court. Further, he asked Sr. Adv. Ranjit Kumar to provide the order that the High Court passed in reference to the affidavits. Both the Chief Justice and Justice Bobde sought to know who had deposed (testified) that the affidavits were legitimate.

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*5.2.4 Historical exhibits to prove existence of 'Ram Janmasthan'*

At this point, Sr. Adv. Ranjit Kumar placed historical exhibits from the 19th century before the court. He sought to establish that the site was referred to as the Ram Janmasthan (birthplace) at least 100 years before the suit was filed.

He discussed a 1850s dispute that referenced the presence of the *Chaputra*. He referred to a complaint against Nihant Singh Fakir, a Sikh who entered the mosque, who placed an idol of Guru Gobind Singh inside the mosque for worship. The *Muezzin* of Babri Masjid (Syed Mohammed Khatir) filed his complaint on 1 December 1858. The plaint references the *Chaputra*.

Sr. Adv. Ranjit Kumar continued to take the court through evidence. He referred to the 14 May 1877 report of the Deputy Commissioner, which recorded no objection to the second door at the site being opened in the interest of public safety.

He submitted that the plaintiff's right to worship dates back to the 1850s, since the installation of the railing and the opening of the door. He submitted that *darshan* continued to take place until the filing of the suit.

Chief Justice Gogoi inquired about whether the Allahabad High Court examined Exhibits 18 to 34 to determine whether worship had continuously taken place at the site. Sr. Adv. Ranjit Kumar pointed to Justice Agarwal's opinion in pages 1361-1415 of Volume 2 of the Ayodhya case's judgment.

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**5.3 Hinduism allows for many kinds of worship**

Sr. Adv. Ranjit Kumar then argued that the plaintiff's right to worship stems from Hinduism itself. He discussed case law that stated that Hinduism allowed for many different forms of worship.

*The court broke for lunch at 12.57 PM.*

### **Afternoon Session**

*Sr. Adv. Ranjit Kumar resumed arguments on behalf of Gopal Visharad (through his son) at 2.26 PM.*

Sr. Adv. Ranjit Kumar read case law that establishes that not all sects of Hinduism require idol worship. He submitted that Hinduism allows for a wide range of beliefs and philosophies to subsist together. He argued that temple worship is a part of Hinduism, and that those who do not worship temples or idols could also be Hindus.

Sr. Adv. Ranjit Kumar reiterated his earlier submission that the plaintiff's right to worship persisted for at least a century before he filed his suit.

He read case law on the offer of worship at a Syrian Christian church. Justice Bobde had asked Sr. Adv. C.S. Vaidyanathan (for Lord Ram) yesterday (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-30-arguments>), if a church had ever been considered a juridical entity. Sr. Adv. Ranjit



Kumar did not answer this question and stated that he would restrict himself to the question of the civil right to worship. The judgment in the case found that in Episcopalian churches only the ordained priest can 'perform' worship .

Sr. Adv. Ranjit Kumar concluded his arguments by submitting that the affidavits are credible and that a case can *prima facie* be inferred from them. He reiterated that all the affidavits state that no *namaz* was performed after 1934. He requested the court to maintain the status quo and not in any manner restrict the plaintiff's centuries-old, unfettered right to worship.

*At this point, the court briefly heard Sr. Adv. K. Parasaran for the Ram Lalla.*

***The court then briefly heard Adv. V. N. Sinha of the Hindu Mahasabha.***

#### ***4.2 Site was passed to the State after British annexed Oudh***

Then, Adv. V.N. Sinha (Hindu Mahasabha) clarified his position from yesterday (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-30-arguments>), stating that he relied on Sr. Adv. K. Parasaran and Sr. Adv. C.S. Vaidyanathan's arguments on the existence of a deity to contend that the lands and soil of the site were passed on to the State after the British annexation of Oudh. Adv. V. N. Sinha then requested to file his written statement as a reply after hearing arguments for the Sunni Waqf Board. The court granted his request.

***Nirmohi Akhara's Arguments***

The court directed Sr. Adv. S.K. Jain, appearing for the Nirmohi Akhara to present his documentary and oral evidence. The court had heard him on 6 (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-22-arguments>) and 7 August (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-23-arguments-live>) and had directed him to resume arguments once he had organised his evidence.

#### *1.15 Nirmohi Akhara claims shebaitship and not title*

Sr. Adv. S.K. Jain submitted that the Akhara was claiming shebaitship, which was the right to manage the temple. He submitted that the shebait is the only one who may claim possession on behalf of the deity.

Chief Justice Gogoi stated that Sr. Adv. S.K. Jain should limit himself to presenting evidence, as he had already made extensive arguments previously. Justice Chandrachud stated that if Nirmohi Akhara claimed the shebaitship, it could no longer also claim the title. Sr. Adv. S.K. Jain stated that the Nirmohi Akhara was not claiming title.

Sr. Adv. S.K. Jain submitted that the Nirmohi Akhara claimed possession of both the inner and outer courtyards. He submitted that the Ram Lalla is not a worshipper, but a 'friend' of the deity. He added that the Ram Lalla suit was filed in 1989, as opposed to the Nirmohi Akhara that filed its suit much earlier

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Sr. Adv. S.K. Jain stressed that the Nirmohi Akhara had always been the shebait because it had continuously taken care of the temple. He stated that the Nirmohi Akhara is not a single person, but a religious denomination that had always fulfilled this role.

#### *1.15.1 Sunni Waqf Board and Umesh Pandey deny Nirmohi Akhara's shebaitship*

Justice Bobde asked Sr. Adv. S.K. Jain if any other parties to the dispute had accepted the Nirmohi Akhara as the shebait in their written statements. Sr. Adv. SK Jain submitted that none of the parties had disputed the shebaitship, except for the Sunni Waqf Board and Umesh Chandra Pandey. Pandey is defendant number 10 in the Nirmohi Akhara's suit.

With a view to disputing Umesh Pandey's statement, Sr. Adv. SK Jain proceeded to cite case laws to argue that adverse inference be drawn with respect to Umesh Pandey's submissions before the lower court. Justice Nazeer prompted Sr. Adv. S.K. Jain to address the issues in Umesh C. Pandey's submission so that he would argue for drawing adverse inference with context.

#### *1.15.2 Sr. Adv. D.N. Agarwal is not entitled to be 'next friend' of Ram Lala*

Sr. Adv. S.K. Jain submitted that Sr. Adv. D.N. Agarwal, acting as 'next friend' for Ram Lala in suit 5 never made any reference to the shebait. He submitted that Sr. Adv. D.N. Agarwal had never claimed to be a worshipper, but only a 'friend' of the deity. He argued that Sr. Adv. D.N. Agarwal had not worshipped the deity at Ram Janmasthan as he had belonged to a different sect, and alleged that Sr. Adv. D.N. Agarwal himself had admitted this during cross-examination.

### *1.15.3 Arguments contradicting the Nirmohi Akhara's written statement*

Justice Chandrachud stated that there would be two issues to consider, namely the juridical character of the deity and who could represent the deity. He asked if Sr. Adv. S.K. Jain was denying the juridical character of the deity. Sr. Adv. S.K. Jain stated that he was not denying the juridical character of the deity, to which Justice Chandrachud responded by saying that this explicitly contradicted Nirmohi Akhara's written statement. He asked for Sr. Adv. S.K. Jain to clarify his argument.

Justice Bobde emphasised that Sr. Adv. S.K. Jain was arguing contrary to his own written statement, without amending the same. Sr. Adv. S.K. Jain clarified that the Nirmohi Akhara was claiming shebait rights to manage the deity, which in turn has a juridical character.

Sr. Adv. S.K. Jain submitted that the site and deity belong to the Nirmohi Akhara as the shebait. He stated that the Nirmohi Akhara was claiming management and not ownership.

Chief Justice Gogoi asked Sr. Adv. S.K. Jain how the bench could allow him to argue against his own written submission. He stated that if Sr. Adv. S.K. Jain failed to justify the seeming contradictions, the bench would not hear him any further.

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*The Bench rose at 3.57 PM. Arguments will resume tomorrow*  
(<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-32-arguments>).

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