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Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 42 Arguments: 11 September 2019

Oral arguments resumed in the Ayodhya title dispute today before the bench comprising Chief Justice Gogoi and Justices Bobde, Chandrachud, Bhushan and Nazeer. The case pertains to a set of appeals to the 2010 Allahabad High Court judgment that divided the disputed land equally among the Nirmohi Akhara (original suit number 3), Sunni Waqf Board (original suit number 4) and Ram Lala (original suit number 5).

Last week (<https://www.scobserver.in/beyond-the-court/week-5-in-ayodhya>), the court began to hear Sr. Adv. Rajeev Dhavan on behalf of the Sunni Waqf Board. So far, he has primarily disputed claims put forth by Sr. Adv. SK Jain, who represents the Nirmohi Akhara.

Today Sr. Adv. Dhavan disputed the Nirmohi Akhara's argument that it had suffered a 'continuous wrong' and that therefore its suit was not barred by limitation.

The bench assembled at 2.02 PM.

7.23 Nirmohi Akhara's suit is not maintainable

Sr. Adv. Rajeev Dhavan argued that suit number 3 is not maintainable.

7.23.1 Nirmohi Akhara cannot claim ownership

First, he argued that the Akhara could not claim ownership of the disputed property. Continuing his arguments from Friday 5 September (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-41-arguments>), he submitted that it was clear that the Akhara was claiming ownership of the site, due to its use of the phrase 'belonging to' in its Supreme Court civil appeal. He argued that they cannot claim ownership as they are also claiming shebaitship (management rights), citing *All India Bank Employees* (1962 (3) SCR 269). He clarified that a shebait is not the equivalent of a trustee (who may claim ownership rights).

7.23.2 Nirmohi Akhara never suffered a continuous wrong

Second, he argued that the Akhara never suffered a continuous wrong and hence its suit was barred by limitation. A suit filed by a party who has suffered a continuous wrong will never be barred by limitation, as the cause of action continuously refreshes. Sr. Adv. SK Jain for the Akhara had claimed that when the Faizabad magistrate's December 1949 order came into effect on 5 January 1950 and the site was placed under the receivership of the State, the Akhara began to suffer a continuous wrong. Sr. Adv. R Dhavan submitted that this argument is premised on the assumption that the Akhara was in possession of the site.

7.23.3 Nirmohi Akhara was not in possession of the site

He disputed that the Akhara was in possession of the site. He stated that the Akhara was only in possession of the site for roughly ten days, after the Hindu idols from the outer courtyard were illegally placed under the central dome where the mosque was (inner courtyard). He questioned how the basis of the Akhara's continuous wrong argument could be an illegal act.

7.23.4 Nirmohi Akhara only had management rights over outer courtyard

He sought to establish that the Akhara only had ever had management rights over the outer courtyard. He submitted that it had conducted worship at the Ram Chabootra, which is in the outer courtyard. He stressed that the Akhara's rights over the inner courtyard stem solely from the Hindu idols 'appearing' on 22/23 December 1949 (recall that the Akhara claims the idols were present since time immemorial).

Expanding on his critique of Sr. Adv. SK Jain's continuous wrong argument, Sr. Adv. Dhavan submitted that the Akhara could not sue a magistrate. It was the Faizabad magistrate who issued the 1949 order that dispossessed the Nirmohi Akhara.

Sr. Adv. Dhavan argued that Sr. Adv. SK Jain failed to distinguish between causation in fact and causation in law (https://en.wikipedia.org/wiki/Proximate_cause). Relying on relevant tort case law, he submitted that the Sr. Adv. SK Jain must do so, otherwise his submissions are bad in law.

7.24 Shebaitship versus trusteeship

Sr. Adv. Dhavan disputed that Section 10 of the Limitation Act, 1908 (<https://www.casemine.com/act/in/5a979dd64a93263ca60b74e0>) was the relevant legal provision. as Sr. Adv. SK Jain was claiming. Section 10 states that there exists no limitation period for suits against persons in whom property has become vested in trust (i.e. trustees). Sr. Adv. Rajeed Dhavan maintained the distinction between trustees and shebait. Instead, Sr. Adv. Dhavan argued that Sections 23 and 142 of the Act were relevant. Section 23 is on continuous wrongs and Section 142 pertains to a plaintiff who has lost possession of an immovable property.

7.25 Adjudicating a 'continuous wrong'

Sr. Adv. Dhavan submitting that the court, in adjudicating on 'continuous wrong', must consider injury with regards to the obligations of the person who committed the wrong. Meaning, the Nirmohi Akhara's injury must be understood with reference to the Faizabad magistrate's obligations. He submitted that no obligation rested with the magistrate to maintain's the Akhara's possession of the site.

He proceeded to cite a series of judgments (https://scobserver-production.s3.amazonaws.com/uploads/case_document_resource/document_upload/439/contwrong_caselaw.jp) to substantiate his claim that continuous wrong is adjudicated on the obligations of the tortfeasor (person who committed wrong). He submitted that the obligations of the tortfeasor should be framed as a positive duty.

The bench rose at 3.26 PM.

Case Documents

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- Case law on continuous wrong, pt. 2 (https://scobserver-production.s3.amazonaws.com/uploads/case_document_resource/document_upload/440/contwrong_caselaw2.jpeg)
- Case law on continuous wrong, pt. 1 (https://scobserver-production.s3.amazonaws.com/uploads/case_document_resource/document_upload/439/contwrong_caselaw.jpeg)
- 2010 Allahabad High Court Judgment (<http://elegalix.allahabadhighcourt.in/elegalix/DisplayAyodhyaBenchLandingPage.do>)

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