

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

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 43 Arguments: 12 September 2019

The Supreme Court is hearing a set of appeals to the 2010 Allahabad High Court judgment that equally divided the disputed title among the Nirmohi Akhara (original suit number 3), the Sunni Waqf Board (original suit number 4) and Ram Lala (original suit number 5). The current legal dispute arose in 1949, when the Faizabad magistrate placed the land under the custody of the state under Sections 145 and 146 of the Code of Criminal Procedure, 1898 (http://bdlaws.minlaw.gov.bd/pdf_part.php?id=75) proceedings. The dispute shifted from the trial courts to the Allahabad High Court in 1989 when Sr. Adv. DN Agarwal filed a suit in the High Court on behalf of Ram Lala and the matters were combined.

Currently, the Supreme Court is hearing Sr. Adv. Rajeev Dhavan on behalf of the Sunni Waqf Board. Yesterday (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-42-arguments>), he argued that the Nirmohi Akhara's suit is barred by limitation as it had never suffered a 'continuous wrong'.

Contempt

Sr. Adv. Rajeev Dhavan brought to the court's attention that his staff was facing harassment due to the fact that he was representing the Sunni Waqf Board. The bench took it on the record and strongly condemned it. Further, it asked whether Sr. Adv. Dhavan required security. He responded in the negative, saying that the bench's condemnation was sufficient for now.

7.26 Nirmohi Akhara's suit is not maintainable

Sr. Adv. Dhavan argued that the Akhara's suit was unmaintainable as it amounted to suing a magistrate. He referred to the Akhara's prayers and submitted that it seeks to assert a right against the Faizabad magistrate that issued the 1949 order. Referring to case law, he established that it cannot claim ownership rights against either the magistrate or the state (see *Ellappa Naicken* [1948] 61 Law Weekly 365 (https://scobserver-production.s3.amazonaws.com/uploads/case_document_resource/document_upload/439/contwrong_caselaw.jp)). He submitted that it should have filed a declaration suit against one of the other parties.

7.27 Nirmohi Akhara never suffered a continuous wrong

He disputed the Akhara's continuous wrong argument by submitting that the Faizabad magistrate did not have duty to maintain the Akhara's possession over the inner courtyard. He argued that claiming a continuous wrong requires that the person committing the wrong failed to fulfill a positive duty. Referring to *Sankar Dastidar* (AIR [2005] Cal 121), he submitted that when there is an absence of duty towards the injured (the Akhara), then a continuous wrong cannot exist.

Further referring to *Sankar Dastidar*, he submitted that when adjudicating limitation the court must determine the cause of action with reference to an entire series of events. He distinguished between a continuous wrong and wrong that causes a

continuous effect. He argued that the Nirmohi Akhara had failed to establish a series or sequence of events that caused it to suffer injury.

The bench noted that *Sankar Dastidar* had been aside by the Supreme Court. Sr. Adv. Dhavan acknowledged this, but submitted that it was set aside on a different ground and that the judgments reasoning on continuous wrong remained legal precedent.

Referring to paragraphs 6 and 7 of the Akhara's original pleadings, he argued that it had been unable to establish any cause of action (vis-à-vis continuous wrong) on the basis of ownership ('belonging to') or possession. He contended that the Akhara could only establish that it had been wrongly deprived of the management of the temple by the magistrate. He reiterated that it was bad in law to sue a magistrate.

7.28 Nirmohi Akhara cannot claim adverse possession

Sr. Adv. Rajeev Dhavan argued that the Nirmohi Akhara's possession claim has no foundation. Focusing first on the Akhara's prayer for adverse possession (possession via occupation of land that another has the title to), he reiterated that the Akhara only possessed the inner courtyard between when the idols were placed there and the State took custody of it - between 22 December 1949 and 5 January 1950.

Referring to case law (http://scobserver-production.s3.amazonaws.com/uploads/ckeditor/attachments/217/possession_caselaw.jpeg), he argued that the Akhara had failed to demonstrate it had adverse possession of the site in its pleadings. He stressed the necessity of showing either 'dispossession' or 'discontinuance'. Next, he highlighted the importance of showing specific times/dates and submitted that the Akhara had failed to do so. Finally, referring to the principle of “without force, without secrecy and without permission”, he argued that the Akhara sought to claim possession illegally by placing the idols in the courtyard.

The bench rose at 12.50 PM and re-assembled at 2.20 PM.

7.29 Illegal acts cannot be the foundation of rights claims

Sr. Adv. Dhavan submitted that the Nirmohi Akhara could not base its management or possession rights on an illegal act. Referring to the compilation of documents relied upon by Sr. Adv. SK Jain, he detailed the sequence of events leading to the 22nd December events and submitted that the Akhara was complicit in the placing of the idols under the central dome.

He referred to case law (https://scobserver-production.s3.amazonaws.com/uploads/ckeditor/attachments/218/illegalacts_caselaw.jpeg) to firmly establish that rights claims cannot be based on illegal acts.

7.31 Not challenging Nirmohi Akhara's shebaitship claim over outer courtyard

Last week, Sr. Adv. Rajeev Dhavan stated that the Sunni Waqf Board recognised the Nirmohi Akhara's shebaitship (management) rights over the outer courtyard. Today, he stated he would not challenge the continuity of the Akhara's shebaitship. However, he submitted that the evidence only validates the Akhara's shebaitship for the period between 1858 and 1959.

Sr. Adv. Dhavan emphasised that the Akhara would not lose its shebaitship, if its suit is barred by limitation. Referring to the Allahabad High Court judgment, he submitted that no party has controverted the Akhara's shebaitship claim and that its Mahant has always performed pooja in the outer courtyard.

He questioned the locus of late Sr. Adv. D.N. Agarwal, who filed a suit on behalf of Ram Lala in 1989. He argued that as the Akhara had the right to manage the deity, it followed that the Akhara should represent the deity in court.

Referring to case law, he sought to clarify the rights of a shebait. First, he argued that shebaitship and ownership cannot co-exist. Second, he said that the rights of the deity are vested in the shebait. Third, he submitted that the shebait can file a suit without the deity being made a formal party to the matter.

The bench rose at 3.54 PM

About Us (/about-us)

Events (/events)

Contact Us (mailto:jai.brunner@clpr.org.in)

Also Visit



Supported By



(<https://southasia.fnst.org/>)

2017-20 © Center for Law and Policy Research

www.vadaprativada.in