

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

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 41 Arguments: 5 September 2019

Today is twentieth of final arguments in the Ayodhya title dispute. The Supreme Court is hearing a set of appeals to the Allahabad High Court judgment that divided the disputed land equally among the Nirmohi Akhara (suit number 3), the Sunni Waqf Board (suit number 4) and Ram Lala (suit number 5). The court has finished hearing arguments for the Akhara and Ram Lala and is now hearing Sr. Adv. Rajeev Dhavan for the Sunni Waqf Board.

Yesterday, Sr. Adv. Dhavan disputed the Nirmohi Akhara's claim of possession over the inner and outer courtyards. He submitted that the Akhara's claim is limited to the management and charge of the Ram Chabootra and framed this as an easementary right regarding access to the land for prayer. He claimed exclusive possession of the site for the Sunni Waqf Board.

Today, Sr. Adv. Dhavan disputed the reliability of witness statements relied upon by the Nirmohi Akhara and, further, argued that its suit was barred by limitation.

Morning Session

The bench assembled at 11.21 AM.

7.16 Disputing witness statements from Nirmohi Akhara's suit

Sr. Adv. Rajeev Dhavan disputed about 15 several plaintiff witness statements from the Nirmohi Akhara's original suit (suit number 4). He sought to dispute various of the Akhara's assertion such as that it has had shebaitship since 'time immemorial' and, rights over both the inner and outer courtyard. Sr. Adv. Dhavan argued that only around 'one tenth' of the witness statements relied upon by the Akhara are reliable. He proceeded to dispute the reliability of fifteen witness statements, one by one.

In addition, he disputed that the idols were located under the central dome (of the mosque) prior to 1947, as per his previous arguments where he had submitted that the idols were place under the dome on the night of 22 December 1947. He submitted that the witness who testified that there were no incidents on the night of the 22nd, also testified to being asleep.

7.17 Nature of Nirmohi Akhara's shebaitship

While recognising the Akhara's shebaitship, Sr. Adv. Dhavan disputed the Akhara's claim that its shebaitship was over 700 years old. He argued that the shebaitship of the Akhara began in 1885. He referenced documents relied upon by the Akhara to

establish it was managing the Ram Chabootra and submitted this was the earliest evidence of the Akhara holding the shebaitship.

Further, Sr. Adv. Dhavan argued that a shebait cannot be the owner of a temple. He submitted that a shebait inherently only has the right to manage a temple.

7.18 Juristic entities have limited rights

Sr. Adv. Rajeev Dhavan briefly sought to establish that juristic entities have limited rights. Referring to principles of jurisprudence established by GW Keeton (*The Elementary Principles of Jurisprudence* (<http://www.amazon.co.uk/Elementary-Principles-Jurisprudence-G-W-Keeton/dp/B0007JJSX4>)) and RE McGarry (*Snell's Principles of Equity* (<https://archive.org/details/in.ernet.dli.2015.148880/page/n2>)), he submitted that juristic entities are created 'for convenience'. He stressed that in interpreting the rights of a juristic entity, one must first determine the 'purpose' of the entity. He did not elaborate further [*we speculate that he will later return to these principles when detailing the rights of Ram Lala and Ram Janmabhoomi*].

7.19 Nirmohi Akhara is claiming ownership to avoid limitation

Sr. Adv. Rajeev Dhavan argued that the sole motivation behind the Nirmohi Akhara's ownership claim is to prevent its suit from being barred by limitation. He submitted that as the inner courtyard was attached and placed under a state receiver, any suit by a litigant who owns the inner courtyard would not be barred by limitation.

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It is important to note that on 23 August (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-32-arguments>), the Akhara's counsel Sr. Adv. SK Jain had argued that the Akhara is *not* claiming ownership rights, rather only shebaitship rights. Today, Sr. Adv. Rajeev Dhavan disputed this, seemingly to demonstrate that Sr. Adv. SK Jain was contradicting himself. He analysed the language used in the Akhara's Supreme Court appeal. He submitted that the repeated use of the phrase 'belonging to' implies ownership. He referenced judgments [1986 (Supp) SCC 700; AIR 1965 SC 1923] where the court had interpreted the meaning of the phrase 'belonging to'.

Afternoon Session

The bench re-assembled at 2.35 PM.

Sr. Adv. Dhavan argued that the phrase 'belonging to' does not imply possession, and only ownership. Referring to the principle of 'open texture', he conceded that language is ambiguous and words must be understood in their context. He argued that the Akhara's Supreme Court appeal uses the phrase in a context that implies ownership.

The bench told Sr. Adv. Dhavan that he need not focus on the phrase 'belonging to' so closely, as it is not a part of any statute. It stressed that the Akhara only used the phrase 'loosely' in its pleadings.

Sr. Adv. Dhavan responded that he sought to show what happens when the phrase is used in a pleading by reference to AIR 1965 SC 1923. He proceeded to read out paragraph 24 (<https://scobserver-production.s3.amazonaws.com/uploads/ckeditor/attachments/216/AIR1965SC1923para24->

1.jpeg) of the judgment, where the Supreme Court held that the phrase 'belonging to' must be interpreted by reference to the context in which it used. The judgment clarifies that 'belonging to' could imply either possession or ownership. Sr. Adv. Dhavan argued that the context in which the Nirmohi Akhara uses the expression 'belonging to' implies ownership.

7.21 Shebaitship versus trusteeship

The bench stated that the Nirmohi Akhara is claiming shebaitship. It interpreted this to mean that the shebait can represent the idol and no one else.

Sr. Adv. Dhavan stated that it is important to ascertain which rights the Akhara is claiming, in order to understand what it means for it to claim the shebaitship. He argued that the Akhara was claiming the duty to manage the idol and the worshippers' prayer.

The bench responded that any claim by a shebait necessarily entails the rights of a deity as its duties are dependent on the rights of the deity. Rajeev Dhavan argued that the bench was confusing the concept of shebaitship with that of trusteeship. He said that the Akhara in its pleadings was merely claiming the duty to perform (i.e. management and charge of prayer) that which was prevented by the Faizabad magistrate's receivership order.

7.22 Nirmohi Akhara's suit is barred by limitation

Sr. Adv. Dhavan argued that the Nirmohi Akhara's suit is barred by limitation under the Limitation Act, 1908 (<https://www.casemine.com/act/in/5a979dd64a93263ca60b74e0>). First, he disputed Sr. Adv. SK Jain's argument (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-22-arguments>) that the limitation period never began under Article 47 of the Limitation Act, 1908. Earlier, Sr. Adv. SK Jain had argued that the order passed by the Faizabad magistrate in December 1949 (placing the inner courtyard under the receivership of the state) was not a final order. Article 47 specifically states that the limitation begins from the 'date of the final order'. Sr. Adv. Dhavan argued that Article 47 did not apply to the Akhara's suit and further that Sr. Adv. SK Jain's final order argument was bad in law.

In addition, Sr. Adv. Dhavan disputed the Akhara's continuous wrong argument. Sr. Adv. SK Jain had argued that the Faizabad magistrate's order caused the Akhara to suffer a continuous wrong and that therefore the Akhara's cause of action had continuously refreshed (limitation period continuously restarts). Sr. Adv. Dhavan argued that the order did not cause the Akhara suffer a 'persistent and active' wrong. He argued that the wrong suffered by the Akhara must be determined with respect to the rights it is claiming. He submitted that it is claiming management rights. Therefore he clarified that while being denied to pray may be a continuous wrong, being denied to 'conduct prayer' is not.

The bench rose at 3.45 PM.

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