

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

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 60 Arguments: 15 October 2019

The Ayodhya title dispute has entered its final stretch. The court has finished hearing the appeals by the primary Hindu parties: Gopal Singh Visharad, the Nirmohi Akhara and Shri Ram Virajman. Currently, it is hearing the appeal by the Sunni Waqf Board. Yesterday (https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-59-arguments), the Bench finished hearing the appellant's main arguments presented by Sr. Adv. Rajeev Dhavan. Today, it heard the counels for the respondent Shri Ram Virajman in reply.

The Bench only assembled at 11.52 AM today, due to a memorial service honouring Arun Jaitley and Sushma Swaraj.

Scheduling

Before arguments began, certain minor respondents in the Sunni Waqf Board's suit sought time to reply to Sr. Adv. Dhavan's arguments. Chief Justice Gogoi observed that the request should have been made earlier. He said that the Bench may hear them after the main arguments conclude. The deadline for final arguments to conclude is Friday, 18 October.

At the very end of the hearing, the Bench directed Sr. Adv. Vaidyanathan to finish his arguments within 45 minutes tomorrow. It said that it would then hear Sr. Adv. Dhavan present his rejoinder for 1 hour, after which, it would hear four other parties for 45 minutes each.

Sr. Adv. Parasaran replies for Shri Ram Virajman

Sr. Adv. Parasaran commenced his reply on behalf of Shri Ram Virajman, as a respondent in the Sunni Waqf Board's suit (original suit number 4). He said that he would present arguments on three issues: title, limitation and the court's exercise of discretion under the Specific Relief Act, 1963.

2.46 Arguments on Sunni Waqf Board's title

2.46.1 Conquerors and foreigners cannot recognise title

On the issue of title, he argued that Sr. Adv. Dhavan could not place reliance on the recognition of the Sunni Waqf Board's title by the Mughals or the British. He argued that '*conquerors and foreign occupiers*' cannot be recognised as legitimate. He urged the court to '*right a historical wrong*'.

Sr. Adv. Dhavan objected, saying that Sr. Adv. Parasaran was introducing a new argument during the rejoinder stage. Sr. Adv. Parasaran responded by referring to the Sunni Waqf Board's plaint, which he submitted referred to '*conquest*' and '*occupation*'. Further, he said that the Bench could take into consideration his argument, even if he didn't continue to argue it. Referring to the nine-judge Supreme Court Bench decision in *New Delhi Municipal Corporation*, he said that the Court could take note of a correct position law, even if it was not argued.

2.46.2 Prayer for site to be declared as public mosque

Further on the issue of title, Sr. Adv. Parasaran argued that the Sunni Waqf Board had prayed for the site to be declared a public mosque, not for the title. Chief Justice Gogoi and Justice Bobde asked what happens when a suit for declaration is filed for a non-existent property. Sr. Adv. Parasaran began to respond by distinguishing between rights vested in land and vested in the structure built on that land. Justice Chandrachud observed that the Board's suit was both for the land and structure. Sr. Adv. Parasaran indicated he would finish his response after lunch (*in 2.48 below*).

In a tangential remark, Sr. Adv. Parasaran emphasised that Babri Masjid was a regular mosque, whereas Ram Janmabhoomi is of special significance to Hindus.

2.47 Arguments on limitation

2.47.1 Sunni Waqf Board's suit is barred by limitation

Proceeding to his argument on limitation, he put forth that the Sunni Waqf Board's suit is barred by limitation under the Limitation Act, 1908 (<https://www.casemine.com/act/in/5a979dd64a93263ca60b74e0>). In particular, he sought to dispute the Sunni Waqf Board's claim, from its plaint, that it had suffered a continuous wrong. Continuous wrongs continuously refresh the limitation period. Sr. Adv. Parasaran argued that while the Board had suffered a continuous injury, it had *not* suffered a continuous wrong, and that therefore the cause of action is *not* continuous.

Justice Chandrachud observed that whether the cause of action is continuous may be irrelevant for determining limitation, as a '*snap in possession*' was claimed in 1949. Further, Sr. Adv. Dhavan noted that he had not pressed the continuous cause of action argument.

Sr. Adv. Parasaran noted that if a continuing cause of action applies to the Sunni Waqf Board's suit, then it should apply to the Nirmohi Akhara' suit as well.

2.47.2 Sunni Waqf Board claimed adverse possession to avoid limitation

Next addressing adverse possession, Sr. Adv. Parasaran argued that the Sunni Waqf Board had claimed adverse possession (paragraph 11(a) of plaint) only to ensure that its suit fell within the limitation period. He explained that if a property is placed under State receivership, a prayer for declaration without possession is sufficient. Justice Chandrachud observed that merely because the Board claimed possession when it did not have to, does not make its suit non-maintainable.

Justice Bobde observed that the Sunni Waqf Board had submitted (paragraph 21(b) of the plaint) that its prayer for declaration survives the destruction of Babri Masjid. The Board claims that the land itself is a mosque, as Muslims can pray in open land. Sr. Adv. Parasaran submitted that even for Hindus, prayer can be in an open space without an idol.

The Bench rose for lunch at 12.59 PM. Hearings resumed at 2.23 PM.

2.48 Declaratory suits for non-existent properties

After lunch, Sr. Adv. Parasaran returned to the Bench's question about declaratory suits for non-existent properties, in particular the distinction between land and structures on land. Citing a judgment (2008 4 SCC 594, 606-607), he argued that such suits can be decided in the absence of specific pleadings regarding title. He argued that this also applied to suits for injunction and possession.

2.49 Worshippers can only claim access

Next, Sr. Adv. Parasaran asserted that worshippers - Hindu and Muslim - can only claim the right to access the site, nothing more. Justice Chandrachud observed that the Sunni Waqf Board's suit was a representative suit under Order I Rule 8 of the Code of Civil Procedure, 1908 (<https://www.google.com/search?>

q=code+of+civil+procedure&oq=code+of+civil+procedure&aqs=chrome..69i57j69i59j0l2j69i61j69i60.2881j0j7&sourceid=chr
8). Sr. Adv. Parasaran submitted that the Waqf Board, as a representative of worshippers, could only claim right to access (as far as worshippers are concerned).

2.51 Sunni Waqf Board cannot manage the structure

Sr. Adv. Parasaran argued that the Sunni Waqf Board could only claim management rights, not the title, as the predominant purpose of the site is worship. Sr. Adv. Dhavan interjected to argue that the primary question in the suit was whether the site is a mosque. He said that if it is a mosque, then the management rights are vested in the Sunni Waqf Board, as by their very nature all mosques are owned by God and managed on God's behalf by the Waqf Board.

Sr. Adv. Parasaran responded by arguing that the Sunni Waqf Board cannot manage Babri Masjid because it was not properly appointed as its Mutwalli (waqf administrator). Referring to paragraphs 4501 and 4504 of the High Court judgment, he submitted that only a properly appointed Mutwalli can manage the mosque. He said that there was no finding showing that the Waqf Board was so appointed.

Justice Chandrachud inquired who administers a mosque, if there is no validly appointed Mutwalli. Sr. Adv. Parasaran merely submitted that a religious institution requires management.

2.52 Sunni Waqf Board should have claimed possession against state

Returning to the issue of possession, Sr. Adv. Parasaran argued that the Sunni Waqf Board could not claim possession against the respondent. He said it should have claimed possession against the State. When the Board filed its suit in 1961, the site had already been under the receivership of the State since 1949. He added that the burden of proof to show that the State was not in possession of the site rested with the Sunni

Waqf Board, referring to Section 110 of the Indian Evidence Act, 1872 (https://indiacode.nic.in/handle/123456789/2188?view_type=browse&sam_handle=123456789/1362).

2.53 Burden of proof on Sunni Waqf Board to prove title

He responded to Sr. Adv. Dhavan's argument that the burden of proof to show title rested with the Hindu parties. Sr. Adv. Parasaran argued that the burden of proof to do so rested with the Sunni Waqf Board. He disputed the fact that the 1885 suit placed the burden of proof on the Hindu parties. In the 1885 suit, a Faizabad district judge denied a Hindu Mahant the permission to construct a temple in the outer courtyard. Sr. Adv. Parasaran submitted that the court had observed it was '*unfortunate*' that a mosque had been built on a place considered sacred by Hindus, but that it would maintain the status quo since '*so many years had passed*'. He argued that the 1885 court had reasoned in favour of the Hindus.

Returning to issues of whether British proclamations/grants had any application in India, he argued that Sr. Adv. Dhavan could not rely on a British proclamation to establish the Sunni Waqf Board's title claim. He said that if Sr. Adv. Dhavan's argument that Roman law has no application in India is true, then the same holds of British law. He asserted that when a new sovereign begins to rule, it has no obligation to recognise rights granted by the earlier ruler.

He concluded that the difference between the inner and outer courtyard was an artificial one created by the British. He argued that Hindus enjoyed the right to worship in both places and that this was even recognised by the British.

The rose at 4.04 PM for a short break. It re-assembled at 4.20 PM.

Sr. Adv. C.S. Vaidyanathan replies for Shri Ram Virajman

After the recess, the Bench heard Sr. Adv. C.S. Vaidyanathan present his reply for Shri Ram Virajman.

2.54 Sunni Waqf Board is primarily claiming title via adverse possession

Sr. Adv. Vaidyanathan asserted that the Sunni Waqf Board was claiming the title via three alternate pathways: (i) grant and dedication via Babur; (ii) adverse possession; (iii) dedication by long use. He added that the Board appeared to primarily claim the second pathway.

He argued that the Sunni Waqf Board had only claimed two of the three alternates in its plaint: grant and dedication, or adverse possession. He argued that Sr. Adv. Dhavan had introduced the third - dedication by long use - to overcome the Board's admission (in its plaint) that the deity originally owned the site. Justice Chandrachud observed that the Sunni Waqf Board had only submitted 'without prejudice' that the deity was the original owner. Further, the Bench remarked that the dedication by long use argument had been raised in the original suit. Sr. Adv. Vaidyanathan clarified that the 'Waqf by User' argument had not been framed.

2.55 Disputing Sunni Waqf Board's possession claim

Sr. Adv. Vaidyanathan disputed that the Sunni Waqf Board could claim that the site was exclusively dedicated as a mosque. Turning to Justice Khan's findings from the High Court judgment, he said that Hindus and Muslims were in joint possession of the site.

He argued that the Sunni Waqf Board could not claim possession by submitting the site was used for worship continuously. Justice Chandrachud observed that this could apply equally to the Hindu parties.

2.56 Documents do not establish continuous use of site by Muslims

Next, Sr. Adv. Vaidyanathan disputed the reliability of various documents relied upon by the Sunni Waqf Board to establish its title claim. In particular, he focused on the translation of an 1865 grant, which purportedly mentions a grant issued by Babur. Sr. Adv. Vaidyanathan argued that the translation submitted to the Supreme Court was different from the one submitted to the High Court. He said that certain phrases had been added to the Supreme Court translation, such as 'land free grant by Babur'.

He said that the High Court had doubted the genuineness of various grant documents relied upon by the Sunni Waqf Board. Hence he argued that the documents do not reliably establish continuous use of the site by Muslims.

(Court reporting by Avinash Amarnath)

Case Documents

- 2010 Allahabad High Court Judgment
(<http://elegalix.allahabadhighcourt.in/elegalix/DisplayAyodhyaBenchLandingPage.do>)

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