

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

# Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

## Day 24 Arguments: 8 August 2019

The court resumed hearing Senior Advocate K Parasaran on behalf of Lord Ram. In 1989, senior advocate of Allahabad High Court DN Agarwal filed a suit on behalf of Lord Ram (Suit no. 5). The first plaintiff in Suit 5 is Lord Ram Lalla and the second plaintiff is the Lord Ram Janmabhoomi site itself. In today's hearing, it claimed that the Ram Janmabhoomi site is a juristic person and that the other suits in the Ayodhya title dispute are barred by limitation.

## Background

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

In March 2019, hearings were suspended so that the parties could attempt mediation. However, the mediation proceedings failed and the court resumed day-to-day hearings on 6 August.

On 6 August, SK Jain presented oral arguments for the Nirmohi Akhara. Relying on the 2010 Allahabad High Court judgment, he attempted to establish the history of the akhara's possession of the disputed land and submitted that the akhara's suit is not barred by limitation. On 7 August, the bench requested SK Jain to provide all documentary and oral evidence to sustain the akhara's claim of possession. When SK Jain requested time to prepare the evidence, the bench began hearing Senior Advocate K Parasaran in Suit 5 on behalf of Lord Ram. K Parasaran sought to establish evidence that the disputed site is the sacred place of Lord Ram's birth and argued that the placing of idols in the mosque in 1949 did not cause a continuous wrong to Muslims under Section 23 of the 1908 Limitation Act (<https://www.casemine.com/act/in/5a979dd64a93263ca60b74e0>).

### Today's Hearing

The bench assembled at 10.34 AM. Chief Justice of India Ranjan Gogoi refused to hear Subramaniam Swamy's writ petition praying that pursuing the worship of Lord Ram without any fetters is a fundamental right. CJI Gogoi stated that the writ petition would be heard at the appropriate time.

Dr Rajeev Dhavan, on behalf of the Sunni Waqf Board, contended that Suits 3 (filed by Nirmohi Akhara) and 5 are in loggerheads with each other, with one failing if the other is maintained. Therefore, he requested that they be allowed to reply to each other and he

would make his submissions after.

Senior advocate K Parasaran reminded the court that it had promised to hear Suits 3 and 5 before examining other claims. He stressed the importance of looking at whether Suit 3 was barred by limitation, because the Allahabad High Court had dismissed it. He further contended that Article 47 of the Limitation Act, 1908, as claimed by Nirmohi Akhara, would not apply.

### *2.3 Installation of idols is not a 'continuous wrong'*

He explained that for the purpose of his arguments, he would consider that the consequence of placing Hindu idols inside the mosque in 1949 is a continuing injury and not a continuing wrong. Further, he contended that the continuing wrong stops upon the 1950 Additional City Magistrate of Faizabad issuing the order that the disputed property be attached under Section 145, Criminal Procedure Code and taken over by a court receiver.

#### *2.3.1 When does a cause of action arise for calculating limitation?*

K Parasaran began by informing how the 2010 Allahabad High Court had decided on the applicability of Article 120 of the Limitation Act 1908 to Suit 4. Article 120 is a residuary provision that states that the limitation period is 6 years from the date when the right to sue accrues for suits that are not covered under any other provisions of the Act. The High Court judgment had barred Suit 4 (filed by Sunni Waqf Board) by applying Article 120. On 6 August, Senior Advocate SK Jain (on behalf of Nirmohi Akhara) contended that Suit 3 was not barred by Article 120.

On the question of when cause of action arises for calculating the limitation period in the Muslim suit, K Parasaran submitted that a party cannot chose a cause of action when claiming wrong or injury. He submitted that for determining the cause of action, the consideration is to be the continuation of the wrong or tort and not continuation of the injury. He submitted that the placement of the idols in the mosque is a continuing injury for the Muslim parties. Therefore, he questioned why the Muslim parties waited 11 years until the demolition of the mosque to file a suit. He argued that the very act of placing the Hindu idol shakes the Muslim faith and is a serious injury for which one will immediately seek the remedy of filing a suit. He was contesting the Muslim party's argument that they are not barred by the limitation period to seek a remedy.

### *2.3.2 Limitation extinguishes both substantive and procedural rights*

K Parasarn continued his argument that Section 28 of the Limitation Act, 1908 extinguishes the substantive right as well as the procedural right. Justice Chandrachud asked whether limitation generally extinguishes only the remedy or both the right and the remedy. K Parasaran responded that limitation is a procedural right that removes the procedure for remedy and thereby destroys claims to the substantive right. While making this argument, he differentiated between justice-making and the ends of justice. He submitted that the statutory recourse of limitation is realised in the interest of public policy to impose time limits and ensure that old controversies do not become immortally disputable. He further submitted that Articles 141 and 142 of the Limitation Act 1908 do not apply to suits seeking declaration, and that only Article 120 will apply. He then attacked the claims of adverse possession by other parties by citing case law and arguing that adverse possession must be demonstrated for the whole land and not parts of the land.

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He returned to his earlier argument on continuing injury and submitted that it is different from a continuous wrong. Justice Bobde inquired what distinction K Parasaran was drawing between injury and wrong by stating that injury as a word is synonymous with 'wrong'. K Parasaran answered that while a wrong may affect a right, an injury does not and that a wrong may be committed once but the injury may continue. Justice Bobde stated that injury is said to be the consequence of, or a result from, a wrong. K Parasaran affirmed that when a wrong is committed, it leads to an injury. Justice Bhushan asked K Parasaran to clarify the position of his submission.

K Parasaran submitted that the act of placing the idols was a completed act and a wrong and that the injury following from the placing of the idols was a continuous injury. He submitted that the act of placing the idols was not a continuous wrong. Justice Bobde asked if denying a person the right to place of worship every day by placing an idol is not a continuous wrong. K Parasaran responded that the lack of access affecting the right to pray is only a continuous injury. Justice Bobde then asked K Parasaran to state an example of a continuing wrong according to his understanding.

When K Parasaran was unable to respond for a few minutes, CJI Gogoi asked him to respond tomorrow, after preparation. K Parasaran submitted precedent that states that a continuous wrong is one which continuously affects right. He seemed to be implying that a new must be affected each time by the wrong for it to classify as a continuing wrong and that it is only a continuous injury when one wrong affects the same right continuously. He further submitted that as soon as the decree of attachment of property and takeover by receiver was passed, the appellants were dispossessed and lost their rights.

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#### *2.4 Ram Janmasthan (birthplace of Lord Ram) is not merely the ground of the main dome of the mosque, but the surrounding area as well*

K Parasaran then submitted that the Ram Janmasthan (birthplace of Lord Ram) is not merely the ground of the main dome of the mosque, but the surrounding area as well. He argued that although 'Sthan' means a specific place, it is not restricted to a specific dimension in size, and that the Janmasthan is considered to be a very sacred site in Hinduism on account of its nature and the fact that holy yatras are conducted through it. He explained that in legal understanding, a building is not merely the constructed building alone but also the incidents to the building. Drawing on this example, he claimed that the Janmasthan is therefore not merely the ground below the main dome of the mosque but the surrounding land which is considered by Hindus to be the birthplace of Lord Rama. He explained that the unshakeable faith of the people over the area of land considered as the Janmasthan should be included to the ground below the dome when deciding on the title of the disputed Ayodhya land title. He further argued that due to its nature and significance, the Janmasthan was at the core of Hinduism and could not be bifurcated into three parts.

#### *2.5 A temple existed before the mosque was built*

K Parasaran then made submissions relating to the existence of a temple before the mosque was built. He primarily relied on the existence of the faith and belief of Hindu people and contended that it is undisputed that Lord Ram existed before Emperor Babar, who built Babri Masjid. He contended that no *namaz* has been offered at the temple and that the Bairagis (implying Nirmohi Akhara) only came to the disputed site only after independence. He contended that no resistance was made by any Muslim to any Hindu pursuing worship in the Janmasthan.

## *2.6 Ram Janmasthan is a juridical person*

K Parasaran then summarised the findings and conclusions of the Allahabad High Court in Issue 1 of Suit 5 which addressed the question of who can file a suit in the present case. Justice Bhushan interjected to ask if the Janmasthan (a piece of land) can be considered as a juridical person with a juristic character. K Parasaran submitted that the forms of a deity are considered a juristic person, by offering the example of the linga idol being placed in a Shiva temple and Lord Shiva being considered the deity of the temple through the linga. Justice Bhushan stated that a deity is considered a juristic person in law, and stressed that Janmasthan is a place. K Parasaran responded that the presence of an idol is not the only necessity for deeming the temple to have a deity as a juristic person. Justice Bobde, recognised that the legal definition of a juristic person had expanded by observing that in 2017, the Uttarakhand High Court held a river to have a juristic person. K Parasaran responded that in Hinduism, the sun and rivers are worshipped as deities. Justice Chandrachud noted that K Parasaran was arguing that the divinity is not merely restricted to the physical form but can be extrapolated to the general divine and source of worship, for the purposes of identifying the juristic person. CJI Gogoi then requested K Parasaran to continue with other issues and directed him to answer the question of whether Janmasthan is a juristic person.

K Parasaran continued to summarise the findings of the Allahabad High Court's judgment in Issues 7, 13, 15 and 21. After reading relevant extracts of the judgment, he submitted copies of the site plan to the bench to explain the particulars of the partition of the title after the Allahabad High Court's judgment.

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He submitted that J Agarwal of the Allahbad High Court had held that Suit 3 was barred by limitation and therefore the issue of providing remedy did not arise. He sought to draw attention to the fact that Suits 3 and 4 had been disposed solely on the bar of limitation. He quoted Explanation 5 of Section 11 of the Civil Procedure Code with Section 28 of the Limitation Act, 1908 and explained that the right to property claimed by the other parties had been extinguished through limitation.

***At 12.45 PM, the court decided to meet after lunch.***

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The bench assembled at 2.07 PM.

*2.7 Muslims stopped namaz as mosque was desecrated*

CS Vaidyanathan submitted that after 16 December 1949, Muslims stopped offering *namaz* at the mosque because they considered that it had been desecrated after the placing of the Charan inside the mosque. The bench questioned whether the placing of Charan had barred the Muslims and Digambaras from offering their prayers at the disputed site. CJI Gogoi inquired if there is documentary evidence to shed light on the consequences of placing the idol inside the mosque.

K Parasaran continued with his arguments and cited case law on when the case of action is said to arise.

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CJI Gogoi stated that the hearings will continue tomorrow, despite it being a Friday and marked for hearing miscellaneous matters. He also asked if the other appeals arising from Suit 5 will need to be heard separately or could be tagged with the ongoing hearings.

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