

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

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 33 Arguments: 26 August 2019

The Supreme Court is hearing final arguments in a set of appeals against the 2010 Allahabad High Court judgment that divided the disputed land title in Ayodhya equally amongst the Nirmohi Akhara (suit number 3), Sunni Waqf Board (suit number 4) and Ram Lala (suit number 5 filed by Sr. Adv. D.N. Agarwal as 'next friend').

Today, Sr. Adv. S.K. Jain resumed arguments on behalf of the Nirmohi Akhara. On 23 August (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-32-arguments>), he altered the Nirmohi Akhara's original argument where it claimed title and now the Nirmohi Akhara only claims shebaitship rights, which are rights to manage the temple. The bench had expressed frustration at the Nirmohi Akhara contradicting its earlier written statement.

Sr. Adv. S.K. Jain primarily focused on two arguments today. Firstly, he submitted that a shebait should rightfully represent a deity in a legal suit. He argued that the Nirmohi Akhara was the rightful representative of Ram Lala (and Ram Janmabhoomi), rather than Sr. Adv. D.N. Agarwal, the 'next friend' of the deity. Secondly, he argued that the Nirmohi Akhara was not making any claims in opposition to the deity, despite arguing that Sr. Adv. D.N. Agarwal's suit was not maintainable.

Morning Session

1.19 Shebait should represent a deity in legal proceedings

Sr. Adv. S.K. Jain referred to certain documents to support the claim that the Nirmohi Akhara is the shebait of the idols and temple. His references were oral, without presenting the actual documents to the court.

Sr. Adv. S.K. Jain stated that no Hindu party had hitherto objected to the Akhara's shebait claim. He submitted that not this supports the fact that the Akhara is the shebait.

1.21 Nirmohi Akhara's claims are not in opposition to the deity

Sr. Adv. S.K. Jain stated that since no Hindu party had objected to the Nirmohi Akhara's shebaitship claim, it was clear that the Akhara was not making adverse claims against the deity.

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Justice Bobde asked whether there were any other significant claims by the Nirmohi Akhara that other parties had not disputed. Sr. Adv. S.K. Jain submitted that no Hindu party had disputed the Akhara's possession claims, either.

Sr. Adv. S.K. Jain substantiated the claim that no Hindus parties disputed the Nirmohi Akhara's shebaitship by referencing Justice S. Agarwal's observation in the 2010 Allahabad High Court judgment. Justice S. Agarwal had observed that the Nirmohi Akhara managed the idol worship at the Ram *Chabutra*.

1.21.1 Nirmohi Akhara will not exclude others from worship

Justice Bobde asked whether the Nirmohi Akhara would exclude others from worshipping, to which Sr. Adv. S.K. Jain stated that the same would go against the Akhara's duties. He added that the Nirmohi Akhara would be entitled to collect the offerings of worshippers as the shebait.

1.21.2 Sr. Adv. D.N. Agarwal recognises Nirmohi Akhara's shebait rights

Sr. Adv. S.K. Jain argued that Sr. Adv. D.N. Agarwal (the deity's 'next friend' in Ram Lala's suit) recognised the Nirmohi Akhara's shebait rights. He submitted that Sr. Adv. D.N. Agarwal had relied on the written statements of Paramhans Ramchandra Das, the plaintiff in suit number 2, which was withdrawn in 1990. Paramahans Ramchandra Das recognised that the Akhara was managing the temple. Sr. Adv. S.K. Jain argued that since Das accepted the Akhara's shebait rights, it could be inferred that Sr. Adv. D.N. Agarwal recognised the same as well.

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1.22 Nirmohi Akhara was involved in civil disputes as the shebait

Sr. Adv. S.K. Jain attempted to substantiate the shebait claim by taking the court through various civil disputes concerning properties around the disputed structure, in which the Nirmohi Akhara or its *mahants* were litigants. He argued that since the Nirmohi Akhara was a litigant, the same demonstrates that it was responsible for managing the site. He referred to the 1885 suit, to which Mahant Rahubar Das was a party and submitted that Das was a member of the Nirmohi Akhara.

1.23 Reference to P. Carnegie to establish historical possession of Nirmohi Akhara

Sr. Adv. S.K. Jain described how the British archaeologist Patrick Carnegie wrote a report in 1870 that referenced the Nirmohi Akhara. Justice Chandrachud directed Sr. Adv. S.K. Jain to present documents directly relevant to the Akhara's shebait claim.

However, Sr. Adv. S.K. Jain returned briefly to P. Carnegie's work, referencing a 19th century sketch of Faizabad to establish that the Nirmohi Akhara's name has continuously been included in historical records. Further, he read out accounts that reference the Nirmohi Akhara in gazetteers.

Justice Bobde stated that these historical accounts did not conclusively establish the Akhara's shebait rights. Sr. Adv. S.K. Jain argued that the accounts established the Nirmohi Akhara's possession of the site. He submitted that references to a 'property Hindu' should be read to mean the Nirmohi Akhara.

Sr. Adv. S.K. Jain referenced a historical agreement executed in 1900 whereby the Nirmohi Akhara took responsibility for providing water to travellers. Sr. Adv. S.K. Jain argued that this was an example of the Nirmohi Akhara performing its duty as the shebait.

Afternoon Session

1.24 Nirmohi Akhara's historical presence (cross-examinations and law lectures)

Sr. Adv. S.K. Jain presented additional historical documents to show the presence of the Nirmohi Akhara (not disputed after 1950) and their management of the temple and idols, including cross-examination of witnesses, such as Abhiram Das and Dharam Das in the court below, as well as former Chief Justice of India B.K. Mukherjea's law lectures.

The bench noted that devotees were only allowed to give prayers at the railing and the dome was locked. Sr. Adv. S.K. Jain submitted that the Nirmohi Akhara has the keys to the dome, referencing witness testimony stating that the locks were in control of the Nirmohi Akhara.

Sr. Adv. S.K. Jain argued that management of the Akhara cannot be disputed and stated that even if the Nirmohi Akhara permitted access to other Hindus to access the site, it would not forfeit its management rights.

1.25 Non-maintainability of Ram Lala's suit

Sr. Adv. S.K. Jain returned to the issue of maintainability of Ram Lala's suit filed by Sr. Adv. D.N. Agarwal. At the time Sr. Adv. D.N. Agarwal filed his suit, there was no indication in the pleadings that the shebait, being the Nirmohi Akhara, had stopped working in the interest of the deity. He argued that therefore, Sr. Adv. D.N. Agarwal

could not maintain his suit as the 'next friend' of the deity. He reiterated his argument that Sr. Adv. D.N. Agarwal could not maintain his suit as the deity's 'friend', since his statements indicated he was not even a worshipper.

Sr. Adv. S.K. Jain clarified that the Nirmohi Akhara did not dispute the juridical nature of Ram Lala nor the Ram Janmabhoomi. Justice Chandrachud specified that the Nirmohi Akhara's written statement specifically denied the juridical personality of Ram Janmabhoomi. Further, Justice Chandrachud stated that it was unnecessary for the Nirmohi Akhara to oppose Sr. Adv. D.N. Agarwal as there was 'nothing stopping' the Nirmohi Akhara from 'being a shebait'.

Sr. Adv. S.K. Jain submitted that past judgments have established that a shebait can file a suit for the recovery of a deity's property without impleading the deity. Justices Bobde and Chandrachud raised the issue of the Nirmohi Akhara's suit being adverse to Ram Lala's suit, to which Sr. Adv. S.K. Jain reiterated that he was only opposed to Sr. Adv. D.N. Agarwal acting as the next friend of the deity, and not the deity itself.

Sr. Adv. S.K. Jain proceeded to read out excerpts of judgments on the nature of shebait rights [1951 SCR 1125, 1954 SCR 1005]. He added that an idol can only be represented by someone other than the shebait if the shebait is acting against the interest of the deity.

The bench rose for the day. Sr. Adv. S.K. Jain will conclude tomorrow (<https://www.scoobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-34-arguments>).

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