

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

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 23 Arguments: 7 August 2019

Background

The court is hearing a set of appeals to the 2010 Allahabad High Court judgment that divided the Ayodhya title equally between three parties: the Sunni Waqf Board, the Nirmohi Akhara and Lord Ram.

From March 2019 onwards hearings were suspended for the parties to resolve the dispute through mediation. The mediation proceedings were unsuccessful and on 6 August (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-22-arguments>) 2019, day-to-day hearings resumed.

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Yesterday (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-22-arguments>), Sr. Adv. S.K. Jain presented oral arguments on behalf of the Nirmohi Akhara. The Nirmohi Akhara is a Hindu religious establishment, which claims not only the Ayodhya land title, but also the exclusive right to manage the Ram Janmasthan (Hindu temple at Babri Masjid). It filed its original suit in 1959.

Relying on the 2010 Allahabad High Court judgment (<http://elegalix.allahabadhighcourt.in/elegalix/ayodhyafiles/honsukj.pdf>), Sr. Adv. S.K. Jain attempted to establish that the Nirmohi Akhara historically possessed the disputed land. He argued that a mosque ceased to exist at the site after daily *namaz* ceased in 1934. He also argued that the Nirmohi Akhara's suit was not barred by limitation. Sr. Adv. S.K. Jain relied on Articles 47 and 142, and Section 23 of the Limitation Act, 1908 to argue that the suit was not barred by limitation.

Today, the court resumed hearing Sr. Adv. S.K. Jain on behalf of the Nirmohi Akhara. After lunch, the court heard Sr. Adv. K. Parasaran for Lord Ram. In 1989, Sr. Adv. D.N. Agarwal had filed a suit on behalf of Lord Ram and the Ram Janmabhoomi site itself.

Today's hearing

The bench assembled at 10.37 AM.

1.9 Nirmohi Akhara's suit is not barred by limitation

Sr. Adv. S.K. Jain resumed arguments on the limitation issue. Yesterday, he had argued that the Nirmohi Akhara's suit was not barred by limitation.

He reminded the court that on 29 December 1949, the Additional City Magistrate of Faizabad directed that the disputed property be given under receivership to the Municipal Board and issued a preliminary attachment order under Section 145 of the Code of Criminal Procedure ('CrPC') to that effect. On 5 January 1950, the state received the property. In 1959, the Nirmohi Akhara filed a title suit over the dispute property.

Sr. Adv. S.K. Jain contended that despite the fact that the suit was filed 10 years after the property went into the state's receivership, the suit was not barred by limitation. Relying on Article 47 of the Limitation Act 1908, he argued that the limitation period never began, because the Magistrate did not pass a final order in the Section 145 CrPC case. Since limitation would only begin once the relevant authority passed a final order, there would be no limitation bar in that case.

Sr. Adv. S.K. Jain submitted that under Section 9 of the Code of Civil Procedure, 1908, any suit can be filed unless it is 'expressly barred' by law. Justice Bobde questioned this reasoning by stating that if the suit was supposedly filed within the limitation period under Article 47 of the Limitation Act, it can only be tested within Article 47 of the Limitation Act and no other legal provisions.

Sr. Adv. S.K. Jain made a second argument for contesting the limitation period. He stated that under Article 142 of the Limitation Act, the limitation period is twelve years. Nirmohi Akhara filed the suit within 10 years. Article 142 applies to the dispossession of immovable property.

1.11 Right of Shebaitship: Nirmohi Akhara's Right to Manage the Property and Possession

Sr. Adv. S.K. Jain expanded on the notion that a deity has proprietary rights in an endowed property, citing, among other cases, the litigation between Manohar Mookerjee and Raja Peary Mohan Mookerjee. He made submissions on the Nirmohi Akhara's right of shebaitship.

Sr. Adv. S.K. Jain argued that the 1949 order of attachment under Section 145 of Code of Criminal Procedure only attached the physical property, and stated that the Magistrate clearly allowed Hindus to continue performing religious ceremonies. He submitted that nevertheless, the Nirmohi Akhara's right to manage the property was curtailed, along with its right of possession

Justice DY Chandrachud interjected that the argument of possessory right and management right being distinguishable would imply that Section 142 of the CrPC does not apply to the case, clarifying that Section 142 speaks of an injunction pending inquiry, which covers both possession and management. Sr. Adv. S.K. Jain responded by stating that the management of deity worship and management of a property are different.

Justice Bobde suggested that another argument may be that Nirmohi Akhari could not manage the property as it lacked proper access to the property. Sr. Adv. S.K. Jain added that the obstruction of prayer has been held to be a wrong, relying on the reasoning used in the *Sri Hukumchand v. Maharaj Bahadur Singh* case in 1933.

1.12 Nirmohi Akhara's suit is not barred by limitation

The bench briefly discussed the right to sue, when it accrues and the timeline of decrees. Justice Bhushan clarified that the right to sue and right of execution are very different and accrue differently.

Sr. Adv. S.K. Jain once again broached the issue of limitation, citing *Bhagwati Prasad v. Shri Chandramaul* (AIR 1966 SC 735) and other cases. He re-iterated that the Faizabad magistrate never passed any final order after the injunction of dispossession and therefore the limitation period never began.

1.13 Did the Attachment Order extinguish Nirmohi Akhara's Right (if any)?

The bench asked Sr. Adv. S.K. Jain to take them through the evidence of revenue payments and land records, to determine (i) whether the Nirmohi Akhara owned the property; (ii) whether this right was extinguished by the 1949 order.

Sr. Adv. S.K. Jain read out excerpts from the 2010 Allahabad judgment dealing with evidence of Nirmohi Akhara's possession of the inner courtyard. Chief Justice Gogoi interrupted to state that while judges' reasoning can be relied on, documentary evidence of possession or oral testimony would better sustain the possession claim. Justice Chandrachud agreed, emphasising the need for Sr. Adv. S.K. Jain to provide oral and documentary evidence to sustain the claim.

Sr. Adv. S.K. Jain was unable to provide such evidence as requested by the bench. He went back to reading Justice Sharma's opinion in the Allahabad High Court judgment, which stated that Hindus owned all the relevant areas, over which the Nirmohi Akhara

is now claiming possession. Justice Sharma made no distinction between 'Hindus' and the Nirmohi Akhara.

Justice Chandrachud stated that there is difference between the existence of the Ram Janmasthan and whether the Nirmohi Akhara has possession of the site. He inquired whether there was evidence to demonstrate when the Nirmohi Akhara began possessing the temple. Justice Chandrachud emphasised the value of revenue payments, land records, historical accounts and traveller's accounts.

Chief Justice Gogoi requested Sr. Adv. S.K. Jain to take them through the evidence after lunch.

At 12.55 PM, the bench rose for lunch.

1.14 Evidence of Nirmohi Akhara's possession of the Inner Courtyard

After lunch, Sr. Adv. S.K. Jain again relied on excerpts of the 2010 Allahabad High Court judgment's assessment of evidence. The bench requested him again to take them through documentary and oral evidence and stated that the bench would begin hearing the appeal in suit 5 (filed by the Ram Lala) while Sr. Adv. S.K. Jain prepares to argue on evidence.

Sr. Adv. S.K. Jain resumes arguments for the Nirmohi Akhara on 22 August 2019 (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-31-arguments>).

Senior advocate K Parasaran began presenting arguments on behalf of Ram Lalla (Lord Ram). He began by emphasising the importance of determining limitation, by quoting from Section 3 of the 1908 Limitation Act which states that every suit after the limitation period *shall* be dismissed.

2.1 Ram was born in Ayodhya

First, he stated that he must establish the nature of the deity, Lord Ram, and the relevant history of events. Parasaran submitted that the spirit of Lord Ram is present at Janmabhoomi and can be experienced by those who pray there, reasoning that the presence of idol is not necessary for the presence of deity.

On the issue of whether Ram was born at Ayodhya, he submitted that Valmiki's Ramayana states that Lord Ram's place of birth is Ayodhya. He further submitted that what has to be proven is that the custom of worshipping at the site (on the belief that Ram was born there) has existed for a significant number of years. He added that the unshakeable faith of millions of believers is itself evidence.

He began citing historical documents, purporting to document the existence of a Ram temple. He quoted extracts from the British District Judge's writing that a Masjid had been built on land bordering the Janmasthan. He emphasised that this conclusion was arrived at not by a Hindu judge, but by a British judge to emphasise its fairness. He also stated that in 1885, the British had established a railing to bi-furcated the inner and outer courtyard.

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Justice Bobde inquired whether any other court of law has dealt with the issue of the birth of a religious figure or prophet. He gave the example of the following claim: Has any other court enquired into, say, deciding whether 'Jesus Christ was born at Bethlehem'. K Parasaran stated that he did not know, but would survey other jurisdictions.

2.2 Installation of idols is not a 'continuous wrong'

At this point, K Parasaran addressed the question of whether the installation of idols in 1949 is a 'continuing wrong'. The Sunni Waqf Board has submitted that the installation of the idols and consequent desecration of the mosque is a continuous wrong. Parasaran argued that in 1950, the court's receiver took charge of the property and that the continuous wrong ceased when the receiver took charge because a court's order, by its nature, cannot further wrong. He further submitted that the placing of the idols may have been the consequence of a wrong, but that it is not a continuing wrong.

Justice Bobde clarified whether one group placing an idol that prevented the other group from worshipping, as they do not believe in the idol, is a continuous wrong. After further back and forth, Justice Bobde drew an analogy between K Parasaran's argument of a completed act (and not a continuous wrong) and trespass.

The court transitioned to looking at the site plan of the disputed judgment. K Parasaran relied on a map from the 2010 Allahabad High Court judgment to take the bench through the disputed site. He specified which parts of the site each party claims, where the idols are situated and what part was attached to the state receiver in 1950.

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Justice Bobde asked whether the idols have been studied. In particular, he inquired whether they had been carbon dated.

K Parasaran provided the bench with archaeological details of the site, such as the existence of stone slabs and carvings.

The hearing concluded with the bench seeking clarifications about the placement of idols. Hearings will continue tomorrow (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-24-arguments>).

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