

IN THE SUPREME COURT IN INDIA

CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 1 OF 2011

(Against the impugned judgment, order and preliminary decree dated 30.9.2010 passed by the three Judges Special Bench of the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow disposing of Other (Original Suit No 4 of 1989 vide three separate judgments

IN THE MATTER OF:-

Misbahuddeen

Appellant

VERSUS

Mahant Suresh Das and others

Respondents

PAPER-BOOK

WITH

I. A. No. of 2011 . Application for Interim Relief / Order

AND WITH

I. A. No of 2011 Application for exemption from filing official translation

VOLUME - I

(List of **dates** and judgement of Hon'ble Mr. Justice U. n)  
(Pages : 1 to 225),

(PLEASE SEE INDEX INSIDE)

FILED BY:-

MR. EJAZ MAQBOOL, ADVOCATE FOR THE APPELLANT

# **VOLUME – I**

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A

IN THE SUPREME COURT OF INDIA  
CIVIL/CRIMINAL APPELLATE JURISDICTION

SLP(C)/(CRL.) APPEAL NO. \_\_\_\_\_ 2011

IN THE MATTER OF

\_\_\_\_\_ PETITIONER(S)

VERSUS

\_\_\_\_\_ RESPONDENT(S)

OFFICE REPORT ON LIMITATION

1. The petition is/are within time.
2. The petition is barred by time and is delay of \_\_\_\_\_ days in filing the same against the order dated \_\_\_\_\_ and petition for condonation of \_\_\_\_\_ days delay has been filed.
3. There is delay of \_\_\_\_\_ days in re-filing the petition and petition for condonation of \_\_\_\_\_ days delay in re-filing has been filed.

NEW DELHI

BRANCH OFFICER

DATED 6/1/2011

**LISTING PROFORMA**  
**IN THE SUPREME COURT OF INDIA**

1. Nature of the matter- Civil Matter.
  - (a) Name(s) of Petitioner(s)/Appellant(s)- **Misbahuddin**
  - (b) e-mail ID : NA
2. (a) Name(s) of Respondent(s) - **Mahant Suresh Das and others**
  - (b) e-mail ID NA
3. Number of case- **Civil Appeal No. — 11**
4. (a) Advocate(s) for Appellant/Petitioner(s) **Mr. Ejaz Maqbool**
  - (b) e-mail ID : **cmaqboolrgj@gmail.com**
5. (a) Advocate(s) for Respondent(s) - NA
  - (b) e-mail ID NA
6. Section dealing with the matter: **XI**
7. Date of the impugned order / Judgment: **30.9.2010**
- 8A. Name of Hon'ble Judges: **Hon'ble Mr. Justice S.U. Khan, Hon'ble Mr. Justice Sudhir Agarwal and Hon'ble Mr. Justice D.V. Sharma**
- 8B. In Land Acquisition matters:-
  - i) Notification / Govt. Order No. (V/s **N/A**)  
Dated Issued by Centre / State of NA
  - ii) Exact purpose of acquisition & village involved NA
- 8C. In Civil matters>
  - i) Suit No., Name of Lower Court: **OOS No.4 of 1989 and other connected Suits, Special Full Bench of the Allahabad High Court, Lucknow Bench**
  - ii) Date of Judgment: **30.9.2010**
- 8D. In Writ Petitions>  
"Catchword" of the other similar matters -
- 8E. In case of Motor Vehicle Accident Matters:  
Vehicle No. NA
- 8F. In Service Matters
  - (i) Relevant service rule, if any: NA
  - (ii) G.O. / Circular / Notification, if applicable or in question
- 8G. In Labour Industrial Disputes Matters: NA
  - I.I. Reference / Award No., if applicable
9. Nature of urgency - : **Stay of Impugned**
10. In case it is a Tax matter : NA
  - (a) Tax amount involved in the matter :
  - (b) Whether a reference/statement of the case was called for or rejected
  - (c) Whether similar tax matters of same parties filed earlier (may be for earlier / other Assessment year)? NA
  - (d) Exemption Notification/Circular No. :
11. Valuation of the Matter NA
12. Classification of the matter :  
(Please fill up the number & name of relevant category with sub category as per the list circulated)



No. of Subject category with full name : **18- Ordinary Civil Matter**

No. of Sub-category with full name - **1807- Others**

13. Title of the Act involved (Centre/State) - re, 1
- (a) Sub-classification (indicate Section/Article of the statute)  
(b) Sub-section involved: **Sections 96, 109, 151, of the CPC**  
(c) Title of the Rules involved (Centre/State) - **NA**  
(d) Sub-classification (indicate Rule/Sub-rule statute) :
15. Point of law and question of law raised in the case:
16. Whether matter is not to be listed before any Hon'ble Judge?  
Mention the name of the Hon'ble Judge:
17. Particulars of identical/similar cases, if any  
(a) Pending cases - **NA**  
(b) Decided cases with citation - **NA**
17. Was SLP/appeal/Writ filed against same impugned Judgment/Order earlier? If yes, particulars: **NA**
18. Whether the petition is against interlocutory/final order/decreed in the case : **FINAL**
19. If it is a fresh matter, please state the name of the High Court and the Coram in the impugned judgment/order : **Hon'ble High Court of Judicature at Lucknow, Lucknow Bench, Lucknow, Uttar Pradesh**  
Coram: **Special Full Bench**
20. If the matter was already listed in this Court:  
(a) When was it listed? **NA**  
(b) What was the Coram? **NA**  
(c) What was the direction of the Court?
21. Whether a date has already been fixed either by Court or on being mentioned, for the hearing of matter? If so, please indicate the date fixed
- Is there a Caveator? If so, whether a notice has been issued to
23. Whether date entered in the Computer? **NA**
24. If it is a criminal matter, please state:  
(a) Whether accused has surrendered :  
(b) Nature of offence, i.e. convicted under Section with Act  
(c) Sentence awarded : **NA**  
(d) Sentence already undergone by the accused  
(e) (i) **FIR/JRC etc. : NA**  
Date of Registration of FIR etc.:  
(ii) Name & place of Trial Court: **NA**  
(iii) Case No. in Trial Court and date of judgment : **NA**  
(iv) Name and Place of 1st Appellate Court : **NA**  
(v) Case No. in 1st Appellate Court & date of Judgment : **NA**

**EJAZ MAQBOO**  
Advocate for the Appellant  
Code No. : 1

Ncv., Delhi

Dated : 6.1.2011

A-

### CHECKLIST

1. (i) Whether SLP (Civil) has been filed in Form No.28 with certificate as per Notification dated 17.6.1997 Yes/No/ N.A. ✓  
(ii) Whether the prescribed court fee has been paid ✓ Yes/No
2. (i) Whether proper and required number of paper-books (1 +3) have been filed? ✓ Yes/No  
(ii) Whether brief list of dates/events has been filed? ✓ Yes/No  
(iii) Whether paragraphs and pages of paper books have been numbered consecutively and correctly noted in Index? ✓ Yes/No
3. Whether the contents of the petition/appeal, application and accompanying are clear, legible and typed in double on one side of the paper. ✓ Yes/No
4. Whether the petition and the application bear the signatures of the counsel/In-person. ✓ Yes/No
- 5.. Whether an affidavit of the petitioner in support of the petition/appeal/application has been filed, properly attested and identified. ✓ Yes/No
6. If there are any vernacular documents/portions/lines and translation of such documents are not filed, whether application for exemption from filing Official Translation, with affidavit and court fee, has been filed. Yes/No/N
7. If a party in the court below has died, whether application for bringing LRs on record indicating the date of death, relationship, age and addresses alongwith affidavit and court fee has been filed. Yes/No/N.A. ✓
8. (i) Whether the Vakalatnama has been properly executed by the petitioners/appellants and accepted and identified by the Advocate and Memo of Appearance filed. ✓ Yes/No  
(ii) If a petitioner is represented through power of attorney, whether the original power of attorney in English/translated copy has been filed and whether application for permission to appear before the court has also been filed? Yes/No/ N.A. ✓

A-4

- (lii) (a) Whether the petition is filed by a body registered under any Act or Rules? Yes/No /N.A.
- (b) If yes, is copy of the Registration Yes/No /N.A. ✓
- (iv) (a) Whether the person filing petition for such incorporated body has authority I.N.A. ✓
- (b) If yes, is proof of such authority I.N.A. ✓
9. Whether the petition/appeal contains a statement in terms of Order XVI/XX.I of Supreme Court Rules as to whether the petitioner has filed any petition against the impugned order/Judgment earlier, and if so, the result thereof stated in the petition. I
10. Whether certified copy of the impugned judgment has been filed and if certified copy is not available, whether an application for exemption from filing certified copy has been filed. ✓ Yes/No
11. Whether the particulars of the impugned judgment passed by the Court(s) below are uniformly written in all the documents. ✓ Yes/No
- 12.(i) Whether the addresses of the parties and their representation are complete and set out properly and whether detailed cause titled has been mentioned in the impugned judgment and if not, whether the memo of parties has been filed, if required? 0
- (ii) Whether the cause title of the petition/appeal corresponds to that of the impugned judgment names of parties therein? Yes/No
13. Whether in case of appeal by certificate the appeal is accompanied by judgment and decree appealed from and order granting certificate. Yes/No /N.A. ✓
14. If the petition/appeal is time barred, whether application for condonation of delay mentioning the no. days of delay, with affidavit and court fee has been filed. Yes/No ✓
15. Whether the Annexures referred to in the petition are true copies of the documents before the Court below and are filed in chronological order as per list of dates. ✓ Yes/No
16. Whether the petition/appeal is confined only to the pleadings in the Court/Tribunal Yes/No ✓

If not whether application for taking additional grounds/ documents with affidavit and court fee has been filed.

Yes/No/N.A. ✓

17 (i) In SLP/Appeal against the order passed in Second Appeal whether copies of the orders passed by the Trial Court and First Appellate Court have been filed

Yes/No/N.A. ✓

(ii) If required copy of the judgment / / notification/ award etc. is not filed, whether letter undertaking has been filed in civil matters?

Yes/No/N.A. ✓

18. In matters involving conviction whether separate proof of surrender in respect of all convicts or application for exemption from surrendering has been filed (Please see judgment dated 16.6.2006 in CrI. Appeal No. 685/ 2006 entitled MayaramSubramanian Srinivasan Versus C.B.I) (Copy of surrender proof to be included In the paper books.)

Yes/No/N.A. ✓

Whether in case where proof of surrender/separate Certificate from the jail Authority has not been filed, an application for exemption from filing separate proof of surrender has been filed.

Yes/No

19. In case of quashing of FIR whether a copy of the petition filed before the High Court under Section 482 of Cr.P.C. has been filed.

Yes/No/N.A. ✓

20. In case of anticipatory bail whether a copy of FIR or translated copy has been filed.

Yes/No/N.A. ✓

21.(i) Whether the complete listing proforma has been filled in, signed and included in the paperbooks?

✓ Yes/No

(ii) If any identical matter is pending/disposed of by Supreme Court, whether complete particulars of such matters have been given?

Yes/No/N.A. ✓

EJAZ MAQBOOL  
Advocate for the Appellant

New Delhi

Date: 6.1.2010

### **BRIEF SYNOPSIS**

That the present Appeal is being filed under Section 96 read with Section 109 and Section 151 of the Code of Civil Procedure (CPC) and also read with Articles 133, 134A and 136 of the Constitution of India from the judgment of the Full Bench of the Hon'ble High Court of Allahabad in Other Original Suit No. 4 and other connected cases dated September 30, 2010 (the impugned judgment) whereunder the Hon'ble High Court has inter-alia directed that disputed land, where prior to 6<sup>th</sup> December 1992, stood the Sabri Masjid which had been constructed in 1528 AD, be divided into 3 equal portions by metes and bounds amongst i) to deities of the Hindu community, ii) Nirmohi Akhara Math and iii) representatives of the Muslim Community.

The Appellant submits that the above directions passed by the Hon'ble High Court are pursuant to three separate judgments where the factual findings rendered are inconsistent with the law on record as well as contrary to law.

These erroneous factual findings include, amongst others erroneous findings of fact related to the building of the mosque on the disputed land in 1528 AD (the "Mosque"), possession of the disputed land and in particular the inner courtyard exclusively by the Muslims until 1949 (when they were ousted from possession pursuant to forcible placement of idols inside the Mosque as well as erroneous application on the principles of law related to the doctrine of res-judicata, Waqf's etc. Furthermore it is respectfully submitted that given that the factual findings in the three separate judgments are also inter se not consistent, the decree, which is

required to be based on factual finding, is unsupported unanimous finding of fact.

In view thereof and for the reasons in group hereinafter, the Appellant is filing this First Appeal against the judgment, order and decree dated 30.9.2010 of the Full Bench of the Hon'ble High Court of Allahabad, Lucknow Bench.

#### LIST OF DATES AND EVENTS

1528 During the rule Emperor r, Mosque was constructed where the Muslim community started offering prayers. These prayers continued uninterrupted as the Mosque from 1 until 22 December 1

1857 The courtyard of the Mosque was divided and an and the outer courtyard was created, separated by a wall made of bricks an grill. From on orarou 1857, a Chabutra admeasuring 17 x 21 ft, was set out in the outer courtyard of the Mosque (the "Chabutra").

January, 1885 Original Suit No. 1 ha Raghubar Dass (claiming m Sthan), against the Secretary of State for ndia in Council, interalia — a temple on the Chabutra. In the said suit, the existence of the Mosque was admitted essence represented the H commun

24.12.1885 The Trial Court Sub-Judge, Faizabad dismissed Original Suit NO.61/280 1 d grant the prayer

seeking permission to construct Temple on the site of Chabutra.

18/26.03.1886 Civil Appeal No. 1 was filed against the above order dated 24.12.1885. The appeal was dismissed. It is imperative to set out the finding of the Appellate Court, which formed the basis for dismissal of the Civil Appeal. The Court

*"The entrance enclosure under a gateway which bears the superscription 'Allah immediately on the left is the platform or chabutra of masonry occupied by the Hindus On this is a small superstructure of wood in the form of a tent. This chabutra is said to indicate the birthplace of Ram Chandra. In front of the gateway is the entry to the masonry platform of the Masjid. A wall pierced here and there with railings divides the platform of the Masjid from the enclosure on which stands the chabutra*

01.11.1886 Second Civil Appeal 122 of 1886 filed against the order dated 18/26.03.1886 in Appeal No. 27 1886. The Second was dismissed Judicial Commissioner, h. finding Hon'ble Judicial Commissioner, dismissing Second Appeal, is as follows

*"The matter is simply that the Hindus of Ajodhya want to erect a new temple of marble over the supposed holy spot in Ayodhya said to be the birthplace of Shri Ram Chander. Now this spot is situated within the precincts of the grounds*

surrounding a mosque constructed some years ago owing to the bigotry and tyranny of the Emperor Bebur, who purposely chose this holy spot according to Hindu legend as site of his mosque.

The HindLJS seem rights of access to certain spots within the precincts adjoining the" mosque a series of years been persistently trying to increase those rights and on spots in the enclosure:

(1) Sita Ki Rasai

(2) Ram ChanderKi Janam Bhumi

The Executive authorities have persistently refused these encroachments and absolutely forbid any alteration of the 'status quo

I think this is a procedure on their part and I am the

Civil Courts properly dismissed Plaintiff's claim.

.....  
.....

There is nothing on show that the plaintiff is in any sense, the proprietor of the land, in question",

1934

In view of communal \_\_\_\_\_ was partly damaged. However, the Mosque was repaired at the cost which was It is pertinent to state as after the riot, right until 22 December 1949, prayers were offered by commu ue.



22/23.12.1949 In the night intervening 22/23 December, around 50 to 60 Hindus trespassed into the Mosque and placed the idols below the Central Dome of the Mosque

23.12.1949 A First Information Report (FIR) was lodged about the said incident of placing idols in the Mosque.

26.12.1949- The local Government instructed the District Magistrate Faizabad to remove the idols from inside the Mosque

27.12.1949 However, the District Magistrate Faizabad did not abide by the direction of the local Government and failed to remove the idols from the Mosque

29.12.1949 On account of the possibility of breach of peace, on December 1949, the Additional City Magistrate Faizabad passed an order under section 145 of the CrPC, attaching Mosque Shri Priya Chairman, Municipal Board was appointed as Receiver.

05.01.1950 Shri Priya Outt Ram took the charge as Receiver and made an inventory of the attached properties

16.01.1950 Regular Suit No. 2 1950 (O.S. No. 1 1989) titled Gopal Singh Visharad V/s. Zahoor Ahmed and others was filed. In the said suit, an interim injunction was granted in favour of the Plaintiff against the removal of the idols from the Mosque

19.01.1950            The order of Temporary Injunction was modified on basis of an application moved on behalf of the District Magistrate, to the effect that darshan and            shall continue as was being            on 16.01.1            The order read as:-

*'The parties are hereby restrained by means of temporary injunction to refrain from removing the idols in question from the site in dispute and from interfering            as            present carried on.'*

03.02.1950            Sri Anisur Rahman filed Transfer Application before the Hon'ble high Court seeking a transfer of the proceedings initiated under Section 145 of the Cr p.e from the Additional City Magistrate, Faizabad to another Court of competent jurisdiction outside the District Faizabad. The Transfer Application also sought a stay of the proceedings (u/s 526,528 Cr.P.C.). The Hon'ble High Court was विनियमित to stay further proceedings and 'passed the following order:

*"issue notice. Stay meanwhile. A copy of the order may            over to the Hon'ble counsel on payment            necessary charges."*

01.04.1950            The Civil Court, Faizabad appointed Shri Shiv Shankar Lal Vakil as a Commissioner. Shri Shiv Shankar Lal Vakil prepared a map of the entire premises. Since the map prepared by Shri Shiv Shankar Lal Vakil nomenclatures——— as            , Bhandar,

Hanuman Dwar etc., was not in accordance with the said land, objections were lodged by the Muslim parties against the same, which were then recorded in an Order dated 20 November 1

25.05.1950 Two site plans of building premises of the adjacent area were prepared by Sri Shiv Shankar Lal pleader as a commissioner appointed by the Court in Suit No.2 of 1950.

05.12.1950 Regular Suit No. of 1950 . S. N 1989); *Paramhans Ramcharan Dass Vs. Zahoor Ahmed and others* was filed. prayers in the said suit were similar to the prayer and reliefs claimed in Regular Suit No. 2 of 1950. Notably, while Regular Suit No. 2 of 1950 had been filed without the mandatory notice under Section 80 of the CPC to the State Government and its officers, the second was 9 aforesaid notice.

03.03.1951 On March 3, 1951, m 16 January 1950 as — on 19, 1 was confirmed. The order stated  
“The interim — 16.1. as modified on 1 1.50 shall remain in force until the sui: is disposed

04.08.1951 Regular Suit NO.2 1 u r S 25 1950 were consolidated an J Faizabad.

30.07.1953 On July 30, 1953, the proceedings under section 1 CrPC were put in abeyance in view of the pending suits on the ground that same would be taken up after the disposal of the

26.04.1955 A first appeal was filed from the order dated March 3, 1951 before the Hon'ble High Court and was numbered as F.A.F.O No. 154 of 1951. This first appeal was dismissed by the order dated 26.4.1955 direction that the suit be expeditiously decided

17.12.1959 Regular Suit No. 1 .S. NO.3 1 titled *Nirmotit Akhara vs. Babu Priya Dutt Ram & Others* was filed.

18.12.1961 Regular Suit No. 12 of 1961 .S. NO.4 1989), titled *Sunni Central Board of Waqf & vs, Gopa/ Singh Visharad & Others* was

09.03.1962 Issues were framed by the J iza in Regular Suit NO.2 1950 and Regular Suit 1950.

17.05.1963 Issues framed in Regular Suit No. 26 of 1959

06.01.1964 By an Order of J Faizabad al the four suits were consolidated together and Regular Suit No 12 of 1961 was made the leading suit.

- 21.04.1966 Certain findings were recorded by the District Judge Faizabad on the issue regarding the validity of notification issued under Section 5(1) of the Muslim Waqf Act, 1936 in the consolidated suits.
- 18.12.1985 A Trust called the Ram Janambhoomi was formed for the construction and management of a Ram Temple, and was registered on the same day by Sub-Registrar, S.D.No.1, at Delhi.
- 01.02.1986 In a Miscellaneous Appeal filed by a stranger to the suit, an Order was passed by the District Judge Faizabad directing the District Magistrate and the S.S.P. of Faizabad to remove the locks of the two gates of the Mosque, in order to enable the general public to enter the main building of the Mosque for the darshan and puja of the idols kept inside. This order was contrary to the terms of the Order dated 19 January 1986.
- 03.02.1986 A Writ Petition was filed by Mr. Hashim Ansari before the Hon'ble High Court, Lucknow Bench challenging the order of District Judge Faizabad, dated 1 February 1986.
- May 1986 Another Writ Petition against the aforesaid order of the District Judge, Faizabad, dated February 1, 1986 was filed by the Sunni Waqf Board.
- 15.12.1987 The State of U.P. filed an application (Misc. case No. 29 of 1987) under Section 24 of Code of Civil Procedure

read with Section 151 C.P.C. before the High Court on the ground that due diligence of the matter these suits may be withdrawn from the Civil Court, Faizabad to the High Court.

01.07.1989 Regular Suit No. 236 of 1989 (S. 5 of 1989) was filed in the Court of Civil Judge, Faizabad by three plaintiffs namely, (1) ———— rajman Shri Ram Janam Bhumi, Ayodhya, represented by next friend Sri Deoki Nandan Agarwala, (2) Asthan Rama Janama Bhumi, Ayodhya represented by friend Sri Deoki ———— a Deoki Nandan Agarwala himself

10.07.1989 On an Application u/s 24 C.P.C. by the State of U.P. I the five Suits were withdrawn and transferred Allahabad High Court, at its Lucknow Bench (and were assigned to a Bench of three Hon'ble Judges for trial of the said cases).

18.09.1990 O.O.S. NO.2 of 1989 withdrawn by the plaintiff

notification

courtyard of the Mosque

11.12.1992      The notification issued      Government  
Prad-esh on 7/10      was struck down by the  
High Court, Lucknow Bench

07.01.1993      An Ordinance titled the 'Acquisition of Certain Area at  
Ayodhya Ordinance' was issued      Central  
Government for the acquisition of 67.703 acres of land  
in Ayodhya, including the land of demolished Mosque  
and some adjoining areas and also for abating all the  
suits pending in the High Court. A Reference also made  
to Supreme Court on      same      under Article 1      1)  
of the Constitution

09.03.1993      The Acquisition of Certain Area at Ayodhya Ordinance  
1993 (No. 8 of 1993), replaced by the Acquisition  
Certain Area at Ayodhya Act, 1993 (No. 33 of 1      ).

24.10.1994      Vide its judgment in *Dr. M. Ismail Faruqui and Ors. vs.*  
*Union of India and Ors.* [Reported in 1994 (6) SCC 360]  
the Hon'ble Supreme Court struck down Section 4(3) of  
the Acquisition of Certain Area at Ayodhya Act, 1993  
(No. 33 of 1993) and revived all the Civil Suits  
adjudication by the High Court and declined to answer  
the Special reference and returned the same.

24.07.1996      The recording of oral evidence began in the Suits

18.01.2002      The ,Full Bench of the Hon'ble H h Court decided to  
take assistance of the Archeological Survey of India  
("AS!") and passed orders in terms thereof by directing

ASI to survey the disputed site by Ground Penetrating Survey/ Geo Radiology Survey

05.03.2003 The Hon'ble High Court directed the A.S.I. to excavate the site and give report about the existence a temple/ structure beneath the Mosque.

12.03.2003 to  
07.08.2003 Excavations were carried disputed between these dates.

22.08.2003 ASI filed a report of excavation before the Hon'ble (the "ASI Report").

October 2003 Objections were filed by the Muslim parties against the ASI Report.

04.12.2006 The Full Bench of Hon'ble Court on objections inter-alia in the following terms

*"So we order that subject to the objections and evidence of the parties in the suit and all these shall be dealt with when the matter is finally decided"*

23.03.2007 The recording of oral evidence concluded

25.04.2007 The oral arguments commenced

29.09.2008 However, on the retirement of Hon'ble Mr. Justice O. P. Srivatsava, the oral arguments again restarted before the reconstituted Bench in which Hon'ble Justice Sudhir Agarwal was included



11.01.2010 On account of the elevation Hon'ble Mr. Justice S. Rafat Alam as 'Chief Justice of the M P High Court oral arguments again restarted after the Bench was reconstituted with the inclusion of Hon'ble Mr. Justice S. U. Khan.

2:6.07.2010 All the hearings concluded in all the Suits.

310.09.2010 The impugned judgments pronounced by all the three judges separately.

10.12.2010 After the impugned order the Special Bench of the Hon'ble High Court passed a corrective order dated 10.12.2010 and corrected the tyrographical errors in the entire judgment which has been carried out by the Appellant

06.01.2011 Hence this First Appeal.

**ANNEXURE A-1**

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW BENCH, LUCKNOW.**

O.S. NO F 1989  
(R.S. No.12/1961)

Sunni Central Board of Waqfs, U.P. & Others

Plaintiffs

Versus

Gopal Singh Visharad (now dead) & Others

Defendants

Copy of Judgement dated 30. 10 Hon'ble Justice S.u.

Khan is attached herewith.

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Examined by: - Sd/- Yusuf Husain

Checked by: - Sd/- Sunder Lal

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Judgment reserved on 26.07.2010)  
(Judgment delivered on 30.09.2010)

In the High Court of Judicature at Allahabad  
(Lucknow Bench)

Other Original Suit (**O.O.S.**) **No.1** of 1989  
(Regular Suit No.2 of 1950)  
Gopal Singh Visharad since deceased and survived by  
Rajendra Singh Vs. Zahid Ahmad and others

AND

Other Original Suit No.1  
(Regular Suit No.12 of 1961)  
Nirmohi Akhara and others Vs. Baboo Priya Datt Ram  
and others

AND

Other Original Suit **No.4 of 1989**  
(Regular Suit No.12 of 1961)  
The Sunni Central Board of Waqfs, U.P. and others Vs.  
Gopal Singh Visharad (since deceased) and others

AND

Other Original Suit No.1  
(Regular Suit No.3 of 1988)  
Bhagwan Sri Ram Lala Virajman and others Vs.  
Rajendra Singh and others

. Hon'ble SRUB Khan, J.

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- (iii) When and by disputed  
structure constructed )
- (iv) Whether any temple demolished and  
Whether the disputed site was treated/  
believed to be birth place 1)
- When the idols p inside  
(246)
- (vi) When Ram habutra came  
existence in outer cou )
- (vii) Possession and )
- (viii) Whether the mosque valid  
mosque (255)
- (ix) Misc. findings (259)
- (x) Relief (262)

## 7 Epilogue

## 8 Gist of findings

## 9 Operative portion

## Prelude

Here is a small piece of land (1 square yards) where angels fear to tread. It is an innumerable land mines. We are required to clear it. Some very sane elements advised us not to attempt that. I do not propose to rush in like fools lest we are blown. However we have to take risk. It is said that the greatest risk in life is not daring to take risk when occasion for the same arises.

Once angels were made to appear before him. Sometimes he has to justify his said honour. This is one of those occasions. Have I succeeded or failed? No one can be a judge in his own cause.

Accordingly, herein follows the judgment for which the entire country is waiting with bated breath.

evidence

earned counsel of all

the parties and cited books 9 \_\_\_\_\_ a \_\_\_\_\_ lings of Privy Council, Supreme Court \_\_\_\_\_ h \_\_\_\_\_ u \_\_\_\_\_ have been mentioned In great detail In \_\_\_\_\_ judgment esteemed brother Sudhir \_\_\_\_\_ I, J \_\_\_\_\_ I am therefore skipping the details and giving \_\_\_\_\_ bird's \_\_\_\_\_ view thereof.

#### **Introduction:-**

(Mainly the position till the i \_\_\_\_\_ " \_\_\_\_\_ " n of the fi \_\_\_\_\_ suit 16. 1.1 \_\_\_\_\_ )

The principle enunciated in Sections \_\_\_\_\_ , 7 a \_\_\_\_\_ 9 Evidence Act is the reason for this ntroduction.

In Ayodhya, District Faizabad, there \_\_\_\_\_ a premises  
*which till 6.12.1992*  
/consisted of constructed portion \_\_\_\_\_ adjoin  
surrounded by a boundary \_\_\_\_\_ ll (total a \_\_\_\_\_ about 1  
square yard) used for worshipping purpose(s), which  
was undisputedly constructed before 1 \_\_\_\_\_ Century  
Muslims claimed that the entire premises was a mosque  
known by the name of Babari Mosqu \_\_\_\_\_ However, it \_\_\_\_\_ .  
admitted to the Muslims \_\_\_\_\_ since middle \_\_\_\_\_ 1

Century outer part of the 11 h a  
chabootara towards South- rl 1 x 21'  
(39.6 square yard) on wh hiping.  
Hindus clairru to be much older. Riva claims of both  
the parties over the prem in dispute have been  
judicially noticed in 1885. rl a  
been noticed in the records d government  
officers since 1855 when took place between  
Hindus and **Muslims**. It is mentio nearby  
temple known by the name  
had some claim asserti  
mosque. The riot started  
Muslims were repelled by Hindus retreat  
the fight is stated to have contin till premises in  
dispute whereat several Muslims were killed They a  
said to have been buried around the disputed premises  
After the said riot, a bifurcation made  
adjoining land by placing a brick gnll (vertical  
bars) wall (railing) of height dividing



adjoining land into two parts, i courtyard adjacent to  
 the constructed portion and c courtyard adjacent to  
 the boundary wall towards courtyard  
 also included a flank in between northern  
 constructed portion and inner n the one hand  
 and northern boundary wall other hand The  
 railing divided the entire prem In almost equal  
 parts. The railing/ grill was r n 1 when  
 Awadh was annexed by the r i iate  
 after 1957 war of independence (called mutiny  
 Britishers.) This was done n  
 Muslims must use the in portion a Hindus  
 between them

towards North

nder

severe

opening

second door was that on two occasions in a year large number of Hindu devotees gathered to worship at the Chabootara and in order to control the crowd, it was essential to have one door for entry and the other for exit. At what particular place in the door shall be opened was itself a subject of raging dispute between Hindus and Muslims. Ultimately a fragile truce was arrived at it was agreed that the exact place must be marked by some European Officer. It was accordingly done.

The spot position is shown on maps prepared by Sri Shiv Shanmugam, Civil Judge dated 01.04.1950. Muslim parties did not object to the maps, they only objected to different portions by the maps and the maps e.g. Sita Rasoi etc. The objections have been considered and dated 20.11.1950 passed in the following order

nd the

spute

0 feet reproduced

Tota

square yards. portions

bout square

[www.vadaprativada.in](http://www.vadaprativada.in)

Suit NO.61/280 of 1 fi Mahanth

Raghubar Das, Mahanth an situate

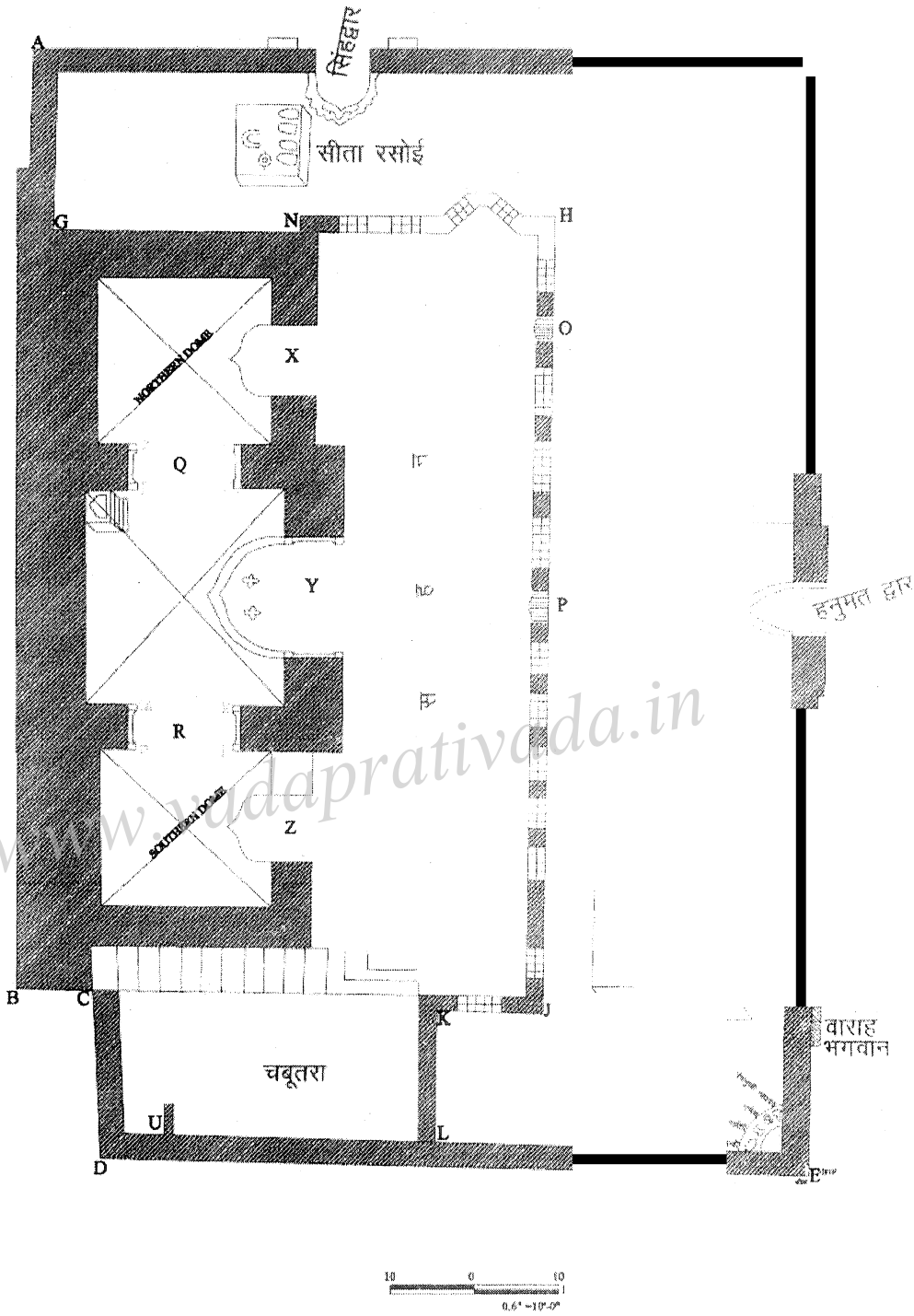
Ayodhya against Secretary in l.

The suit was instituted on 01 1 Certified copy

of the plaint is Ex. A-22 In fi it. d.

Ashgar claiming to be Mutawalli a rl ue fi

BASED ON THE PLAN NO. 01 . PREPARED BY SHRI SHIV SHANKAR LAL PLEADER, COMMISSIONER, DATED 25.05.1950  
 IN THE COURT OF THE CIVIL JUDGE FAIZABAD REGULAR SUIT NO. 2 OF 1950 / SHRI GOPAL SINGH VISHARAD  
 V/S ZAHUR AHMAD AND OTHERS.



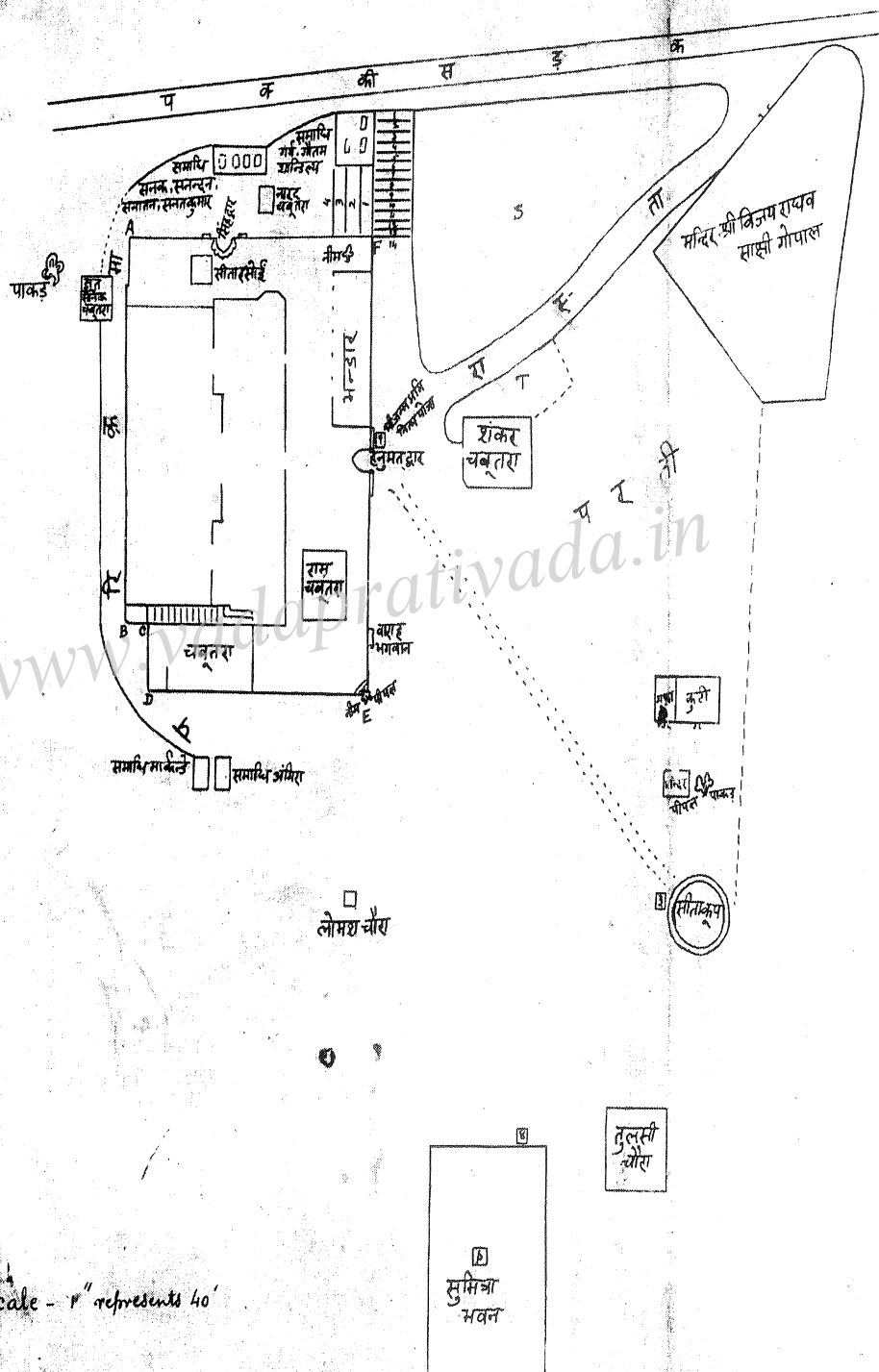
Reduced Scale 0.6"= 10' or 1" = 16.66'  
 A.F. =97' E.F. = 140'  
 B.C.= 9' C.D.= 21'  
 (A.F. X E.F.) - (B.C. X C.D.):= 1482.5 Sq. Yd.  
 G.H. = 66' H.J. = 89'  
 K.L.=21' L.D.= 40'  
 (G.H.X H.J.) + (K.L. X L.D.) = 746 Sq. Yd.

Exact Dimensions and area has been calculated from the original map with the help of scale. They are not given in the original map which is on the scale of 1"=10'

Reg. Suit No. 2 of 1950

Plan No. II

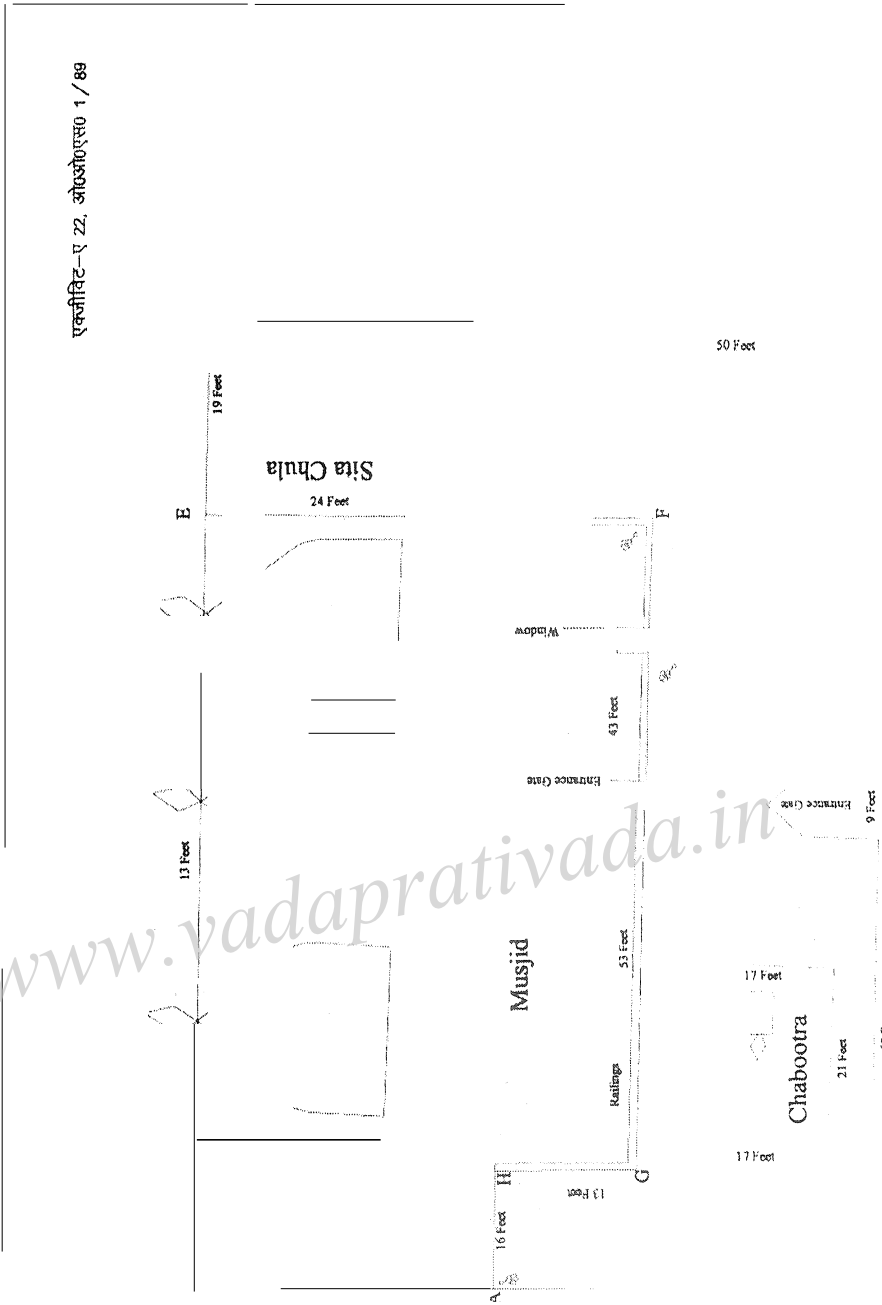
Showing the building in suit  
with its locality.



Al. Bankar Lal,  
Pleader,  
Commissioner  
25. 5. 50.

impleadment application in the allowed  
Mohd. Ashgar alone mainly 9  
the plaint sketch map was a an suit was for  
permission to construct temp r b Jana  
Asthan situate in Ayodhya di 1 x 21'  
and for restraining the defenda ng In the said  
exercise of the plaintiff. It was in p Ja  
Asthan situate at Ayodhya in a  
old and sacred place of worsh aha  
thereof, that on the Chabutra ha n u affixed  
(or lied) and a small temple kept, which  
worshipped, that chabutra was in possession of the plaintiff  
and plaintiff and other (fuqra f. n  
English Dictionary by F. Stei ) 9 difficulty  
extremely hot, cold and rainy seasons as there was  
building thereupon and if tern was constructed on the  
chabutra (platform) no one I u In  
March, 1883, due to certain objections of Muslims Deputy  
Commissioner prohibited the e p  
Thereafter, in Para-5 of the p it a ll

wisher public man is' entitled construct a building on the land owned and possessed hi and that a just government was duty t Protect the said of the public and help in obtaini a In the law and order. The map an along with the plaint is given on page 0.14. (The almost same as the map prepared n n kill Commissioner in the first su ) In it was clearly shown that the portion in courtyard a constructed portion was masjid a in possession Mohammedans and outer courtyard including b question was shown in possession of Hindus. In outer courtyard near the northern gate Sita Rasoi was shown and towards north of the eastern gate, chhappar (thatch) shown. In the said suit, amin directed to prepare which was accordingly prepared. Certified copy of the same is Annexure A-25. The said map which substantially tallies with plaint map of suit of 1885 is a 9iven on page N0.15, In map *hauz ghusal* (water tank ) shown in the in courtyard.

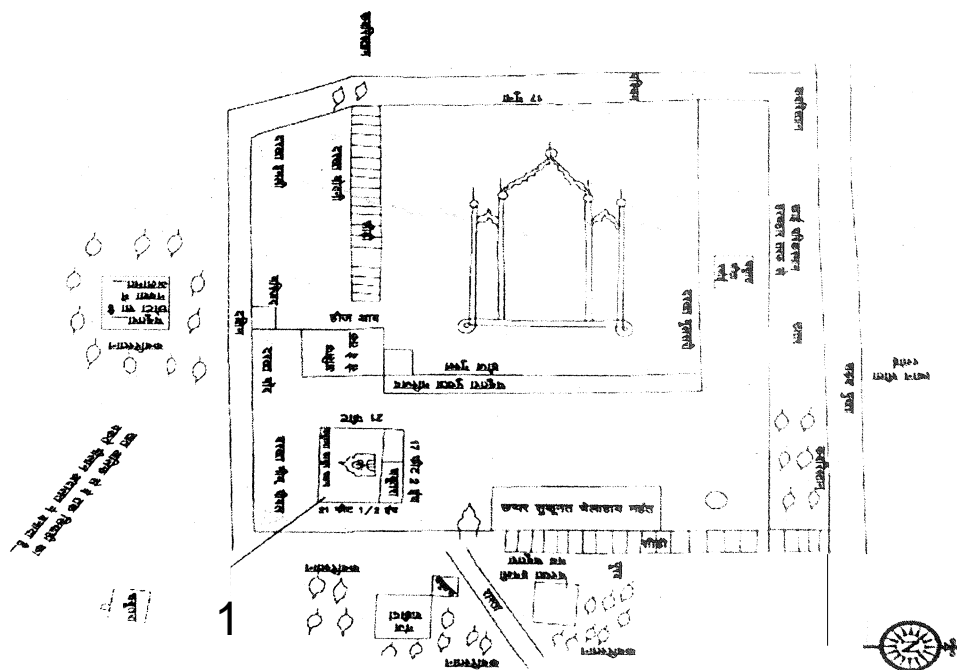


A B C D E is in possession of Hindoos  
W E F G H is in possession of Mohammdans



एकजीविट-ए 25, ओ0ओ0एस0 1

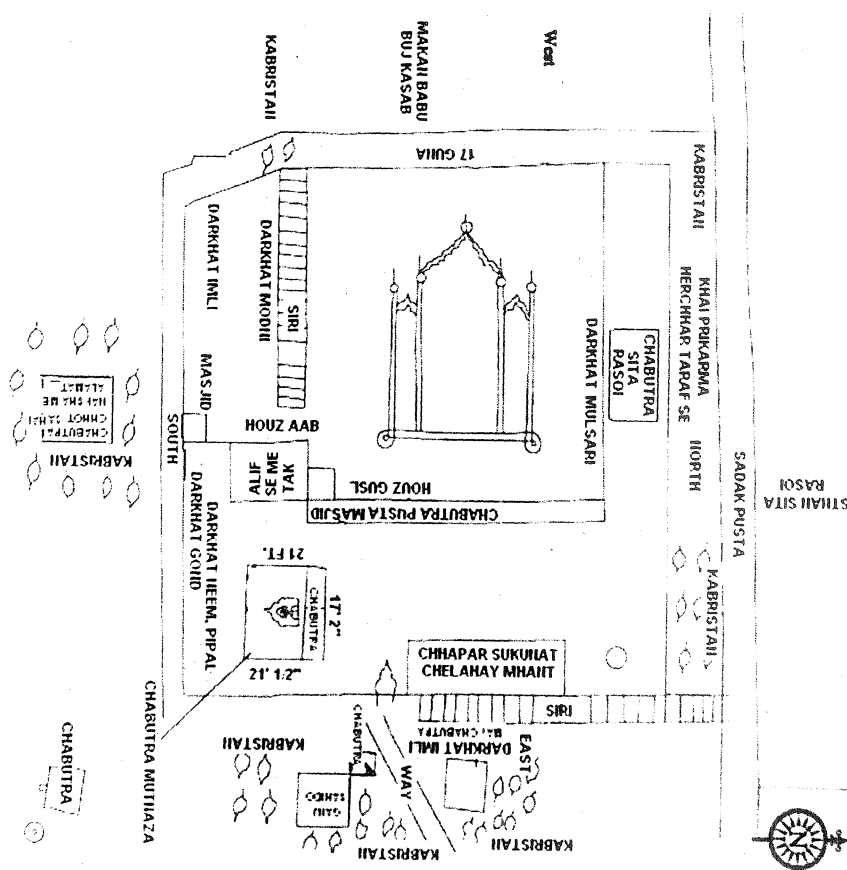
नक्शा मौका मुतनाजा यानी चबूतरा जनम स्थान कि अन्दर हाता मस्जिद व चबूतरा हर दो वाके हैं मुरल्लिबा गोपाल सहाय मुंशी वाके अयोध्या जी बमोजुदगी फरीकैन नक्शा मुरुतब व पैमाइशी चबूतरा मुतनाजा हुआ बतारीख 06 दिसम्बर 1885 ई0 तमुकदमा महंत रघुबर दास मुद्दई बनाम साहब व सय्यद मोहम्मद असगर मुद्दआअलेहिम दावा इमारत बनवाने तामीर मन्दिर ऊपर चबूतरा जनम स्थान



(ENGLISH TRANSLATION)

Exhibit -A25, O.O.S 1/89

Site map of Jaman Sthan that is Chabutra. Inner courtyard-Mosque and chabutra are situated  
Examined and measured in the presence of Gopal Sahay, Munshi, Amin commesoncr RID avodha on  
6<sup>th</sup> December, 1885, in the case of Mahant Ragnubar Das v, The of and Mohd.  
regarding construction of temple over the chabutra.



Certified copy of written file Mohd  
 Ashgar is Ex. A-23. In the it was  
 mentioned that Babar constructed and  
 outer door (eastern one), lah' Inscribed  
 and thereafter the ownership a er n d  
 remain/ survive hence plai owner  
 chabutra or the land beneath unless the King who got  
 constructed the mosque granted  
 permission for the same and document had  
 been filed by the plaintiff hence plaintiff was not entitled to  
 construct the temple. It was r In Para-2  
 by merely going inside part ue alntiff or the  
 Hindus could not have any n  
 non Muslims visited Imamba — a graves for  
 making offerings and Muslims d . n  
 Para-3 of the written statement, it stated since  
 the time of construction of the till 1 ere was  
 no chabutra and it was con in ' In , it  
 was stated that plaintiff and us were permitted  
 to visit the chabutra with certain ns e of which

was that no new construction should be made thereupon, hence plaintiff cannot become owner. It was further stated that neither in nor some other Hindus intend to do anything inside the compound of the mosque. The government stopped the construction therefrom. A monk had placed a thatch, which was removed. It was further stated that plaintiff has not been allowed to construct the temple. However, the defendant has a dharmshala, the subsequently impleaded defendant has not been allowed to construct the temple. The correctness of the map filed in support of the plaintiff's claim was not in dispute.

The trial court/ Sub-Judge at Faizabad decided the suit on 24.12.1885, and the defendant has not been allowed to construct the temple. Ex. A-26 (the Judgment) shows that the Sub-Judge held that regarding the map filed in support of the plaintiff's claim, the defendant has not been allowed to construct the temple. Amin's report Mohd. has not been allowed to construct the temple.

except for view inches.                      u      u                      h r  
 found that charans (feet)                      ngrossed      n  
 chabutra and an idol                      h kIJ                      was also  
 installed and these things wer                      ing worshipped.  
 It was also held that from                      perusa  
 corrected map of Amin it was clear                      in between  
 mosque and *chabutra* th r was                      *pucca* wall  
 having grill! railing which meant                      dividIn line  
 between the two was established/ made. It was  
 also observed that the said                      was amp  
 substantiated from the gazette which was **pared**  
 before the dispute, which was su                      n e  
 said suit and in the Gazette it was mention                      at  
 previously both Hindus an                      uslims u                      r  
 prayer and worship at that place, h                      r in 1  
 after the fight between Hindus                      usli s,  
 grill! railing wall was constructed                      resolve

dispute so that the Muslims should worship inside the wall and Hindus outside the wall. In the last paragraph, it was held that there could not be a question of law regarding the possession and ownership of the land by Hindus and Muslims. It was further held that the construction of a temple on the site of the chabutra was against public policy. It was observed that there was the wall of the mosque and a word 'Allah' was inscribed thereupon, hence it was against public policy to permit construction of a temple on the site. At the eventuality there would be some conflict between the Hindus and Muslims and as Muslims pass from the same way as Hindus would lead to great conflict resulting in massacre of thousands of people. Ultimately, it was held that the Court was of the opinion that granting permission to construct temple would amount to laying down foundation of riot between the two communities. It was also observed that the need of the hour and the requirement of Justice was not to grant the relief which had been claimed. Reference was made to the law of contract prohibiting performance of such contract which is opposed to the public policy (probably Section 23 of Contract Act, 1872). Ultimately, the suit was

dismissed.

Against the said judgment a decree, civil Appeal No.2 of 1886 was filed, which was heard by Mr. F.E.A. Chamier, District Judge, Faizabad on 18.3.1886. Certified copy of the said judgment was filed on 13.03.1886, the learned District Judge passed an order proposing to visit the site. In the judgment dated 18.03.1886, it was mentioned that the learned District Judge visited the site and before him in the presence of all parties. He found that the Masjid built by the Emperor Akbar stood on the border of the town of Ayodhya. Thereafter, it was observed that:

*"It is most unfortunate that a masjid should have been built on land specially held sacred by the Hindus, but as that event occurred 356 years ago it is too late now to remedy the grievance. All that can be done is to maintain the parties in status quo."*

It was further held that:

*"The entrance to the enclosure is under a gateway which bears the superscription 'Allah immediately on the left is the platform or chabutra of masonry occupied by Hindus. A small*

*superstructure of wood form a tent. This chabutra is said to indicate the birthplace of Ram Chandra. In front of the gateway is the entry to the masonry platform of the masjid. A wall pierced here and there with railings divides the platform of masjid from the enclosure which stands chabutra."*

The learned District Judge struck off words holding the ownership of Hindus over chabutra from judgment of the Sub-Judge being reduced. In said judgment, it was also observed

*"The true object of the suit was disclosed by B Kuccu Mul yesterday when we were standing near the masjid – namely that the British Government as no respecter of persons was asked through its courts to remedy an injustice committed by a Mohammadan emperor."*

Ultimately, appeal was dismissed. Against judgment and decree, Second. 1886 was filed, which was dismissed. Judicial Commissioner, Oudh 01 11.1 Copy of the said judgment has been annexed to.

23

of 1986, which is directed against order dated 01. .1986 passed in a misc. appeal .J directed against an interim order passed f it en it was pending before Munsif, Faiza The said writ petition is being decided along with these suits. The penu mate sentence of the judgment in second appeal dated 01.11.1886 is as follows:

whatever record

in any sense the proprietor of the land in question."

In the earlier part of the judgment by Justice. W. Young, Judicial Commission udh, it was observed as follows:

*"The matter is simply that the Hindus of Ajodhya want to create a new temple or marble baldacchino over the supposed holy spot in Ajodhya said to be the birlhplace of Shri Ram Chandar. Now this spot is situated within the precinct of the grounds surrounding a mosque erected some 350 years ago owing to the bigotry and tyranny of the Emperor Babur, who purposely chose this holy spot according to Hindu legend as the site of his mosque*



*The Hindus seem to have got very limited rights of access to certain spots within precincts adjoining the mosque and they have a series of years been persistently trying to increase those rights and to erect buildings on two spots in the enclosure*

(1) *Sita ki Rasoi*

(b) *Ram Chandar ki Janam Bhumi*

*The Executive authorities have persistently refused these encroachments and absolutely forbid any alteration of the 'status*

*I think this is a very wise and proper procedure on their part and I am further of opinion that the Civil Courts have properly dismissed Plaintiff's claim."*

#### **Incident of 23.12.1949:-**

The position continued until 1.1. In the evening (7 p.m.) 1 Pandit Sri Ram Deo r Incharge Thana Ayodh nti nln therein that on information r u h ata

Prasad, constable No.7, (Subey) reached the disputed site at about — In and learnt that a crowd r n ha broken the locks, which we n un of the Sabri Mosque a In walls by ladders illegally interfered n u n had placed the idol of Sri B a n n the walls inside and outside In a yellow. It was also mentioned o. Hansraj, who was on the d ibited them but they did not pay any heed thereu called P.A.C guard for help, which was ti the guard could reach, the persons entered mosque. It has also been — h h officers of the District came a aged themselves in management. It is further mentioned that afterwards a crowd of 5000 — and raised religious slogans and perform d It is r

mentioned that Abhay Ram Dass, Ram hukul Dass  
Shea Darshan Dass and 50 other persons had  
committed riot, trespassed into the mosque and installed  
an idol in the mosque and had desecrated the mosque

For some time before incident of .12.1  
tension between the two communities increased  
and Muslims were apprehending incident. It  
evident from the letter of S.P. dated 29.11.1949, letter of  
D.M. dated 16.12.1949, diary/ report of the D.M.,  
Faizabad of 23.12.19'49 and of few subsequent  
The report also shows that placed  
the mosque at about a.  
thereafter under the arrangement made D.M.  
Shog and Puja of the idol by two or three *pandits* was  
started and continued.

Under the directions Bench  
Faizabad brought the original file containing *inter alia*  
the reports regarding the incident of .1.1  
different officers particularly of Sri K.K.K. Nayar, Deputy

27

Commissioner/ District Magistrate Faizabad. It a contains some reports regarding riot of 1934 a report of Special Intelligence Officer, Faizabad 1 1 pertaining to the dispute of two Mahants regarding Puja etc. in the premises in dispute. order dated 29.05.2009 passed by this Bench the said file was taken on record and was directed sealed. relevant details of the contents of the documents fi are given below.

One of **the** documents in the said file is letter dated 29.11.1949 written by S. . Faizabad, Sri Kripa ingh addressed to Sri Nayar, Deputy Commissioner/ . ., Faizabad which is reproduced below:

*((My dear Neyer,*

*I visited the premises Babri Mosque and the Janm Asthan in Ajodhya this evening I noticed that several 'Hawan Kunds' have been constructed all around the mosque. Some of them have been built on constructions already existing there.*

*There is a place known as Kuber Qila situated on a high mound about 2 furlongs from the Janm Asthan. Several graves have been dismantled there. Inside an enclosure near the Kuber Qila, where probably there was a grave, deity of Mahadeoji has been installed. This place is quite distant from the place where the police guard posted and could not have been noticed by them*

*I found bricks and lime also lying near the Janm Asthan. They have a proposal to construct a very big Havan Kund where Kirtan and Yagna on Purnamashi will be performed on a very large scale. Several thousand Hindus, Bairagis and Sadhus from outside will also participate. They also intend to continue the present Kirtan till Purnamashi. The plan appears to be to surround the mosque in such a way that entry for the Muslims will be very difficult and ultimately they might be forced to abandon the mosque. There is a strong rumour, that on Purnamashi the Hindus will try to force entry into the mosque with the object of installing a deity."*

Thereafter, there is the report of K.K.K. Nayak,

D.M. running in scores of pages \_\_\_\_\_ In  
the form of diary mentioning a time starts  
from 23.12.1949, 7 a.m. fi an  
ammunition dealer of Faizabad came  
informed him that at about in an idol  
had been installed inside Saba and some  
Bairagis were in the Masjid ipp: . t  
is further mentioned that:

*"this news came as great surprise as it had  
never been reported suspected that there was  
any move to enter and occupy the masjid by force "*

The surprise does not \_\_\_\_\_ UI  
there was a clear mention a In above  
letter of S.P. dated 29.11.1 In same  
records there is a tetter ri ri Govind  
Narayan, Home Secretary, Government  
Lucknow dated 16.12.1949 In h ireless  
message dated 08.12.1949, s  
plan showing the position a ri Ram

Chandra Ji Mandir at Janm Bhoomi. letter,  
Sri Nayar stated that a magnificent temple was constructed by Vikramaditya in 1<sup>st</sup> Century, it was demolished by Babar and a mosque known as Babari Masjid was constructed in the said process, building material of the temple was used, and that a long time before Hindus were again in possession of a site therein, i.e. at the corner of two walls. It is further mentioned that "Muslims who go to the mosque pass in front of the temple and there has frequently been trouble over the occasional failure of Muslims to take off their shoes." Paras 4, 5 & 6 and part of para-7 of the report are reproduced below:

*"Some time this year probably in October or November some grave-mounds were partially destroyed apparently by Bairagis who very keenly resent Muslim associations with this shrine. On 12.11.49 a police picket was posted at this place. The picket still continues in augmented strength. There were since other attempts to destroy*

grave-mounds. Four persons were caught and cases are proceeding against them but for quite some time now there have been no attempts.

Muslims, mostly of Faizabad have been exaggerating these happenings and giving currency to the report that graves are being demolished systematically on a large scale. This is an entirely false canard inspired apparently by a desire to prevent Hindus from securing in this area possession or rights of a larger character than have so far been enjoyed. Muslim anxiety on this score was heightened by the recent Navanah Ramayan Path, a devotional reading of Ramayan by thousands of Hindus for nine days at a stretch.

period covered a Friday on which Muslims went to say their prayers at the mosque were escorted to and from safely by the Police

As far as I have been able to understand the situation the Muslims of Ayodhya proper are far from agitated over this issue with the exception of one Anisur Rahman who frequently sends frantic messages giving the impression that the Babri Masjid and graves imminent danger demolition.”



Thereafter, it is mentioned that some other Muslims were incited to general uprising. Thereafter, it is mentioned that on 11/11/1947 when Muslims were leaving Babari Masjid for Friday prayers under police help, they shouted their famous war cry "*Allah-O-Akbar*" which created considerable resentment among the Hindus. In spite of repeated complaints by Muslims, the police did not intervene as the situation was entirely out of control. The picket was functioning efficiently. However, it was mentioned that Muslim agitation and truculence could bring the situation out of control. The last paragraph stated as follows

*"Lastly I would request that credence be given to the false reports carried to Lucknow and other places from time to time*

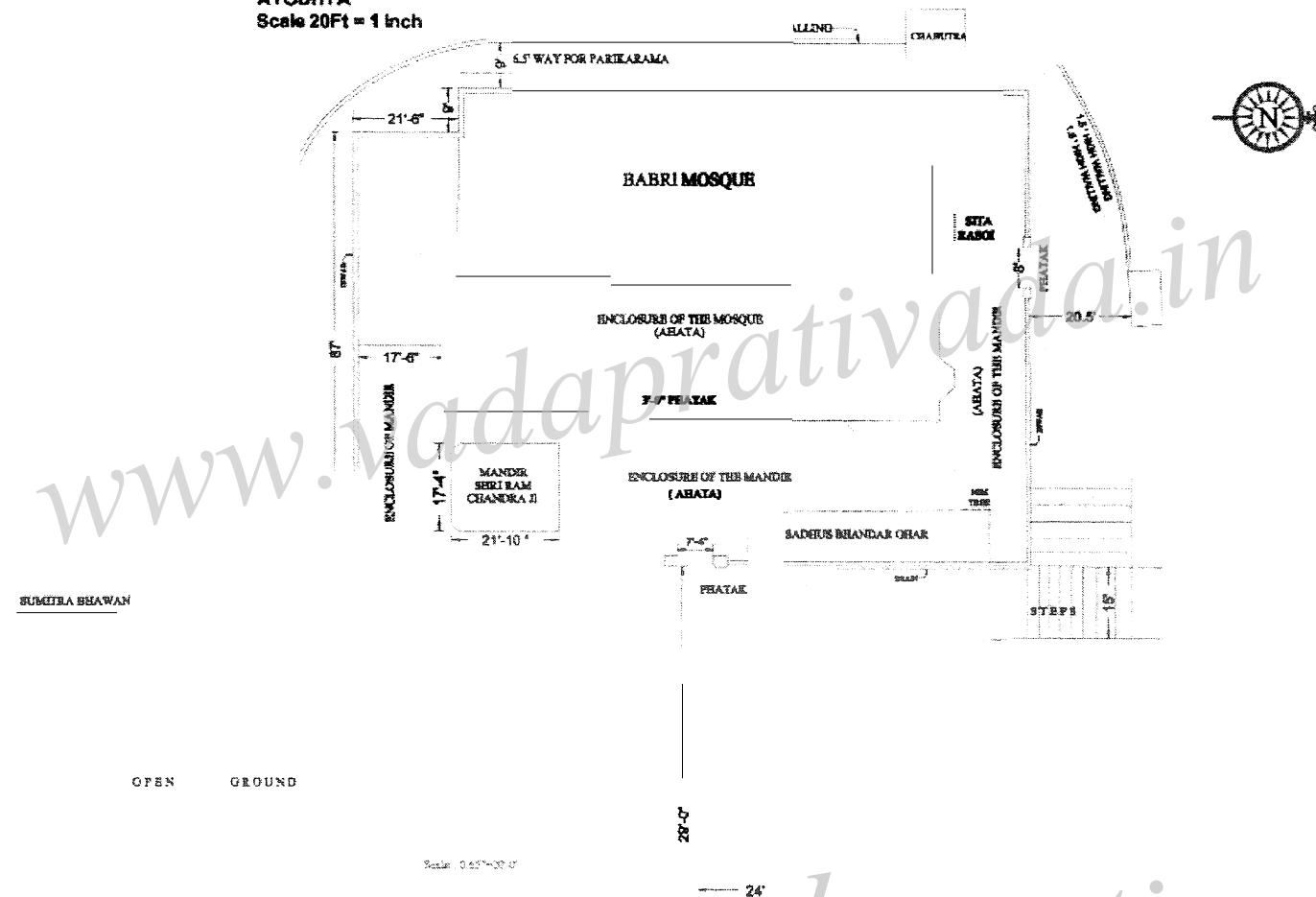
*by Ghulam Husain, Ahmad Beg and persons under their influence."*

On the one hand related  
16.12.1949, he requested t  
not to give credence to the r e  
Muslims regarding safety n  
the other hand In ated  
23.12.1949, he mentioned t came  
as a great surprise to hi

Photostat copy of the with  
the said letter is given on page No.33

However, it may th  
S.P. Sri Kripal Singh, ressed  
grave apprehension regarding entry of  
Hindus In the mosq f r lii

Paper filed in Cm appaction no. 20(O)2002



Sd. \_\_\_\_\_  
City Magistrate  
Faizabad

deity (on full moon which was 11 1 ) in  
 his earlier' letter dated 29.11.1 — h steps  
 and in tune with the D.M. wrote in h r .l.  
 dated 02.02.1950 that the i 1 1949 could  
 not be predicted. Probably t a  
 controversy and save his at  
 placing of idol inside the mosqu a accompli  
 and almost irreversible.

In the report! diary of the . it oned that  
 on 23.12.1949 the crowd controlled permitting  
 two or three persons to offer I. . Abhiram Dass,  
 Ram Shukal Dass and S n . It a  
 mentioned that removal of directed by  
 the State Government was — a it would  
 lead to slaughter and would — . In the  
 entry of 25.12.1949, it is and Bhog  
 was offered as usual. The in diary/ report of  
 9.30 a.m, dated 27.12.1949 is that D.M outrightly  
 refused to abide by the di f the Government to

remove the idol "*and that Government still insisted that removal should be carried out in the face of these facts, I would request to replace me by another officer*"

The D.M./ Deputy Commissioner, Faizabad wrote two letters dated 26<sup>th</sup> & December, 1 to Sri Bhagwan Sahai, Chief Secretary Government of U.P. Copies of the said letters have been filed by the State Government in pursuance of orders passed by the Court on the application of plaintiffs of the lead case (Suit No.4) for summoning certain documents from the State Government and have been marked *Exhibits* 66 & 67. In these letters also he insisted that the incident of 23.12.1949 was unpredictable and irreversible. He rather castigated the Government showing so much interest.

In the report! diary dated .1.1 it is mentioned that Chief Secretary visited the spot, he was surrounded by the crowd which uttered slogans *Bhagwan ka Phatak Khat do.'* It is also mentioned that Chief

Secretary was told by Naga J u if this spot would be argued to different from Janam Bhoomi, then they were prepared receive any other spot for the construction of Janam Bhoomi temple which could be proved to spot where was born."

There is a report of Ju , 1 1 in sa records by Special Intelligence Officer which it mentioned **as** follows:

"It is reliably learnt Baba Ram Lakhan Sharan gets legal advice in this respect from Sri K.K.K. Nayar (Ex-D. Faizabad) supporter also."

The report of 1961 was in relation to the dispute between different *mahants* regarding control Pooja, which was going on and for receiving the monetary gain through *charawa* etc.

Section 145, Cr.P.C. proceedings:-

On 29<sup>th</sup> December, 1949, liminary order under

Section 145, Cr.P.C. was issued Additional City Magistrate, Faizabad-cum-Ayodhya a ultaneously attachment order was also passed treating the situation to be of emergency. The d directed be given in the receivership f n Priya Datt Ram Chairman, Municipal Boa . The complete order quoted below:-

*"Whereas I, Markendeya Singh, Magistrate First Class and Additional City Magistrate, Faizabad-cum-Ayodhya, am fully satisfied from information received from Police sources and from other credible sources that a dispute between Hindus and Muslims in Ayodhya over the question of rights of proprietorship and worship in building claimed variously as Babari Masjid Janam Bhoomi Mendir, situate at Mohalla Ram Kot within the local limits of my jurisdiction, lead to a breach of the peace*

*I hereby direct parties described below namely:-*

*1) Muslims who bonafide residents Ayodhya or who claim rights of proprietorship*

worship in the properly in dispute,

2) Hindus who are bonafide residents  
Ahodhya or who claim rights of proprietorship  
worship in the properly in dispute,

To appear before me on 17<sup>th</sup> day of January at  
11 A.M. at Ayodhya Police Station in person or by  
pleader and put in written statements of their  
respective claims with regard to the fact of actual  
possession of the subject of dispute

And the case being one of the emergency I  
hereby attach the said buildings pending decision

The attachment shall be carried out  
immediately by Station Officer, Ayodhya Police  
Station, who shall then put the attached properties  
in the charge of Sri Priya Datt Ram, Chairman  
Municipal Board, Faizabad-cum-Ayodhya who shall  
thereafter be the receiver thereof and shall arrange  
for the care of the properly in dispute

The receiver shall submit for approval  
scheme for management of the property in dispute  
during attachment, and the cost of management  
shall be defrayed by the parties to this dispute in  
such proportions as may be fixed from time to time.

This order shall, in the absence of information  
regarding the actual names and addresses of the



*parties to dispute to be served by publication in*

1. *The English Daily) "The Leader" Allahabad*
2. *The Urdu Weekly "Akhtar" Faizabad*
3. *The Hindi Weekly "Virakta" Ayodhya.*

*Copies of this order shall also be affixed to the walls of the buildings in dispute and to the notice board at Ayodhya Police Station.*

*Given under my hand and the seal of the court on this the twenty ninth day of December, 1949 at Ayodhya."*

At the end of the para 'The attachment' there was a II which scored off by the Magistrate himself. admitted it in his reply/ response Application filed in this Court for transfer under Section 145, Cr.P. . The Magistrate he scored off the sentence before signing the was redundant. The original records Linder Section 145, Cr.P. have bee these suits. The cutting does n t bear initials. sentence is readable with g difficulty. It .

effect that *puja darshan* shall continue being done at that time (presently).

Sri Priya Datt Ram took charge on 05.01.1981 and made inventory of the attached properties. Items No. 14 and 16 to 20 relate to movable properties including idols. Item No.15 relates to building which states same to be three-domed building along with courtyard and boundary wall and eastern boundary shown Chabootara Mandir of Ram Ji and Nirmohi Akhara and courtyard. Towards north the boundary mentioned is hata chhatti courtyard and Nirmohi Akhara. Sri Priya Datt Ram submitted the scheme of management to the D.M. (in accordance with preliminary order) stating that "the most important item is management maintenance of Shog and puja in the condition in which it was carried on when I took over charge"

Muslims admit that since 1947 they have not been able to offer the prayers in mosque

(23.12.1949 was Friday).

According to the Muslims some Hindu parties in the suits, the idol of Lord Ram, which Chabootara In the outer courtyard placed/ transferred under the central dome of building. According to the further case Muslims was placed on *mimbar* (pul in meharab (arch) under central dome from where fridays mam (who leads the congregation prayers) used read khutba (Sermon, before friday prayer)

It appears that since .1 1 fi under directions of the executive authorities thereafter under the order of the Magistrate passed proceedings under Section 1 r. n r three *Penalts* were permitted t in place where idol was kept to perform II bhog and puja etc. and general public was permitted to have *darshanonly* from beyond gril II.

These suits; popularly su were

instituted before Civil Judge, Faizabad on 1.12.1959, 18.12.1961 and 1.12.1989 respectively

The constructed portion, boundary wall and Ram Chabootara arena more in existence were demolished by a large crowd on 12.12.1989

After demolition, makeshift structure was constructed by the same people at the place till 12.12.1989. The idol has been kept and the makeshift structure/ temple.

### Pleadings of the Suit:-

#### Suit No.1 :-

The first suit, Other Original Suit (S.O.S.) No.1 of 1989, Regular Suit NO.2 of 1989, hereinafter referred to as Suit No.1 was instituted on 1.12.1989. Visharad the plaintiff claimed in his plaint that he was worshipping the *Janam Bhumi*, details of which were given at the end of the plaint. On 12.12.1989 Ram

Chandra Ji and Charan Paduka (t impression)  
 boundaries indicated that in the East there was *bhandar*  
 and *Chabootara*, in the north *Rasoi* a *parti*  
 towards West and South. It presumably related  
 constructed portion and the inner courtyard. It  
 further pleaded that for several days due to illness  
 plaintiff was not going to the disputed place *ildi*  
 site for worship and on 14.01.1950 when he went there  
 for worship and *darshan*, defendant No.6, I State  
 U.P., Lucknow and its employees prevented  
 petitioner from going inside where idols *ri* Ram  
 Chandra and others were placed *it* done  
 on the undue insistence defendants 5 *ll*  
 Muslims residents of *Ayodhya*, who a *d*  
 and have not been substituted.) It was also mentioned in  
 the plaint that the State employees, i.  
 respondents NO.7 to 9, K.K.K. a *r*, Deputy  
 Commissioner, Faizabad, Markandey Singh, *itional*  
 City Magistrate, Faizabad a *Ram Kripa Singh*,

Faizabad, (whose names have not been deleted and only the designations remain) were under pressurising the Hindu public for removal of idols from existing place. The relief claimed was that it be declared that the plaintiff according to his religion and custom is entitled to do worship and *darshan* of Bhagwan Ram Chandra and others at the place of *Janam Bhumi* going near the idols without let or hindrance. Defendants No.6 & 9 have no right to interfere in said rights. Prohibitory injunction was sought against defendants NO.6 to 10 (defendant No.10 is Sunni Central Waqf Board added in 1990). Defendant No.11 is Nirmohi Akhara added in 1990. The injunction sought was that defendants No.6 to 10 should not remove the idols of Bhagwan Ram Chandra and others from the place where idols were and should also not close the way leading to and should not interfere in worship and *darshan* in any manner. original plaintiff Sri G.S. Visharad d

substituted by his son Rajend Singh in order dated 22.02.1986 who also claimed that his father he was entitled to worship and *darshan*

Suit No.2 already dismissed as withdrawn:

It is necessary at this stage that no more suit being Regular suit No.1 (O.O.S. NO.2 of 1989) had been filed in the case of Ramchandra Das against Zahid and seven others. First five defendants were Muslims, residents of Ayodhya and those five defendants were defendants No.1 to 5 in Suit No.1 also. Defendant No.6 was State of U.P. and defendant No.7 was Deputy Commissioner, Faizabad. Sunni Central Board of Waqfs was added as defendant No.8 In 1989. The complaint was almost in verbatim reproduction of the complaint in suit No.1. However, in Suit No.2, it was mentioned that notice under Section 80, C.P.C. had been given to defendant No.6 & 7 on 07.02.1950. Valuation was also same and the reliefs claimed were also same. Boundaries

property in dispute at the bottom of the plaint were a same. The suit was filed .12.1950. However an application to get the said suit dismissed as withdrawn was filed by the plaintiff 23.08.1950 which was allowed on 18.09.1950. It appears that suit No.2 was filed only for the reason that no notice under Section 80, C.P.C. had not been given

**Suit No.3:-**

O.O.S. NO.3 of 1989, Regular Suit No.26 of 1959, hereinafter referred to as Suit No.3 filed by *Nirmohi Akhara* through its *Mahant*. After the death of original *mahant*, his *chela* was substituted Defendant No.1 in the suit was initially Babu Priya Datt Ram who was appointed as receiver in proceedings No.15, Cr.P.C. Thereafter, the receiver N. Ja. Prasad was substituted at his place by order dated 15 October 1989. Defendants No.2 to 5 were State of U.P., Deputy Commissioner Faizabad, District Magistrate at S.P. Faizabad, Defendant No.6 Phekku after



his death he has been substituted sons  
Defendant NO.7 was Mohd. 0.8  
Mohd. Achhan Mian. Defendant .11 Mohd Farook  
was added vide order Court dated .12.1 1.  
Defendant No.9 was U.P. S n l Central Board of Waqfs  
Lucknow added vide order of Court dated 23.08.1989.  
One Umesh Chandra Pandey was later on mpleaded as  
defendant No.10 on 28.01.1989 on h application.  
The case of plaintiff Nirmohi Akhara was that for a very  
long time in Ayodhya an ancient *math* a *akhara*  
Ramanandi Varagis called Nirmohis existed which was  
a religious establishment public character. It was  
further pleaded that Janma Asthan commonly  
known as Janam Bhumi, birth place Lord Ram  
Chandra at the time of filing of the suit belonged a it  
had always belonged to Nirmohi Akhara who through  
Mahant and Sarbrahkar had always been managing a  
receiving offerings made there in the form of money  
etc. It was also claimed In f plaint

Asthan of Janam Bhumi was an ancient antiquity. A map of the property in dispute was attached along with the plaint and the entire premises claimed temple. The map was photograph of plan-II prepared by Vakil Commissioner in Suit No. 1. It was confined to inner courtyard and constructed portion. In Para-4 it was stated that Nirmohi Akhara possessed the temple and none others but Hindus were allowed to enter and worship therein. After demolition on 06.12.1992, plaint was amended. It was asserted that the main temple and other portions of Nirmohi Akhara were also demolished by some persons who had no religion, caste or creed. It was also claimed in para 4-A that Nirmohi Akhara was a panchyati Math of Ramanandi Sect. of Vairagya and such a religious denomination has customs which have been reduced in writing on 19.11.1991 registered deed. It was stated that no Muslim could or ever did enter in the temple building and entire disputed

structure. However, it was further stated that In a case since 1934 no Muslim ever entered premises attachment under Section 145 Cr.P.C. was stated to be illegal and having been made in pursuance of defendant No.6 to 8, who claimed to represent Muslim Community. In Para-7, it was stated that due to wrongful attachment, plaintiffs were wrongfully deprived of management and charge of the property. They had been waiting for dropping of the proceedings under Section 145, Cr.P.C. but the same were being prolonged and lingered and as a result immediate term of proceedings under Section 145, Cr.P.C. hence the suit had become inevitable. It was also stated that defendants No.6 to 8 claimed to be representatives of the Muslim community hence they were being sued. In representative capacity on behalf of the entire Muslim community. Cause of action was stated to have arisen on 05.01.1950 when defendant No.4, City Magistrate, Faizabad illegally took over the management of the property.

charge of the temple along with articles (which were taken into the custody at the time a entrusted the same to the receiver defendant 1. It was further stated that permission of the court to file the suit against defendants No. B in representative capacity had been obtained under 1 u 8, C.P.C. The prayer in the suit a — passed for removal of the defendant 1 (receiver) from management and charge — Jan Bhoorni : delivering the same <sup>be given</sup> 1/1 plai ugh its *mehent*. The suit was instituted on 1.1.1

#### **Suit No.4:-**

O.O.S. NO.4 of 1989, Registered on 12.12.1961, hereinafter referred to as No.4 of the Sunni Central Board of Waqfs, 9 Muslims Ayodhya, most of whom have — have been substituted and some a In suit was Sri G.S. Visharad, uit .1, has been deleted after his — ra a

Ram Chander Das, third Nirmohi Akhara, fourth Mahant of Nirmohi Akhara, fifth State U.P., sixth Collector, Faizabad, seventh City Mag Faizabad eighth S.P of Faizabad, ninth P (deceased), tenth President, All India Hindu a eleventh President, Arya Maha ik Sabha twelfth President, All India Sanatan, Dharm Sabha hi a some others. Defendant n u Oadar, President All India Shia Conference, istered, Oaumi Ghar, Nadan Mo Road, P.S. h Lucknow. Defendants 11 were mpleaded r filing of the suit on their own applications.

In the plaint, it was stated n d there existed an ancient historic mosque commonly known as Sabri Masjid built by Emperor Babar more n 433 years ago, after his conquest ndia and occupation of the territories including the f Ayodhya. Along with the plaint a map was attached According to the Para-2 of the plaint, the main construction of the Mosque was

shown by letters A, B, C, D. in the said sketch map map is almost a square. Neither it in scale nor it gives any dimensions. It is divided by dotted lines in parts. Eastern part is about third of western part. Towards south-east of eastern a portion is demarcated dimensions of which given as 1 21' and it is denoted by the words habutra Masjid nail the four sides of ABC 0 graveyard shown. It further mentioned in the said para adjoining the mosque on all the four sides was ancient graveyard of the Muslims consisting of the graves of the Muslims who lost lives in the battle between Emperor Babar and the previous Ruler of Ayodhya that the mosque and the graveyard vested in Almighty; the Mosque had since the time of its construction been used by Muslims offering prayers. The Mosque and graveyard were stated to be situated in Mohal a a r al known as Ram Kat Town, Ayodhya Khasara numbers of Mosque and graveyard were 9 nI Schedu

attached with the plaint showing several nu . It was also stated that a grant was also given for upkeep a maintenance of the mosque in r 1864 Britishers converted the cash Nankar 9 grant of revenue free land situate In village Shola r a Bahoranpur in the vicinity Ayodhya. In , it mentioned that *"In the mosque outside main building of the mosque, there Chabootara 17' x 21' on which there was a small wooden structure form of a tent, which is there."* n Para-6 it was stated that in 1885, one Mahant hu Dass alleging to be Mahant of Janam Asthan nstituted a it (O.S. NO.61/280 of 1885) against the Secretary of State for India in Council and Mohammad Asghar, Mutwalli

also dismissed by the District Judge. In para-6 plaint, it is also stated that in the sketch map filed along

with the plaint of suit of 1885, building with the exception of Chabutara<sup>1</sup> was admitted to mosque and was shown as such

Thereafter, through amendment, paras No.6-A to 6-F were added in the plaint. The amendment application was allowed on 22.12.1962. In the said paras details of suit of 1885 and the interpretation of the judgment of the said suit according to the plaintiff

further stated that the suit <sup>1</sup> filed on behalf of the plaintiff Mahant, on behalf of Janam Astha and on behalf of whole body of persons interested

Sthan. Thereafter, in para-8 of the plaint

that in 1934 during a communal riot

of Sabri Mosque were damaged, however, the damaged

portions were rebuilt and reconditioned at the cost of the

government through a Ministry. In this

was stated that under the provisions of the

Commissioner of Waqfs made a detailed report

held that Sabri Masjid was built by Emperor Babar and



hence was a public waqf; copy of the report was forwarded to the Sunni Central Board of Waqfs which published the said report in official gazette dated 26.02.1944. It was also stated that no challenging the said report was filed by Hindus. It further stated that Muslims used to recite prayers in mosque till 23.12.1949 when a large crowd of Hindus entered the mosque and desecrated it by placing idols inside the mosque. Paragraph 11), which was added through amendment allowed in 1951, is quoted below:

“11(a) That assuming, though admitting, that at one time there existed a Hindu temple alleged by the defendants representatives of HindUIS on the site of which of which emperor Babar built the mosque, some 433 years ago) Muslims, by virtue of their long exclusive and continuous possession beginning from the time the mosque was built and continuing right upto the time some mischievous persons entered the mosque and desecrated the mosque alleged in the

*preceding paragraphs the plaint, the Muslims perfected their title by adverse possession and the right, title or interest of temple and of the Hindu public if any extinguished. "*

Thereafter, details of FI lodged by Sri Ram Dubey sub-Inspector, details orders passed under Section 145, Cr.P.C. and the details of su which h been filed till then have been mentioned

In Para-13 of the plai it stated that as Priya Datt Ram was acting as in dispute, hence Muslims were r right offering prayers in the mosq action Magistrate was described as illegal. Thereafter, Para-18 of the plaint, it was mentioned temporary injunction order been passed restra the defendants of the said suit from removing from the mosque in dispute and from interfering puja etc. of the Hindus as a It f which Hindus permitted to perform puja of the idols placed by them

the mosque but the Muslims were not allowed even enter the mosque. The suit was stated to be filed under Order 1 Rule 8 C.P.C. against Hindu public and for the benefit of entire Muslim community. A application for permission under Order 1 Rule 8 C.P.C. In Para-20, it was mentioned that the building in the suit was in the possession of receiver holding for real owner and would be released in favour of the plaintiffs in case their suit succeeded, but if for any reason in the opinion of the Court, recovery for possession was not proper relief to be claimed, the plaintiff was entitled to a alternative prayer for recovery of possession.

After demolition of the disputed building in 6.12.1992 various paragraphs were added in the plaint through amendment applications which have been allowed on 25<sup>th</sup> May, 1995. It was stated through a judgment in violation of order of the Supreme Court in 1991 and of this Court of various judgments and orders.

demolished on 06.12.1992 thereafter an illegal structure was created on 1 1 Thereafter it stated that under Muslim Law, mosque is a place where prayers are offered publicly and it does not require any structure and even in open space could be a mosque, hence even after demolition continued to be mosque. Cause of action was stated to have accrued on 23.12.1949. It para 23 that "Hindus unlawfully legally entered mosque and desecrated the mosque by placing idols in the mosque, thus causing obstruction with the rights of the Muslims in performing prayers." It was further stated caused were continuing injuries cause action renewed de-die-diem. The relief claimed is for a declaration to the effect that the property indicated by letters A, B, C, D in the sketch map attached to the plaint is public mosque commonly known as Bab Masjid. The next prayer is in case in the opinion of

the Court delivery of possession deemed proper remedy, a decree of the possession of the mosque in suit by removal of idols passed in plaintiff's favour against the defendants more prayer was added through allowed on 25.05.1995 to the effect statutory receiver commanded to handover property in dispute removing the unauthorised construction erected thereon.

**Written statements in Suit No.4:**

Various defendants filed written statements joint written statements were filed by defendants No 1 2, Gopal Singh Visharad and Ram Chandra They pleaded that plaintiffs have no right to make defendant contest the suit in a representative capacity (Para-19). In Para-23 it was stated that suit is hopelessly barred by time as Muslims have been in possession of the property in dispute since 1947 and earlier. Under additional pleas, it was stated

Muslims were never in possession of the temple called Ram Janam Bhoomi and if ever they were in possession of the so called Babari Mosq r possession ceased thereon in 1934 and since Hindus were holding that temple in their possession. In Para-26 it was stated that the temple was a publ charitable nstitution a did not belong to any sect, g p, math ndividual Mahanth or any Akhara. Bar limitation again pleaded in Paras NO.2? & . In the second joint written statement filed by defendants . 1 & 2, which appea to have been filed after amendment of the plaint, most of the pleas related to the Waqf Act and action of Waqf Commissioner recording the in dispute as Waqf property was termed as illegal. It a n the judgment in the suit 1 operated *judicata*. Additional written a filed which also related to Waqf Act and Government of Act, 1935. The replication was filed by the plaintiffs.

Another joint written fi If

of Nirmohi Akhara and its un  
defendants No. 3 & 4. They took the same pleas which  
they had taken in their suit .3). They denied that  
Babar had made any conq on a  
territory in India at the time alleged n the plaint or had  
constructed a mosque at the disputed place Existence  
of graveyard was also den uisition  
property in dispute including nl property  
total area 2.7744 acres by State 9overnment In year  
1991, assertions in that rega were made In  
written statement through amendment. n a 1 , it  
was stated that temples of Nirmohi Akhara were  
demolished by some miscreants on 1 .1 o  
had no religion, cast creed: Ram  
Chabootara whose existence was judicially recogn In  
1885 was in possession of Nirmohi Akhara. Along with  
the written statement a sketch map of property  
dispute was attached wherei constructed portion  
was shown as main temple. It stated

Mohmmadan ever entered disputed premises  
least since 1934 Additional written statement was a  
filed on behalf of defendants a ication  
was filed to that. In one of the written statements filed on  
21.08.1995 details of the suits between differe  
persons claiming to be Maha f Nirmoh Akhara  
were given.

Defendants No 5 to 8 (State and its authorities) d  
not propose to contest the suit nd they requested that  
they might be exempted c Receiver Priya  
Datt Ram, defendant no.9 written statement  
only admitting that small tem idols, which was  
referred to as tent shape structur In the plaint belonged  
to Nirmohi Akhara.

Hindu Mahasabha, .1 at filed  
written statement denying at  
passing of U.P. Waqf Act 1 ( uslim Act  
1936) was an atrocity comm y lers  
and further stating m para 1 n aini



independence original Hindu revived a  
Constitution itself having been imposed  
misrepresentation was voidable *ab-initio (sic.)*. It  
also been stated that the property in dispute had always  
been in possession of Hind Thereafter details  
acquisition by the Govern f l been  
mentioned. Various other pleas were also taken a  
replication to that was also fi intiffs.  
Additional written statement a f defenda  
No.10. In para-2 thereof it was stated that Muslim Law is  
also subject to the provisions of the Constitution a it  
is the Constitution, which is supreme

Defendants No. 13 & 1 Baba Abhiram Das a  
Pundrik Misra also filed written statement. Baba  
Abhiram Das thereafter died and was substituted by his  
chela Dharam Das under order f u dated  
26.04.1968. In the said written statement al it was  
pleaded that if ever Musli were n interrupted  
possession of the falsely called Babri Mosque r

possession ceased thereon in-1 since then temple was in possession of the Hindus a Muslims had not offered any prayer therein. It a stated that the temple did not belong to any sect, group, math or individual or Mahanth or Akhara Plea of bar limitation had also been taken. It a pleaded that Britishers reclaimed the entire in hya and thereafter no fresh grant was made in respect of the property in dispute, hence rights of usufruct if stood lost. Action of Commissioner, Waqf a challenged.

Dharam Das chela of Baba Abhiram r h" substitution at the place of deceased Abhiram Das a filed written statement. It was asserted in Para 11 thereof as follows:

*"The act of installation Deity BHAGWAN SRI RAMA under the central dome the building at Sri Ram Janma Bhumi, in the form of the Idol of BHAGIRATH SRI RAM LALA on Paush Shukla 3 of the Vikram Samvat 2006*

*worshippers, led by among others, answering defendants Guru Baba Abhiram Das was not a mischievous act but a perfectly lawful exercise their right by the Hindus to worship the Deity.”*

The date corresponds 23<sup>rd</sup> December, 1949 (Saba Abhiram Das in his written statement No. 1 stated that the idol had been installed under the central dome in the early hours of 23.12.1949 by him and some other persons). In Para-13 of the written statement filed by Dharam Das, it was stated that after attachment and appointment of Priya Datt Ram as receiver to manage the worship of the Deity Bhagwan Sri Ram Virajmaan under the central dome, Muslims were prohibited from entering the building premises. Plea of bar of limitation was a failure. In Para-25 it was mentioned that an old temple of Maharaja Vikramaditya's time existed near Rama Janmabhumi, and that was demolished by Mir Baqi. In Para-26, it was stated that the premises in dispute were the place where

Bhagwan Sri Ram manifested himself in human form as an incarnation of Bhagwan Krishna according to the tradition and faith of the Hindu. The written statement of Dharam Das is quite accurate and contains several other pleas also to the effect that the mosque even if constructed was against the principles of Muslim law and that attempt to construct mosque did not completely succeed. In Para-Z?; it is stated that the story goes, whatever was constructed during the night was pulled down during the night, and it was not after making certain material concessions in favour of the Hindus for the continued preservation of the place as a place of Hindu worship, that the construction of the three-domed structure was somehow completed. I.

Additional written statement filed by the Plaintiff.

Das after demolition of the premises. 12.1

the effect that what was demolished was a mosque (Babari Mosque).

Defendant No.17, Ramesh Chandra Tripathi

filed additional written statement. However, there is other written statement on It was stated said additional written statement idols were placed in the night of 22<sup>nd</sup> /23<sup>rd</sup> December, 1 b were in existence from times i I and what was demolished on 06.12.1992 was n t mosque Babar was invader and I authority construct any Masjid.

Mahanth Ganga Das, defendant 18 al filed written statement supporting case f defenda No.3, Nirmohi Akhara.

Written statement on behalf defendant o. Madan Mohan Gupta, convener Akhil Bhartiya rl Ram Janam Bhoomi Punarud Samiti Bhopa was also filed. He got himself impleaded by fili application, which was allowed on .1.1 n Mish learned counsel, argued case h behalf r about 15 days and also filed detailed written a uments

It was pleaded in the written statement of defenda

No.20 that Babar neither demolished any temple nor constructed any mosque and only gave currency to the said idea. In case there had been any such then Tuls Das or Beveridge or Laiden should have said it. It was also stated that Ayodhya had been a silent about any mosque. It was at until 1855 there was no mosque. In dispute was temple. In the absence of it headed in para-41(6) that even if Saad mosque it was no mosque in the absence of In same para, it was also stated subsequently Aurangzeb also desecrated shrine of Ayodhya. However, the last reference was not related to the premises in question. Reference to Babar in respect of demolition of temple was also made in paras 42, 47, 49 of the written statement and para-4 additional written statement.

### **Suit No.5**

This suit was filed by Bhagwan n Ram Birajman Sri Ram Janam Bhoomi Ayodhya, Asthan rl Ram Janam Bhoomi, Ayodhya n Deoki a n Agarwala, senior advocate retired J h Court, resident of Allahabad Plaintiffs .1 were stated to be represented by next friend Deoki andan Agarwala, plaintiff NO.3. Sri Deoki Nandan arwa died and was substituted by ri T.P. Verma. Thereafter, he expressed his inability t c nu t friend of plaintiffs NO.1 & d t h ill health a age hence under orders of Supreme Court Triloki ath Pandey has been appointed next friend of plaintiffs NO.1 and 2 by this Court through order dated 18.03.201 O.Defendants in the said suit a Rajendra Singh son of Gopal Singh Visharad the origina plaintiff of Suit No.1. Defendant No Param a Maha Ram Chandra plaintiff of Suit No.2 (which has now been got dismissed as withdrawn), defendant No.3 is Nirmoh

Akhara, plaintiff of Suit NO.3. Defendant No.4 unru  
Central Board of Waqfs. Defendants 5 a  
Mohammad Hashim and Mohammad Ahmad. In total  
there are 27 defendants including parties  
previous suits. The other defendants include State  
U.P., Collector, City Magistrate S.S.P., Faizabad,  
Presidents of All India Hindu Mahasabha, All India Arya  
Samaj and All India Sanatan Dharma Sabha. Ram  
Janam Bhoomi Nyas, Shiva Central Board of Waqfs  
Some defendants have been deleted

In para-1 of the plaint it is stated  
plaintiffs NO.1 & 2 are juridical persons and plaintiff NO.3  
is a Vaishnava Hindu and seeks to represent the Deity  
and the Asthan as a next friend. In a ,it stated  
that Ram Janam Bhoomi is too well known at Ayodhya  
and it does not require any description for purposes of  
identification of the subject matter of dispute however  
for greater precision, two plans buildi  
premises and of the adjacent area known rl Ra



Janam Bhoomi, prepared by Sri Shiv Shankar Lal as  
Commissioner in Regular Suit 1 1)

and his report are being annexed as Annexures

III. Thereafter, history of earl n Given.

Thereafter, it has been stated h dated

04.08.1951 and 06.01.1964 all f ur were

consolidated and Suit NO.1 1 1 uit o. )

made the leading case. ——— it stated

that interim injunction order was ——— in uit .1

16.01.1950 and 19.01.1950, which confirmed

03.03.1951. Thereafter, it has ——— that

years have passed since framing issues

hearing has not commenced. Thereafter, it is mentioned

that expectation was that su u decided

earlier and *darshan* and *puja* would permitted from

near the. Deities and not ——— r.

Thereafter, it is mentioned in 13 h order

of District Judge, Faizabad ——— 01 .1986. barriers

locks and brick-grill wall were ——— it .

mentioned that Plaintiff Deities and their devotees are extremely unhappy with the prolonged delay in hearing of the suits and that devotees and Deities are desirous of having a new temple constructed. Thereafter, it is mentioned that a temple has been created on 08.12.1985, which was registered on the same day through which J. Adagu Ramanandacharya Swami Shivaramacharya was declared as first trustee for life and other trustees were also appointed including Paramhans Ram Chandra Das. It was stated that plaintiff No. 3 was appointed as trustee. Thereafter in Para-1 of the plaint, it is mentioned that the earlier suits were inadequate as neither presiding Deity nor the plaintiffs Nos. 1 and 2 of the suit were impleaded in the earlier suits hence a fresh suit is being filed. **Ita** is stated that the events which have occurred during the last few decades are material facts and points which were not pleaded before the court from the view point of the Plaintiffs Deities. Thereafter it

is stated that the place itself being birth place of Lord Ram is object of worship as Deity (para-20.) Illustration of Kedarnath has been given where there is no idol and where an undulating surface of stone is worshipped as Deity. Next example given is of Vishnupad Temple at Gaya, which does not contain any idol and said place is believed to have born the footprint of Lord Vishnu, hence it is worshipped as Deity. It has been stated that the place, Sri Ram Janmabhoomi, is worshipped as Deity, which is a juridical person and the actual performance of puja to an immovable Deity by its devotees is not essential for it to be a Deity (para-22 of the plaint). In the plaint, it is mentioned that there was an ancient temple of Lord Rama at Ayodhya during Vikramaditya's time at Sri Ram Janmabhoomi, which was destroyed partly by Mirza Asif Khan, a commander of Baber's hordes and an attempt was made to raise a mosque there and for the construction of the mosque almost entire material used for the temple including

its *kasauti* pillars with figures of Hindu Gods and Goddesses- carved on them. It is mentioned that neither there is any minaret nor place for storage of water for Vazoo in the alleged mosque in question. It also stated that many battles were fought by the Hindus, the last one of which occurred in 1855. Thereafter, reference to Nevill's Faizabad Gazetteer, 1<sup>st</sup> Edition has been made and the following portion thereof has been quoted in para-23:

*"It is locally affirmed that at the time of the Musalman conquest there were three important Hindu shrines at Ayodhya and little else. These were the Janmasthan temple, Swargaddwar and the Treta-ka-Thakur, each was successively made object of attention of different Musalman rulers. The Janmasthan was Ramkot and marked birthplace of Rama. In 1528 Babar came to Ayodhya and halted here for a week. He destroyed the ancient temple and on its site built a mosque, still known as Babar's mosque. The materials of the old structure were largely employed, and many of the columns are in good*

*preservation, they are of close-grained black stone, called by the natives kasauti, and carved with various devices. Their length is from seven to eight feet, and the shape square at the base, centre and capital, the rest being regular octagonal. The mosque has two inscriptions, one on the outside and the other on the pulpit, both are in persian and bear date 935 Hijri."*

(Exactly same description given in Nevill's gazetteer of 1905)

Thereafter, further portion of the gazetteer has been quoted regarding the building in respect of Hanumaan Garhi, which is at a distance of less than a kilometer from the premises in dispute. Thereafter In Para-24, which consists of several sub-paragraphs, it has been stated that the structure like the disputed one could not be mosque even according to the Muslim Law. In Para-26, it is mentioned that no prayers have ever been offered in this building. In dispute. Thereafter mention has been made about riot of 1

when substantial parts of the domes of building were destroyed and thereafter rebuilt government. It has further been stated in Para-26 thereafter, one dared to offer Namaz therein. Thereafter, been stated in Para-27 of the plaint as follows:

*"That after independence from the British Rule, the Vairagis and the Sadhus and the Hindu public, dug up and levelled whatever graves had been left in the area surrounding Sri Rama Janma Bhumi Asthan and purified the place by Akhand Patha and Japa by thousands of persons all over the area. Ultimately, on the night between the 22<sup>nd</sup> 23<sup>rd</sup> December, 1949 the of Bhagwan Sri Rama was installed with due ceremony under the central dome of the building*

Thereafter, lodging n 12 1 initiation of proceedings under Section r. . . have been mentioned. Details different receivers h also been mentioned. In f plaint, it h been mentioned that Plaintiff Deities were made parties to any earlier proceedi Thereafter, it

been mentioned in Paras 35-H 35-U, added under different orders of Court, amendment applications passed in 1995, that a movement was initiated construction of new temple building thereafter fact of demolition on 6.12.1992 n mentioned Thereafter, reference has been made to the judgment the Supreme Court reported in Ismail Farooqi Vs. Union of India, 1994 (6) S.C. 360. In , it has been stated that cause action suit has been accruing from day to day particularly since recently when plans of Temple reconstruction are being to be obstructed by violent action from certain Muslim communalists. prayer In suit is for a decree of declaration effect that the entire premises of Sri Ram Janama Bhoomi Ayodhya described and delineated in Annexures I, II and III belong to the Plaintiff Deities a perpetual injunction against the defendants prohibiting them from interfering with, or raising any objection to or placing a

obstruction in the construction of the new Temple at Sri Ram Janama Bhoorni Ayodhya, after demolishing and removing the existing buildings and structures. Annexures I, II & III to the plaint are two maps and the report of Sri Shiv Shanker, who was appointed Commissioner in Suit No. 1 to inspect and report on the locality. The report is dated 15.05.1950. The first map is of the disputed premises and the second map is of the disputed premises along with the adjoining locality.

### Some important stages of the suits and related matters

#### Consolidation of Suits and their withdrawal to High Court:..

State of U.P. filed an application in the High Court under Section 22 of the C.P.C. seeking withdrawal of the four suits, which were pending at that time before the Munsif Sadar Faizabad. The High Court ordered



dated 06.01.1964 passed by I Judge, Faizabad, four suits had already been consolidated a ular Suit NO.12 of 1961 (Suit No.4) been made leading case, on the agreement all parties r increase in pecuniary jurisd f Munsif suits were transferred to the Court of Munsif Sadar, Izabao. The transfer/withdrawal application registered Civil Miscellaneous Case No.29 1987. nwhile, Suit No.5 had been filed before Ij Faiz on 01.07.1989 and an application for transfer/withdrawal the said suit by its plaintiffs been fi n IS High Court in the form Miscella s Case No.11 of 1989. Both transfer applications/ miscellaneous cases were disposed f 10 .1989. The suits were withdrawn to the High a directed to be heard by a Full Bench.

**Permission to sue under Order 1 Rule 8, C.P.C. and as guardian:-**

In Suit No.3, application u r Order 1 ule 8,

C.P.c. was allowed on 11.1.62 a plaintiff permitted to sue Muslim parties I. . defendants No.6, 7 & 8 in their representative capacity on behalf of entire Muslim community In it o. 08.08.1962, an order was passed permitting plaintiffs to sue in their representative capacity on behalf of the Muslims and defendants 1 a permitted to be sued in the representative capacity on behalf of Hindus.

Suit No.5 was filed 01.1.62 an application by plaintiff NO.3 it his behalf of plaintiffs NO.1 & r n same date, the application — a it a directed that until some other fi any objection plaintiff NO.3 was permitted c u it friend of plaintiffs NO.1 & II said order was rejected by this Court on 20.04.1992 on the ground that some — a la Muslim parties had objected .3 could

represent plaintiffs NO.1 & hence point/ issue might be decided either as preliminary issue a with final judgment in the su

However, Suit No.5 is representative application for permission defendant(s) in representative capacity was ever filed. There is no s assertion in the plaint also.

In Suit No.1, defendants .1 5 (Mus filed an application that plaintiff directed representative capacity (on behalf all Hindus plaintiff opposed the application stated that he suing in his personal capacity. The Civil Judge th order dated 27.10.1951 d advice to the plaintiff to sue in representative capacity but rejected the application defenda on ground that plaintiff cou b compelled regard.

#### Temporary Injunction:-

In suit No.1, an ad-i i unction order

passed on 16.01 1950 to the effect "issue interim injunction in the meanwhile as prayed" It was modified on 19.01.1950. The order of 19.01.1950 is quoted below:

*The opposite parties are hereby restrained by means of temporary injunction to refrain from removing the idols from the question from the site dispute and from interfering with puja present carried on. The order dated 16.1.1950 stands modified accordingly. "*

The temporary injunction order was confirmed by a detailed order on 03.03.1951 after hearing both parties and was directed to remain in force until the suit was disposed of.

Appeal under Order 43 Rule 1, filed from the said order being F.A.F.O. No. 1 of 1951, was dismissed by this Court on 15.5.1951.

**Receivers: -**

Sri Priya Datt Ram, has been appointed receiver in proceedings under Section 1 of the Hindu Succession Act, 1956.

through order dated 29.12.1949 died on 08.08.1961. Sri K.K. Ram Varma remained receiver until his death. Magistrate thereafter, through order dated 20.10.1961 appointed Sri K.K. Ram Varma as receiver. Thereafter, different parties in the suits filed applications for appointment of civil court receiver. Once again, Sri K.K. Ram Varma was appointed as receiver by the Civil Court through order dated 17.11.1970, however this order was challenged through miscellaneous appeal, which was allowed and the matter was remanded. Thereafter, on 18.12.1975, Civil Judge, Faizabad appointed Sri Madan Mohan Dubey as receiver. That order was also challenged (in F.A.O. no.181 of 1975 renumbered F.A.O. 17 of 1976) and the matter was again remanded through order dated 23.07.1987. However, due to interim orders passed in the aforesaid appeals, Sri K.K. Ram Varma continued to act as receiver. After decision in the appeals some other receivers were also appointed until 1.1.1988 when constructed portion of the premises in dispute was

demolished. Thereafter under Supreme Court given in the judgment of In M. Ismail Farooqi Vs. Union of India, 1994 360, of India took over as statutory receiver

### Opening of lock:-

Until 31.01.1986, the In existence on 23.12.1949 was run a three *Pandits* were deputed to perform religious rites like Shag and Puja etc. and general public was permitted have *darshan* from beyond rill ll. t : mentioned in the diary/ report r. K.K.K. Nayar, D.M./ D.C. Faizabad dated 25.1 .1 p. . 7.20 p. and dated 27.12.1949, 9.30 ..... at two places that h0 plan was to get the property in dispute attached under Section 145, Cr.P.C. and g difficu persuaded the Sadhus and genera Hindus a had agreed that except two or three priests one will go near the newly placed . a genera Hindus will have *darshan* from beyond rill/ iii u I "

court decided the matters of right and title

One Umesh Chand Pandey, advocate (who neither a party till then nor in any of parties in any of the suits) filed an application on 25.01.1986 that public must be permitted to have *darshan* from inside and locks on the wall should be removed. At that time, miscellaneous appeal against order of the Civil Judge, Faizabad appointing in Madan Mohan Dubey as receiver (FAFO No.1 of 1975) was pending in this High Court and the file of the leading case, i.e. Suit No.4 had been summoned therein. In the aforesaid FAFO (which was initially filed in Allahabad in the form of FAFO No.1 of 1975) the operation of order dated 18.1.1975 appointing Sri Dubey as receiver had been stayed. However it appears that at Faizabad every day there was a great confusion that proceedings of the suit had been stayed. In any case as the file of the leading case had been summoned in the aforesaid FAFO, hence proceedings

were practically held up. application  
Pandey, the learned Munsif where suits were  
pending passed an order 28.01.1 t effect  
that order could be passed leading  
case i.e. R.S. no. 12 of 1961 as the  
suit had been summoned by F.A.F.O.  
no. 17 of 1977 hence the application should up  
on the next date already fixed. a: appeal  
was filed before the District J n 31 1.1 (Mise  
appeal no. 8 of 1986).

In the appeal only su n defend  
i.e. State of U'P', Deputy Commissione  
and S.P. Faizabad were made parties. Plaintiff  
as defendants 1 to 5 already  
substitution application was pending  
Mohamad Hashim one of the plaintiffs in  
to know about filing of the appeal hence o  
he filed an application for bei mpleaded as party  
the appeal. The appellant opposed the said application



The learned District Judge ` i K.M. Pandey held that Mohamad Hashim was neither \_\_\_\_\_ a \_\_\_\_\_ party and rejected his application n 1 .1 itself. Thereafter, appeal was allowed \_\_\_\_\_ i.e. on 01.02.1986. In the judgment it mentioned \_\_\_\_\_ and S.P. both were present In Court D.M. \_\_\_\_\_ clearly stated that there were \_\_\_\_\_ n \_\_\_\_\_ grill wall/railing. It is further mentioned \_\_\_\_\_ and S.P. both clearly admitted that \_\_\_\_\_ ll there would be no problem t \_\_\_\_\_ In peace The statement of D.M. and S.P g \_\_\_\_\_ In q \_\_\_\_\_ In Roman In the judgment 1 .1 learned District Judge. Ultimately, \_\_\_\_\_ learned District Judge held that keeping \_\_\_\_\_ In grill/ railing/was unnecessary, irrita \_\_\_\_\_ a \_\_\_\_\_ and the other members of the pu \_\_\_\_\_ it \_\_\_\_\_ an artificial barrier In between the idols and \_\_\_\_\_ devotees. Ultimately, appeal was allowed \_\_\_\_\_ respondents were directed to open the locks \_\_\_\_\_ s \_\_\_\_\_ In the brick

and grill/railing. It has been In petition  
challenging the said order (writ 1  
which is also being decided a su )  
the final judgment in the appeal 15

Within minutes the locks were opened. The opening  
the lock catapulted the dispute n l (rather  
international) level. Prior to that no one beyond Ayodhya  
and Faizabad was aware dispute. The order  
dated 01.02.1986 triggered n leadi  
the demolition of the structure 1

As the suits itself are finally ce  
there is no need to analyse minutely the correctness or  
otherwise of the order dated 1. .1 which  
an interim order. All interim orders come to an end with  
the suit. However, the manner n which order was  
passed requires to be considered analysed.  
Learned counsel for the petitioner In petition  
directed against the said judg 01. 1986)  
has also argued that even h n

suit writ petition will become infructuous as In any case there did not remain much decided in petition after 06.12.1992, however, a document regarding utter disregard of procedure in passing said order should be considered by this Court

There were following 9 defects in procedure adopted in the appeal the order passed therein-

(a) The order of the Munsif dated 28.01.1986 was not appealable absolutely nothing been decided thereby.

(b) Without the file leading case no order could be passed either u or by District Judge.

(c) Plaintiff of suit nO.1 in which the impugned order was passed had d n bstitution application had been fi till n. Accordingly the suit 'was dormant and nothing could done therein.

(d) Impleadment application wrongly rejected by the appellate court as a result of which there was no one to oppose the appeal. District Magistrate and S.P. categorically supported the appeal.

(e) Appeal by Sri Umesh Chand Pandey who was not a party in the suit. It is not maintainable. It is quite interesting to note that a person who was a party in the connected suit which was leading case was considered to be neither necessary nor proper party by the District Judge, who held that Sri Chand Pandey who was a party in the suit was held entitled to file appeal and the same was allowed.

(f) The learned district Judge in his order dated 01.02.1986 did not hold that Sri Pandey was a stranger or application filed by him before the trial Court was maintainable. (It has already been noticed that Sri Pandey was not in the representative capacity)

(g) There was absolutely no occasion to show such undue haste. The appeal was filed on 31<sup>st</sup> January

1986 and was allowed

I. st

February 1986. At least the reason for this extreme haste is not mentioned in judgment.

It is a sound principle that justice must be done but it must also appear to be done. Before passing the judgment dated 01.02.1986, the learned District Judge first buried the second line principle (appearance of justice) very much. The learned judge was of the view that he should pass the order (which obviously, that he have been a just order) in case he has the appearance of justice being shown to the faith of the parties affected by the judgement which was the real tragedy.

### **Acquisition by State of U.P.:-**

State of U.P. acquired In dispute along with some adjoining land. 2. ) for 'development of tourism and amenities Pilgrims in Ayodhya' and notifications under

isition was  
petitions leading being

Mohd. Hashim

staying

2.1992 (after five

constructed portion

[www.vadaprativada.in](http://www.vadaprativada.in)

of most of the petitioners

destruction

emple hence they were

athered

dispute in spite of the interim orders passed by Supreme Court and this Court and makeshift structure/ temple was constructed at the place which under central dome and the idol was replaced there

The demolition caused al unprecedented communal disturbance and d . In independent only the frenzy and madness unleashed immediately after independence a partition country could surpass the n f situation triggered by the demolition h n design, as asserted by it s sudden, spontaneous and unplanned a a ult o burst of pant up feelings of h gathered there for *kar seva* (religious ), asserted others? This controversy is n su and is not covered by any of the s, hence nothing need be said in this judgment regarding this aspect.

One may not fully agr In h interpretation of history relati n only with

economics. However, it will be perilous to deny even a partial truth in the said approach. The demolition of our economy was in shatters. 'The physical mortgaging of India's gold reserves in 1947 epitomized the bankruptcy of an economic system. (Swapan Dasgupta In The Telegraph dated 19.9.10). The rupee had drastically been devalued twice in quick succession.

Those who are interested in a realistic economic interpretation of history may recall that about two years before the recommendations of the Mandal Commission for reserving 270/0 government jobs for O.B.C. had been accepted and implemented.

However, it goes to our credit that we the people of India showed remarkable resilience and disproved the doomsday predictors. Neither misplaced ecstasy nor the abject despondency survived (In this process some role of revival of the economy is ruled out). The demolition does not prove that



equivalent of storming of the a it remained a turning point In Indian history n history refused turn. (Again from same editoria page article Dasgupta.) We could again sing with fresh charm Sare jahan Se Achcha Hindustan hamara, particularly following verses.

„मजहब नही सिखाता आपस मे बैर रखना

हिन्दी है हम, वतन है हिन्दोस्तां II

यूनान-ओ-मि०-ओ-रोमा सब जहां से I

अब तक मगर है बाकी हमारा II

कुछ बात है कि हस्ती मिटती नही

सदियो रहा है दुश्मन II"

(also quoted by Justice R. . Dhavan In . Datt vs. Rajiv Gandhi AIR 1990 Allahabad 38)

### **Acquisition by Central Government:-**

Thereafter, Central Government UI a rge area of about 68 acres including the premises in dispute through Acquisition of Certain Areas Ayodhya

1993. (Earlier an ordinance same name been issued). Simultaneously, reference a made the President of India to Supreme Court under Article-143 of the Constitution I . Reference was to the following effect:

*"Whether a Hindu temple Hindu religious structure existed prior to the construction of the Ram Janam Bhoomi Babari Masjid (including the premises inner outer courtyards on such structure) in the area on which the structure stands or not?"*

Supreme Court decided matter through judgment reported in Dr. M. Ismail Farooq . Union of India, 1994 (6) SCC 360. Supreme Court refused answer the reference. Supreme Court struck down Section 4(3) of the Acquisition Bill which had directed abatement of pending suits unconstitutional and invalid and upheld the validity of the remaining Act. The result of these suits, which

had abated in view of the aforesaid provision  
Acquisition Act 1993 stood revived. It a directed  
that the vesting of the disputed area described as In r  
and outer courtyard in the (in dispute in these su )  
in the Central Government would be as statutory  
receiver with the duty management a  
administration requiring maintenance status It  
was further directed that d Centra  
Government as the statutory receiver would  
handover the disputed area in accordance with Section  
6 of the Act in terms of the adjudication made n the  
suits for implementation of the fi decision therein as it  
was the purpose for which the disputed a h been  
so acquired. It was also clarified d area  
(inner and outer courtyards) a remained the subject  
matter of the revived su .. The 81 lms  
regarding adjoining alleged graveyard is therefore  
left to be decided.

**Impleadment applications rejected:**

The impleadment applications filed by the following persons for their impleadment and impleadment Union of were rejected on the dates mentioned against their names.

SLNo	Suit No.	Moved on	Moved	xeiecteo on
	O.O.S. NO.4 of 1989	04.12.1990	Sri Brahmajeet Nihal	17.01.1991
2	O.O.S. NO.4 of 1989	20.01.1995	Maharshi 'Rashtriya	25.05.1995
3	O.O.S. NO.4 of 1989	13.02.1995	Maharshi 'Waghnesh	02.08.1995
4	O.O.S.No.4 of 1989	03.01.1995	President, Avami Leeg of Nation	28.03.1995
5	O.O.S. NO.4 of 1989	09.01.1990	Hindu Mahasabha to implead Union of India as	.1990
6	O.O.S. NO.4 of 1989	12.08.1991	Maharshi	1
7	O.O.S. NO.4 of 1989	31.03.1992	Maharshi	20.04.1992
8	O.O.S. NO.4 of : 1989	02.02.1992	Gopi	15.04.1992
9	O.O.S. NO.4 of : 1989	31.03.1992	S.C. Pandey	31.03.1992
10	O.O.S. NO.4 of 1989	31.03.1992	Maharshi 'Waghnesh	07.04.1992
11	O.O.S. NO.4 of 1989	05.02.1993 18.01.1995	Moved by Parties at various dates for of Union of 'India as Parties in Suits pending before Hon'ble	25.05.1995 In forty pages and minority view in sixteen pages
	O.O.S. NO.3 of 1989	15.01.1993 03.01.1995		
	O.O.S. NO.5 of 1989	03.01.1995 25.07.1989 12.12.1994		
12	O.O.S. NO.5 of 1989	13.12.1990	Buddhist	17.01,1991
13	O.O.S. NO.5 of 1989	11.08.1989	'Motana Ahmad	19.08.1989
14	O.O.S. NO.5 of 1989	14.08.1989	Farooque Ahmad	14.08.1989
15	O.O.S. NO.5 of 1989	25.08.1989	Sri Prem Chandra Gupta	23.10.1989

16	O.O.S. NO.5 of 1989	25.08.1989	Mandir Raksha Committee & Sri Bal Krishna Sharma	23.10.1989
17	O.O.S. No.5 of 1989	06.05.1992	iMaharshi Awadhesh founder President of Rashtriya Party	07.05.1992
18	O.O.S. NO.5 of 1989	09.10.1995 for transposing Defendants : 14, 21 as Plaintiffs No.4, 5 & 6 respectively	Sri Ram Janam Bhumi Nyas through Ashok Singh	19.11.1996
19	O.O.S. NO.5 of 1989	07.10.1996	Sri Ismail Farooqui	27.11.1996
20	O.O.S. NO.3 of 1989	25.08.1989	Sri Prem Chandra Gupta	23.10.1989
21	O.O.S. NO.3 of 1989	25.08.1989	Sri Sri Mandir Raksha Samiti	23.10.1989
22	O.O.S. NO.1 of 1989	21.04.2003	Sri Mahasabha	29.04.2003
23	O.O.S. NO.5 of 1989	18.02.2003	Sri Rajeshwari Sri Sita Ram Waqts through Manager Kunwar Shivendra , Pratap Sahi	18.02.2003
24	O.O.S. NO.4 of 1989	04.04.2003	;Buddha	07/04/03
25	O.O.S. NO.4 of 1989	07.04.1978	Sri Ram Janambhumi Dharmarth Prabandhkari 'Samiti' Sri Ram Janambhumi Ramkot Ayodhya and Sri Raghunandan Saran	09.12.1991
26	O.O.S. NO.4 of 1989	16.04.1988	Sarpanch Ramswaroop Das Chela Raghubar and Rajaram	09.12.1991
27	O.O.S. NO.4 of 1989	08.11.1988	Kashiteesh Mishra	19.11.1988

Chandra Mishra Ad.

Dutt Mishra  
Armatandavi

Pathak

### Issues:

Issues had already been framed when the suits were transferred to this Court, some issues were reframed thereafter. The most important point to be decided, particularly after judgment of the Supreme Court in *M. Ismail Farooqui's* (1994) case, was of title and possession. Other important points/ issues relate to limitation, when the building was constructed and when (which was demolished on 06.12.1992), what was its nature and of course whether title should be granted. The complete issues in dispute stand are given below:-

### Suit No.4

#### Issue No.1 :-

Whether the building in question described in the sketch map attached to the plaint (hereinafter referred to as the building) was a mosque as claimed by the plaintiffs? answer In

affirmative -

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(a) When was it built a whom-whether Babar as alleged by the plaintiffs r Meer Baqui as alleged by defendant No. 1

(b) Whether the building had been constructed the site of an alleged Hindu temple after demolishing the same as alleged by defendant no 13? If so. its effect?

**Issue No. 1-B(a)**

Whether the building existed Nazu of the Khasra of the year 1 1 f Mohalla Ram Chandra known as Ram Ayodhya (Nazul estate?) Ayodhya? If so its effect thereon)"

**Issue No. 1-B(b) :-**

Whether the building stood dedicated almig God as alleged by the plaintiffs?

**Issue no. 1-B (c):-**

Whether the building been used members of the Muslim com unity for offering prayers

from times immemorial? If so, its effect?

Issue No. 2:-

Whether the plaintiffs were in possession of property in suit upto 1949 and dispossessed from the same in 1949 as alleged in ?

Issue No.3:-

Is the suit within time?

Issue No. 4:-

Whether the Hindus in I and the devotees of 'Bhagwan Sri Ram in particular perfected right prayers at the site by a continuous possession as of right for more than ten years of time by way of prescription alleged defendants?

Issue No. 5(a):-

Are the defendants estopped from challenging the character of property in it waqf under the administration of plaintiff No 1 in view of the provision of



5(3) of U.P. Act 13 of 1936 ? ( issue already  
 been decided in the negative 21. .1966  
 by the learned Civil Judge)

**Issue No.5(b):-** Has the said application  
 right of Hindus in general and n lar.  
 to the right of their worship?

**Issue No.5(c):-** Were the u sa  
 Act conclusive? (This issue has decided in  
 the negative vide order dated 1. .1 learned  
 civil-Judge.)

**Issue No.5(d):-** Are the said III  
 1936 ultra-vires as alleged in written statement?  
 (This issue was not pressed counsel for  
 defendants, hence not a " "  
 Judge, vide his order dated 1. 1 ).

**Issue No.5(e):-** Whether in findings  
 recorded by the learned n 1. .1966  
 issue no.17 to the effect that, " under  
 section 5(1) of the Muslim Wa f ( II 1936)

was ever made in respect of the property indispute", the plaintiff Sunni Central Soard Waqf right maintain the present suit?

**Issue No.5(f):-** Whether in view of the aforesaid finding the suit is barred on account of Jurisdiction a limitation as it was filed after the commencement of the U.P. Muslim Waqf Act, 1960?

**Issue No. 6:-**

Whether the present suit representative plaintiffs representing the f Muslims and defendants representing the f the Hindus?

**Issue No. 7:-**

7(a) Whether Mahant hu r Dass intiff Suit No. 61/280 of 1885 d n behalf Jan Sthan and whole body of persons nterested in Jan Sthan

**Issue No.7(b):-** Whether Mohammad Asghar the Mutwalli of alleged Sabri Masj and did he contest the suit for and on behalf of any such mosqu

**Issue No. 7(c):-** Whether in f J n  
 said suit, the members u un  
 including the contesting defendants are estopped from  
 denying the title of the Musli u ncluding the  
 plaintiffs of the present suit, y in dispute? If  
 so, its effect?

**Issue No. 7(d):-** Whether in aforesaid su  
 the Muslims to the property in dispute a n  
 thereof was admitted by plai of that suit?  
 effect?

**Issue No. 8:-**

Does the judgment case No.61 1885,  
 Mahant Raghubar Dass Secretary State a  
 others, operate as res judicata ainst the defendants in  
 suit?

**Issue No.10:-**

Whether the plaintiffs have perfected their rights by adverse possession as alleged in the plaint?

**Issue No. 11:-**

Is the property in suit the property of Ja...  
Ram Chandraji?

**Issue No. 12:-**

Whether idols and objects of worship were placed inside the building in the night and 23<sup>rd</sup> December, 1949 as alleged in the plaint or they have been in existence since then. In either case effect?

**Issue No. 13:-**

Whether the Hindus in the village of... In particular had the right to worship the Charans and 'Sita Rasoi' and other idols and... if any, existing in or upon the property in suit?

**Issue No. 14:-**

Have the Hindus been... In

dispute as Sri Ram Janam Shu **ir**anam Asthan a  
have been visiting it as a sacred place of pilgrnraqe as  
of right since times immemorial? s , its effect?

Issue No. 15:-

Have the Muslims been n possession  
property in suit from 1528 nuously openly  
and to the knowledge of the defendants Hindus In  
general? If so, its effect?

Issue No. 16:-

To what relief, if any, a antiffs r any of  
them, entitled?

Issue No. 17:-

Whether a valid notification u r section )  
the U.P. Muslim Waqf Act N. " 1936 relating to the  
property in suit was ever done? its effect?

(This issue has already been decided rned  
Civil Judge by order dated 1. 1 )

Issue No. 18:-

What is the effect of the judgment of their Lordships

of the Supreme Court in Gu Abbas others  
 State of U.P. and others, 1 1 Supreme Court  
 2198 on the finding of the learned Civil Judge recorded  
 on 21<sup>st</sup> April, 1966 on issue 1

Issue No. 19 **(a):-**

Whether even after In  
 suit deities of Shagwan rl n a  
 Asthan Sri Ram Janam Shu nued to exist on the  
 property in suit as alleged on o. 13  
 and the said places continued to be visited by devotees  
 for purposes of worship? In  
 dispirte continued to vest in the said deities?

Issue No. 19 **(b):-**

Whether the building was a n  
 be reached except by passi h u  
 worship? If so, its effect?

Issue No. 19 **(c):-**

Whether any portion p In it  
 used as a place or worship iately

prior to the construction of the building in question?  
the finding is in the affirmative, whether a mosque  
could come into existence in view of the Islamic tenets  
at the place in dispute?

**Issue No. 19 (d):-**

Whether the building in question could be a  
mosque under the Islamic tenets in view of the admitted  
position that it did not have minarets?

**Issue No. 19 (e):-**

Whether the building in question could be a  
mosque as on plaintiffs showing it was  
surrounded by a grave-yard on three sides.

**Issue No. 19 (f):-**

Whether the pillars inside and outside the building  
in question contain images of Hindu Gods and  
Goddesses? If the finding is affirmative whether it  
that account the building in question cannot have the  
character of Mosque under the tenets of Islam

**Issue No. 20 (a):-**

Whether the waqf in question is a Sunni Waqf as the building was not duly constructed by a Sunni Mohammedan but was allegedly constructed by Meer Baqi who was alleged to be a Shia alleged Mutwalis were alleged to be Shia Mohammedans? If so, its effect?

Issue No. 20 **(b):-**

Whether there was a Muslim alleged Waqf and whether the alleged Mutwalli In the suit, the suit is not maintainable or it relates to relief for possession?

Issue No. 21:-

Whether the suit is bad for alleged deities?

Issue No. 22:-

Whether the suit is liable to be dismissed with special costs?

Issue No. 23:-

If the waqf Board is an instrumentality of state?



it a:

nder Article 1 of the  
Board being state n  
capacity sponsoring  
and against the interest of

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spute structure

called mosque  
of the plaintiffs is liable to be  
nable?"

use the opensite as mosque  
re which stood thereon

court yard contained Ram

Chabutra, Bhandar and Sita Raso whether they  
 were also demolished on . 1 1 along  
 main temple?"

**Issue No. 28:-**

"Whether the defendant . 3 ever been in  
 possession of the disputed plaintiffs were  
 never in its possession?"

**Suit No.1**

**Issue No.1:-**

Is the property in suit s f Jana  
 Shri Ram Chandra Ji?

**Issue No.2 :-**

Are there any idols Bhagwan Ram Chandra Ji  
 and are His charan Paduka' situated in the site in suit?

**Issue No.3 :-**

Has the plaintiff any right worship ' ha n  
 Paduka' and the idols situated in the place in suit?

**Issue No.4:-**

Has the plaintiff the right to have Darshan of the place in suit?

**. Issue No. 5(a) :-**

Was the property in suit involved in original suit No. 61/280 of 1885 in the court of sub-judge at Aizabad' Raghubar Das Mahant Vs. Secretary of State for India & others.?

**Issue No. 5(b):-** Was it decided against the plaintiff?

**Issue No. 5(c):-** Was that decision in the knowledge of all Hindus in general and were all Hindus interested in the same?

**Jssue No. 5(d):-** Does the decision in the original suit conform with the principles of Judicial Precedent in any other way.

**Issue No.6 :-**

Is the property in suit a mosque constructed by Shansah Babar commonly known as Babri mosque, In 1528 A.D.

**Issue No.7 :-**

Have the Muslims been in possession of property in suit from 1528 continuously openly and to the knowledge of plaintiffs Hindus in general? If so its effect?

**Issue No.8:-**

Is the suit barred by proviso to section 42 Specific Relief Act?

**Issue No.9:-**

Is the suit barred by section 13(3) of the Muslim Waqfs Act (U. 13 of 1936)?

**Issue No.9 (a):-** Has the said act no application to the right of Hindus in general of present suit in particular to his right of worship?

**Issue No. 9 (b):-** Were the documents said act referred to in written statement collusive? If so, its effect?

**Issue No. 9 (c):-** Are the said provisions of the U.P. 13 of 1936 ultra-vires for In the statement

of plaintiffs counsel dated 9.        r        d        r  
454-A?

Issue No.10 :-

Is the present suit barred        time?

Issue No. 11(a) :-

Are the provisions of        1        applicable  
to present suit? If so is the        it bad for want of consent  
in writing by the advocate        l?

Issue No. 11(b) :- Are the        up y the pal        In  
this suit independent of        n 91  
C.P.C.        If not its effect?

Issue No. 12 :-

Is the suit bad for want        a        u        r  
order 1 Rule 8 C.P.C. ? If so its effect?

Issue No. 13 :-

Is the suit No.2 of 50 Shri        h Visharad Vs  
Zahoor Ahmad bad for want        u        n  
C.P.C.

Issue **No. 14** ::

Is the suit no.25 of 50 Param Ha Ram Chandra  
Vs. Zahoor Ahmad bad for want valid notice u r  
section 89 C.P.c.?

Issue No. 15 :-

Is the suit bad for non-joinder of defenda

Issue No. 16 :-

Are the defendants them entitled  
special costs under Section 35-A C.P.C.?

Issue No. 17 :-

To what reliefs, if any, is the plaintiff entitled?

Suit No.3

Issue No.1 :-

Is there a temple Janam hu Is  
installed therein as alleged in para 3 of the plaint?

Issue No.2 :-

Does the property in it belong al  
No.1?

Issue No. 3 :-

Have plaintiffs acquired title by adverse possession for over 12 years?

Issue No.4:-

Are plaintiffs entitled to management a charge of the said temple?

Issue No.5:-

Is the property in suit a mosque made by Emperor Babar known as Babari masjid

Issue No.6 :-

Was the alleged mosque dedicated by Emperor Babar for worship by Muslims in general or made a public waqf property?

Issue No. 7(a) :-

Has there been a notification under the Waqf Act (Act No.13 of 1936) declaring this property in suit a Sunni Waqf?

Issue No. 7(b) :- Is the notification final and binding? Its effect.

Issue No.8 :-

Have the rights of plaintiffs extinguished by their long period of possession for over 12 years prior to the suit?

Issue No.9 :-

Is the suit within time?

Issue No. 10(a) :- Is the suit barred by limitation for want of notice to the defendants u/s80C.

Issue No. 10(b) :- Is the suit barred by limitation above available to the plaintiffs against the contesting defendants?

Issue No. 11 :-

Is the suit bad for non-joinder of necessary parties and defendants?

Issue No. 12 :-

Are defendants entitled to set aside the decree on the ground of irregularities in the trial? C.P.C.?

Issue No. 13 :-

To what relief, if any, is the plaintiff entitled?

Issue No. 14 :-



120

framed?

Court-Fee

of notice u/s 83 of U.P. Act

Court order dated 23.2.96)

Plaintiff, n ayati

of Bairagis a su is a

lowing religious faith a

custom '

### **Suit No.5**

**Issue No.1** :- Whether plaintiffs a

juridical persons?

**Issue No.2** Whether suit na

deities described in the plaint as plaintiffs 1 and 2 is n

maintainable through plai 3 ?

**Issue No.3(a):-** Whether In q was  
installed under the central f d i1ding  
(since demolished) In December  
23,1949 as alleged by the plai in raph of the  
plaint as clarified on 30. In r under  
order 10 Rule 2 C.P.C.?

**Issue No.3(b):-** Whether ——— installed  
at the same place on a chabutra under the canopy?

**Issue No. 3(c):-**

"Whether the idols were d s  
on or after 6.12.92 in violation c u d.ated  
148.1989,7.11.1989 and 15119 .

**Issue No. 3(d):-**

If the aforesaid issue is a in the affirmative  
whether the idols so placed ll ui status a  
deity?"

**Issue No. (4):-** Whether idols in question

been in existence under the "hikhar" prior to 12.92 from time immemorial as alleged in paragraph-44 of the additional written statement of defendant no.3?

Issue No. (5):- Is the In question properly identified and described in the plaint?

Issue No. (6):- Is the plai .3 entitled represent the plaintiffs 1 and and is the suit not competent on this account?

Issue No. (7):- Whether .3 a entitled to represent plaintiffs 1 a suit n competent on that account alleged in paragraph 49 of the additional written statement no. 3?

Issue No. (8):- Is the defenda a "Shebait" of Shagwan Sri Rama i In disputed structure?

Issue No. (9):- Was the disputed structure a mosque known as Sabri Masjid.

Issue No. (10):- Whether disputed structure could be treated to be a mosque allegations

contained in paragraph-24 of the plaint?

**Issue No. (11):-** Whether averments made paragraph-25 of the plaint no valid waqf was created respect of the structure in dispute to constitute a mosque?

**Issue No. (13):-** Whether it barred limitation?

**Issue No. (14):-** Whether disputed structure claimed to be Sabri Masj was erected after demolishing Janma-Sthan temple at its site

**Issue No. 15:-**

Whether the disputed structure claimed to be Babri Masjid was always used by the Muslims uta for offering Namaz ever since alleged construction in 1528 A.D. to 22<sup>nd</sup> December 1949 as alleged defendant 4 and 5?

**Issue No. 16:-**

Whether the title of plai 1 if a extinguished as alleged in paragraph 5 written

statement of defendant no 4? If yes have pl81 1  
 re-acquired title by adverse possession al In  
 paragraph 29 of the plaint?

**Issue No. 18:-**

Whether the suit is barred section  
 Specific Relief Act as alleged in paragraph  
 additional written statement of defendant no.3 a a  
 as alleged in paragraph of the written statement  
 defendant nO.4 and paragraph written  
 statement of defendant no.

**Issue No. 19:-**

Whether the suit is bad non-joinder of necessa  
 parties, as pleaded in parag 3 additiona  
 written statement of defendant No.3?

**Issue No. 20:-**

Whether the alleged Trust, creating Nyas  
 defendant no. 21, is void facts a grounds  
 stated in paragraph 47 of the written statement

defendant no. 3?

**Issue No. 21 :-**

Whether the idols in question be treated as deities as alleged in paragraph 1, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 of the written statement of the plaintiff? In paragraph 1 of the written statement of the defendant no. 5?

**Issue No. 22:-**

Whether the premises in question are the subject matter of the title deed thereof is by tradition, belief and custom of the people of the place as alleged in paragraph 19 of the written statement of the plaintiff? If so, its effect?

**Issue No. 23:-**

Whether the Judgment in Civil Appeal No. 1 of 1954 filed by Mahant Raghuber Das against the Special Judge, Faizabad is binding upon the plaintiffs in the application of the principles of law and equity as alleged by the defendants in paragraph 5?

**Issue No. 24:-**

Whether worship has been carried on at the alleged place of worship as alleged by the plaintiff?

plaintiff deity on the premises in it 81 ti  
 immemorial as alleged in paragraph 25 of the plai

Issue No. 25:-

Whether the Judgment a decree d  
 March 1946 passed in suit 1 is n blinding  
 upon the plaintiffs as alleged by the plaintiffs?

Issue No. 26:-

Whether the suit is bad want notice under  
 section 80 C.P.C. as alleged by the defendants 4 and 5?

Issue No. 27:-

Whether the plea of it being want  
 notice under section 80 C.P.C. n ised  
 defendants 4 and 5?

Issue No. 28:-

Whether the suit is f r want notice under  
 section 65 of the U.P. Muslim Waqfs 1960  
 alleged by defendants 4 and 5? If so its effect

Issue No. 29:-

Whether the plaintiffs a precluded from bringi

the present suit on account dismissal of suit no.57 of  
 1 (Bhagwan Sri Ram Lala Vs. state) of the u  
 Munsif Sadar, Faizabad.

Issue No. 30:-

To what relief, if any, a plaintiffs a of them  
 entitled.

Issues relating to graveyard alleged to exist  
 the premises in dispute (i.e. issue No of Suit  
 No.4 and Issue No.1? of uit No.5  
 order of this Court dated 23. .1

Court judgment in Dr. M. Ismail **Farooq**

India, 1994 (6) S.C.C. 360 wherein the Supreme Co

confined the dispute only premises

Issue No.12 in Suit No. relating shifting

mosque (if the structure in question

mosque) was deleted thro h orde or the same

date, i.e. 23.02.1996.

Issue NO.9 of Suit No.4 relating to service of valid  
 notice under Section 80, C.P.C. been deleted



through order of Court dated 22/25.05.1990

### Oral Evidence:-

Oral evidence was recorded after the suits to this Court from 24.11.2006 to 23.03.2007. After enforcement of 1999 & 2002 Amendments in C.P.C, w.e.f. 01.07.2002, most evidences were recorded by the Commissioner/ O.S.D. Court, who is of the rank of A.D.J. J.

In total 86 witnesses were examined on behalf of plaintiffs in Suit NO.4 as PW-1 to PW-32, 18 If of plaintiffs in Suit NO.5 as O.P.W.-1 13 a O.P.W.-15 to O.P.W.-18 and 36 on If intiffs Suits NO.1 & 3 (who are also defendants in u o. 5) and other defendants of uit No.4 as D.Ws

The cross examination n a an Agarawai original plaintiff .3 u 5, O.P.W.-2 could not be completed due his death

All the witnesses may b divided three categories. The witnesses f o were

witnesses of fact, second category witnesses claimed to be historians and the third category witnesses deposed about the A.S.1. report. Most of witnesses admitted in their cross examination in h momentary lapses of memory.

### Documentary Evidence:-

Thirty four documents filed by plaintiff of Suit NO.1 have been exhibited as Ex.-1 to Ex.-34. Three documents filed by defendant of Suit NO.2 have been exhibited as Ex. A-1 to Ex. A-3. Three documents filed by plaintiff of Suit NO.3 have been exhibited as Ex. A-3A). Twenty one documents filed by plaintiff of Suit NO.3 have been exhibited as Ex. 1 to Ex.-21.

One hundred and twenty documents filed by plaintiff of Suit NO.4 have been exhibited as Ex.-1 to Ex.-128. The documents include books, gazetteers or their parts, certified copies of judgments of Suit of 1885, of other suits and different applications and executive orders.

records etc.

A.S.J. Report:-

Through orders dated 1.08.2002 .10.2002  
Geo Radiological Survey ground beneath the  
premises in dispute was *suo-motu* ordered be held.  
The said order was passed, in spite of opposition  
almost all the parties, under u 1, Order  
XVIII Rule 18, Order XXVI 1 a 15 ,  
C.P.C. G.P.R. Survey was kas  
International Pvt. Ltd. It d report  
17.02.2003. According report some anomaly  
were observed. According court through order  
dated 05.03.2003 directed excavation by A.S.I.  
.A.S.I. after excavation submitted report

08.2003. The last para of Summary of Results of the  
report is quoted below:

*" The Honible High Court, order  
sufficient archeological evidence issue  
involved 'whether there was any temple/structure*

which was demolished mosque  
constructed on the disputed " as stated on page  
1 and further on p. 5 of their order dated 5 march  
2003, had given directions to the Archaeological  
Survey of India to exca disputed  
where the GPR Survey has suggested evidence of  
anomalies Vvhich could structure, pillars,  
foundation walls, slab flooring which could be  
confirmed by excavation . Now, viewing totality  
and taking. into account archaeological  
evidence of a massive structure below  
structure and evidence continuity structural  
phases from the tenth century onwards upto  
construction of the disputed structure alongwith the  
yield of stone and decorated bricks  
mutilated sculpture divine couple carved  
architectural' members including foliage patterns,  
ama/aka, kapotapali doorjamb with semi-circular  
pilaster, broken octagonal shaft black schist

*pillar, lotus motif, circular shrine having pranala (waterchute) in the north, pillar bases association of the huge structure, are indicative of remains which are distinctive features found associated with the temples of north India."*

### **Hearing:-**

One of the members of this full bench Hon'ble S.R. Alam, J. took oath as Chief Justice of M.P. h Court on 20.12.2009. The then hi Justice is u through order dated 21.12.2009 constituted fresh be by inducting me therein. newly constituted bench started hearing the arguments .f. 11.01. 10. The arguments were al till 26.07.2010 covering 90 worki n 10 following order was passed.

*"Arguments in suits concluded. Arguments in Suits No.1, 3 & 4 had already concluded. Today, the arguments in Suit No.5 have been concluded. This newly constituted bench heard the arguments for 90 working days starting*

from 11.01.2010.

*Sri P.N. Vishra, Sri Ravi Shankar Prasad, P.R. Ganpathi Aiyer and Sri K.N. Bhat, Senior Advocates; Sri Zafaryab Jilani, Sri M.A. Siddiqui, Sri Syed Irfan Ahmad, Sri R.L. Verma, Sri Tarunjeet Verma, Sushri Ranjana Agnihotri, Sri M.M. Pandey, Sri Rakesh Pandey, Sri Hari Shankar Jain, Sri R.K. Srivastava, Sri Ajay Kumar Pandey, Sri D.P. Gupta and Sri Ved Prakash, Advocates; and Sri S.P. Srivastava, Addl. Chief Standing Counsel advanced their submissions on behalf of respective parties quite ably and we put on record our appreciation for the assistance they have rendered to this Court and the cordial atmosphere they have maintained in the Court.*

*We greatly appreciate not only the arguments of learned counsel for the parties but also the manner in which the arguments were advanced. No learned counsel interrupted the arguments of any other learned counsel. Learned counsel were quite careful while advancing their arguments and none of them said any such thing which could injure feeling of the other side.*

*Judgment reserved and will be delivered in the second fortnight of September, 10. Exact date for*

*delivery of judgment will be notified in the cause list. Learned counsel have advanced the arguments or their assisting counsel will also be informed about the date delivery of judgment about one week in advance.*

*Tomorrow we propose discuss each and every advocate, who argued the matter, or his assisting advocate, in the order in which they had advanced the arguments, the possibility of amicable settlement in terms Section 89. C.P.C. in the Chamber. After individual sessions, if need is felt, joint session may also be held.*

*Put up tomorrow r Senior Judge among us (S. Khan, above purpose. "*

*Thereafter on 27. 1 following order passed:*

*"Today, we discussed possibility amicable settlement of the dispute with different advocates. At present nothing substantial has come out, however we have indicated to all the learned counsel that until delivery of judgment they are at complete liberty to contact the O.S.D. for formation*

of the Bench In case some possibility  
compromise emerges.

Since 02.08.201 Bench would  
constituted in Chamber preparation  
dictation of judgment. "

Thereafter by order dated 08.09.2010 specific date  
24.09.2010 was fixed for delivery of judgment.

stay order by the Supreme Court passed on 23.09.2010  
the judgment could not be pronounced on the said date.

Supreme Court dismissed the special Leave Petition  
28.09.2010. Thereafter, 30.09.2010 fixed  
pronouncement of judgment.

The following learned counsel argued matter  
for different parties as indicated below

List of the Learned Counsel who have argued in all the  
suits  
(From.- 11.01.2010 .2010)

Sl. No.	Name of the Counsel	Parties Name
1	Sri Z. Jilani, Adv.	In O.O.S. of 1989 for the Plaintiffs (The Sunni Central Board of



- 2 Sri M.A. Siddiqui, Adv. Waqfs U.P.) For Plaintiff No.7 (Mohd. Hashim)
- 3 Sri R.L. Verma, Adv. Assisted by Sri Tarunjeet Verma, Adv. .3 ( hi a )
- 4 Sri P.N. Mishra, Adv. Assisted by Km. Ranjana Agnihotri, Adv. 20 (Ram Punrudhar Samiti) convenor Sri M.M. Gupta
- 5 Sri M.M. Pandey, Adv. For Def. No.2/1 (Mahant Sures Das)
- 6 Sri Ravi Shanker Prasad, Adv. For Def. No.2/1 (Mahant Sures Das)  
Assisted by Sri M.M. Pandey, Adv.
- 7 Sri M.M. Pandey, Adv. For 1 u h Das)
- 8 Sri P.R. Ganapathi Iyer, Sr. Adv. 1 ha Dharam Das)  
Assisted by Sri Rakesh Pandey, Adv.
- 9 Sri M.M. Pandey, Ad'J. o. 1 hant Suresh Das)
- 10 Sri Rakesh Pandey, Adv. o. 1 ha Dharam Das)
- 11 Sri H.S. Jain, Adv. (Hindu
- 12 Sri Z. Jilani, Adv. — in n argument
- 13 Sri M.A. Siddiqui, Adv. For Plaintiff No.7 Mohd. Hashim (in rejoinder)
- 14 Sri A.K. Pandey, ( rl nd ingh)

- |    |   |   |        |
|----|---|---|--------|
|    | Adv.  | In O.O.S. No.1 of 1989  |        |
| 15 | Sri Z. Jilani, Adv.   | For Def. No.10 (The Sunni Central Board of Waqfs)   |        |
| 16 | Sri Tarunjeet Verma, Adv.   | For Plaintiff (Nirmohi Akhara) in O.O.S. No.3 of 1989                                     |        |
| 17 | Sri R.L. Verma, Adv. Assisted by Sri Tarunjeet Verma, Adv.                        | O.O.S. No.3 of 1989   | a ) in |
| 18 | Sri Z. Jilani, Adv. and Sri M.A. Siddiqui, Adv.                                   | For Def. No.9 (The Sunni Central Board of Waqfs)  |        |
| 19 | Sri K.N. Bhat, Sr. Adv. Assisted by Sri M.M. Pandey, Adv. & Sri A.K. Pandey, Adv. | For Plaintiffs (Bhagwan Sri Ram Lala Virajman at Ayodhya & others in O.O.S. No.5 of 1989) |        |
| 20 | Sri M.M. Pandey, Adv. Assisted by Sri A.K. Pandey, Adv.                           | For — in  | 0.5    |
| 21 | Sri Ved Prakash, Adv.   | For al — in 1989  | 0.5    |
| 22 | Sri R.L. Verma, Adv. Assisted by Sri Tarunjeet Verma, Adv.                        | For .3 ( In 0.5 1   | a )    |
| 23 | Sri I.I.S. Jain, Adv.   | For .11 ( Mahasa )  | u      |
| 24 | Sri Z. Jilani, Adv.   | For ef.No.4 (T unru Centra Board of Waqfs)  |        |
| 25 | Sri M.A. Siddiqui, Adv.   | For   | )      |
| 26 | Sri J.S. Jain, Adv.   | For .11 ndu Mahasa )  |        |

# FINDINGS

## I- Limitation

Issue No.3 of Suit No.4,  
Issues No. 8 & 10 of Suit 1,  
Issue No.9 of Suit No.3,  
Issue No.13 of Suit No.5

### Suit no. 4 and 3

Almost all the defendants in it n particula  
defendant nO.20 represented Sri P.N.Misra learned  
counsel have argued that the it is barred by limitation  
'The position of limitation exactly same in suit .3  
also. Suit No.4 was instituted 18.12.1961 a uit  
No.3 on 17.12.1959.

The argument of Mr. P. u l is  
that as premises In dispute In  
proceedings under Section 1 1 r. on  
29.12.1949 and had been di t 9 n u the  
receivership of Sri Priya Oatt Ram hence relief  
possession could not be asked a it has

further been argued that after attachment or appointment of receiver, the property custodia leg' and supuadar/receiver/cou holds property for benefit of the true owner hence it permissible seek relief of possession against private/contesting defendant and the only relief which may be asked for is of declaration for which limitation years article 120 of Limitation Act 1 (misc. article regard reliance has main b n pi n authorities one of Privy coun reported in *Rajgan Maharaja Jagatjit Singh Vs. Raja artab Behedur Singh AIR 1942 Privy Council* a the other Supreme Court reported in *Deo Kuer V. Sheo Prasad Singh AIR 1966 Supreme Court* (paragraphs 5 and 6).

As far as Supreme authority is n , it was dealing with the proviso Section Specific Relief Act of 1877 according to which ief r declaration alone was not to be granted if consequential

relief might be asked for but had not been asked. Supreme Court held that property attached in proceedings under Section 146(1) Cr.P.C., it is in custodia legis and it is not necessary in such a suit to ask for possession. However, in the authority of Supreme Court no question of limitation was involved. In such a judgment it was also observed that attachment under Section 146 Cr.P.C. was continuing and final decision had been taken in such proceedings even until the decision by the Supreme Court. Obviously it was an attachment pending decision in such a case and of emergency.

In **Shanti Kumar Panda** vs. **Kuntala Devi**

**A.I.R. 2004 S.C. 115** also same thing has been

Para 13 thereof is quoted below

*In a case where attachment has been made under Section 146(1) of the Code, it is not necessary for the unsuccessful party to seek the relief of possession from the court; a mere adjudication of rights would suffice inasmuch as the attached property is held custodia legis by the Magistrate for*

*and on behalf of the party who would be successful from the competent Court by establishing his right to possession over the property.*

In the authority of the Privy Council, the Magistrate had passed a final order on 06.04.1932 in proceedings under Section 111 Cr.P.C., on applications and agreement of the parties that pending the decision of Civil Court, the land should remain attached and that the proceedings should mean time be consigned to records, the land to be released to the party who succeeded in the suit. Attachment order on the ground of emergency had been passed on 23.02.1932. The Privy Council held that thereafter attaching Magistrate/Tehsildar held the property for true owner. Privy Council also held *"that the suit which was subsequently instituted was rightly confined to a mere declaration of title and not in the form of substance a suit for possession of immovable property"*. (The suit had been instituted on 3.01.1933).

In respect of limitation the Privy Council held that article 47 of the Limitation Act 1908 did not apply as there had been no order for possession. Magistrate under Section 145 Cr.P.C. It further held that as the suit was one for a declaration of a right, articles 142 and 144 did not apply and article which was applicable was article 120 (miscellaneous Article).

On the basis of the above authorities Mr. Misra, learned counsel has strenuously argued that the only suit which could be filed was for a declaration. It has further been argued, on the basis of the authority, that the limitation period is 3 years under article 120 of the old limitation Act and the Limitation started from the date of the attachment order i.e. 29.12.1949.

The first point being clearly covered by the above authorities is accepted. However, the second point relating to start of limitation from 1.1.1950 as other date is not accepted for the following reasons

When the suits (except institution) instituted  
 Limitation Act 1908 (old Limitation Act) in 1908  
 was replaced by Limitation Act 1963 (new Limitation  
 Act). However, by virtue of section 31(b)  
 Limitation Act, nothing in the new Limitation Act

*"effect any appeal or application  
 instituted preferred or made before and  
 pending at such commencement."*

Under the old Limitation Act, article 120 that time to file a suit which  
 Limitation Act had not been in article 120  
 would be six years. The corresponding article under the  
 new Limitation Act is article 113 according to which  
 limitation to file suit is three years from the date when  
 the right to sue accrues, for any suit for which no period  
 of limitation is provided elsewhere in the schedule.  
 Under the new Limitation Act, article 113 specific  
 covers general suits for declaration and provides three  
 years limitation therefor. However, there  
 corresponding article for general suits for declaration



under the old Limitation hence such suits were covered by misc. article i. . article 1 providing s years limitation.

**First Reason:-**

The last order which was passed In proceedings under Section 145 Cr.P.C. in the instant matter was on 30.07.1953. (except the order 1 appointing new receiver after the death receiver inal appointed). It has been noticed rlier that in suit n .1 ad interim temporary injunction had been granted by the Civil judge on 16.01.1950 order dated 19.01.1950 and the un on order had been confirmed after n both parties through order dated 03.03.1 1

The learned City Magistrate in hi order dated 30.07.1953 passed in Section 1 5 r. . . p mqs held as follows in its concluding part

"the finding of the Civil Court will be binding on Criminal Court it is no use starting proceedings in

this case under Section 145 Cr.P.C. and recording evidence specially when a temporary injunction stands, as it can not be said that what may be the finding of this Court after recording the evidence of parties. *From the administrative point of view the property is already under attachment and no breach of peace can occur.*

*I, therefore, order that under Section 1 Cr.P.C. be consigned to records as it is and will be taken out for proceedings further when temporary injunction is vacated."*

From the above quoted portion of the order of the Magistrate it is quite clear neither proceedings under Section 145 Cr.P. b dropped n r finalized. This position was further clarified learned Magistrate through r order dated 31.07.1954 which was passed n n application dated 22.07.1954 filed by Gopal h Visharad suit nO.1. The prayer in the n enti file of the case under Section 1 r.P.C. preserved and not weeded out until such ti it was summoned

by the Civil Court even though under u ti  
 might come for its weeding h concerned clerk  
 had noted on the application according to Awadll  
 Criminal Rules file would d r weeding after  
 31.12.1956. The following order passed

Magistrate on 31.07.1954:

*"This file can not be weeded as it is not a disposed  
 of file. How do you report that it will be weeded of?"*

When the learned Magistrate h recorded in his  
 order dated 30.07.1953 that breach peace u  
 occur, he should have dropped proceedings **sur**  
 Section 145(5) Cr.P.C. Which is quoted below:

*Nothing in this section shall preclude any party  
 so required to attend, or any other person  
 interested, from showing that no such dispute as  
 aforesaid exists or has existed; and in such case  
 the Magistrate shall cancel his said order, and all  
 further proceedings thereon shall be stayed, but,  
 subject to such cancellation, the order of the  
 Magistrate under sub-so(1) shall be final.*

In any case if after passi of preliminary order  
 and attachment order consideri case

emergency but before the proceedings under Section 145 Cr.P.C. are finalised, u decides the matter in a suit either finally nterim i unction application stage, Magistrate conclude proceedings by passing final order. In **Mathuralal Bhanwarlal AIR 1980 S.C. 242**, Supreme Court in middle of para 4 has held as follows

*"Thus a proceeding begun with a preliminary order must be followed up by an enquiry and end with the Magistrate deciding in one of three ways and making consequential orders. There is no half way house, there is no question of stopping in the middle and leave the parties to go to the Civil Court. Proceeding may however be stopped at any time if one or other of the parties satisfies the magistrate that there has never been or there is no longer any dispute likely to cause a breach of the peace. If there is dispute likely to cause a breach of the peace, the foundation for the jurisdiction of the magistrate disappears. The magistrate then cancels the preliminary order. This is provided by S. 145 sub-s.(5). Except for the reason that there is dispute likely to cause a breach of the peace and as provided by S. 145(5), a proceeding initiated by a preliminary order under S. 145(1) must run its full course".*

(In the case before the Supreme u suit h been filed)

In Dharam Pal vs, Srimati Ram

I. 1993

**S.C.** 1361 it has been held in middle para-5

follows:

"It is obvious from sub-sec. (1) . 1 that the Magistrate is given power to attach the subject of dispute "until the competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof." The determination by a competent Court of the rights of the parties spoken of there has not necessarily to be a final determination. The determination may be even tentative at the interim stage when the competent Court passes an order of interim injunction appoints a receiver in respect of the subject-matter of the dispute pending the final decision in suit. The moment the competent Court does so, even at the interim stage, the order of attachment passed by the Magistrate has to come to an end. Otherwise, there is inconsistency between the order passed by the Civil Court and the order of attachment passed by the Magistrate. The proviso to sub-sec. (1) of S.146 itself takes cognizance of such a situation when it states that "Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of any breach of peace with regard to the subject of dispute." When a Civil Court passes an order of injunction or receiver, it is the Civil Court which is seized of the matter and any breach of its order can be punished by it according to law. Hence on the passing of the interlocutory order by the Civil Court, it can legitimately be said that there is no longer any likelihood of the breach of the peace with regard to

the subject of dispute."

Accordingly, Magistrate absolutely jurisdiction to keep the matter pending indefinitely (Technically even till date proceedings 145 Cr.P.C. are pending). He should have either dropped proceeding on the ground Court has granted confirmed temporary injunction order should have passed some final order. In any case Magistrate should have dropped the proceedings and passed some other final order after 26.04.1955 when miscellaneous appeal FAFO no. 154 of 1951 filed against confirmed temporary injunction order dated 03.11.51 was dismissed by the High Court.

The course adopted by Magistrate is warranted by any of the provisions contained in Sections 145 and 146 Cr.P.C. The course adopted by Magistrate on the one hand confused the parties regarding start of limitation and on the other hand

the limitation suspended. use of the word 'starting' by the Magistrate in its last order dated 3 .1953 ("it is no use starting proceedings in this case under Section 145 Cr.P,C.") confounded the confusion

The above authority Privy Council (Raja Rajgan Maharaja Jagatjit Si Raja Partab Bahadur Singh, AIR 1942 Privy Council) is not applicable as firstly in that if order has been passed in proceedings under Section 145 Cr.P.C hence that might be treated as starting point for limitation. Secondly the provision of article 120 applied. It did not say anything regarding starting point for limitation.

Normally suit for declaration can be filed after final order is passed under Section 145 -Cr.P. It can not be said that until final order is passed by the Magistrate proceedings under Section 145 Cr.P.C, suit for declaration can not be filed. In the authority of the Supreme Court of Deo Kuer, (1951) 1 Cr. 100 (S.C.)

suit for declaration had been after attachment  
 pending decision (situation bei ) by the  
 Magistrate. The proceedings u 145 Cr.P.C.  
 had not been finalised u decision  
 Supreme Court still the Su n h e  
 suit to be premature.

It is, therefore quite In case—  
 Magistrate had passed r r r  
 dismissal of the appeal di at temporary  
 injunction order (when there remain d no possibility  
 vacation of temporary inju In  
 last sentence of the order 3 . 1 —passed—  
 the Magistrate) or on a it u h  
 provided fresh starting point purposes  
 limitation for filing suit for decla n.

Second Reason:-

If in proceedings under Section 1 Cr.P.C  
 between two parties, mag'istrate passes an order to the



effect that he is unable to decide possession directs continuance of attachment, it is not all necessary that both the parties must separately file suits for declaration. Similarly if after attachment pending decision in 145, Cr.P.C. proceedings on ground emergency, one party opts to file suit for a declaration was done in the aforesaid Supreme Court authority of Deo Kuer, 1966) it is not necessary that other party shall also file similar suit for declaration. Even if it does not happen. Suit for declaration by one of parties is sufficient and in such case it is competent court will adjudicate the rights of both parties, plaintiff as well as defendant. If competent court holds that defendant has got title to the property and in the plaintiff and thereupon dismisses the suit, such determination would be sufficient in releasing property in his (defendants') favour as per requirement of Section 146(1) Cr.P.C. which is quoted below

*“146.(1) If the Magistrate decides that none of*

*the parties was then such possession, or unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it until a competent Court has determined the rights of the parties thereto or the person entitled to possession thereof."*

Accordingly, even if it is held that suit no.4 & 3a barred by limitation, still right in entitlement contesting parties have to be decided in suit .1 which is undisputedly within time. If the title of plaintiff of suit no.4 i.e. Sunni Central Waqf Board which is a defendant no. 10 in suit .1 or of plaintiff of suit .3 i.e. Nirmohi Akharha which is also defendant .11 In suit no. 1 is decided in suit .1, that would be sufficient for the purposes of Section 1 (1) r.

### **Third Reason :-**

The demolition of the constructed portion premises in dispute on 06.11.1971 acquisition premises in dispute and adjoining area by the Central Government and the judgment of the Supreme Court in

Doctor Ismail Farooqui's case 1 ( ) S.C.C. 360] changed the whole scena 9 a fresh starting point for the purposes of limitati n it u that the remedy of all the parties — In it no.1 stood barred due to lapse f li — If his/its rights subsisted. Section of New Limitation Act (28 of old Limitation Act) did not exti uish the right to property as due to attachment a suit — not be filed Section 28 of Limitation 19 8 is quoted below:

*1128. Extinguishment — t the determination of period hereby limited any person for instituting a suit for possession any property, his right such property shall extinguished. "*

Demolition of structure was more severe violation the right in respect of the constructed portion n attachment. For suits for declaration such situation gives a fresh starting point for limitation. Suits for d arati were provided for by Section Specific Relief

1877 (corresponding provision in Specific Relief

1963 is Section 34), which is quoted below:

*"Section-34. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such ask for any further relief:*

*Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.*

*Explanation - trustee of property is a "person interested to deny" a title adverse to the title of some one in existence, and for whom, he would be a trustee."*

It has been held in authorities Privy Council, Supreme Court and different High Courts that it is not every invasion or threat of right of plaintiff by the defendant which makes it mandatory for the plaintiff to seek declaration of right. It is an invasion of a serious nature which requires the plaintiff to necessarily file suit for declaration otherwise his right is lost after expiry of period of limitation prescribed therefor.

However, plaintiff may opt to file suit for declaration even after mildest possible invasion threat. In regard reference may be made to *Itendra Nath Ghose and Ors. v. Monmaha Ghose and Ors.* AIR 1930 PC 193. In the said case for sale had been passed. Thereafter, execution of the decree was refused. Privy Council held that starting of limitation for filing suit for declaration against third party transferee from date of filing of execution application against the decree. Of course, if the third party transferee opted to file the suit for declaration after passing of the decree it would have been quite timeous and not premature. Similarly in *Mst. Lal Bai v. Laxminarayan and Ors.* AIR 1930 (Patna) 30 (a) it has been held that a suit for declaration of the validity of several trust deeds etc. were sham the cause of action arose when Commissioner of the district took measurements for preparation of final decree of partition pursuant to preliminary decree of partition which

been passed on the basis \_\_\_\_\_ a not at  
 the time of filing of the pa \_\_\_\_\_ it or passing  
 preliminary decree therein. In \_\_\_\_\_ a In  
 case plaintiff had opted to file \_\_\_\_\_ it for declaration either  
 after the execution of the trust \_\_\_\_\_ r \_\_\_\_\_ filing of  
 partition suit or after the sa \_\_\_\_\_ it \_\_\_\_\_ suit  
 would have been fully maintai \_\_\_\_\_ a not premature

#### Fourth Reason:-

The Magistrate/Supardar/Receiver \_\_\_\_\_ expected  
 to hold the property indefin \_\_\_\_\_ r attachment  
 proceedings under Section 145/146 Cr.P.C. In such  
 situation liberal view of adjudication/ determination  
 right by the competent Court \_\_\_\_\_ ll h \_\_\_\_\_ taken  
 otherwise uncertainty will \_\_\_\_\_ perpetuated The law \_\_\_\_\_ n  
 not countenance such situation

In this regard reference may be made \_\_\_\_\_ -liappa  
 Naicken vs. Lakshmana Naicken A.I.R. 1949 Madras  
 71, which placed reliance up n \_\_\_\_\_ n \_\_\_\_\_ rl \_\_\_\_\_ Division

Bench authority of the same has reported  
 Rajah of Venkatagiri Isakali Subbiah 26  
**Madras 410.** In the said case, first order was passed  
 under Section 145/146 Cr. directing property to  
 remain under attachment on the ground that magistrate  
 was not in a position to decide that which party was  
 in possession either at the time of the preliminary order or  
 two months before that. Thereafter a final order was given  
 in favour of one of the parties which was set aside on appeal,  
 and a restoration application was made. A second appeal was  
 allowed. It was held that even though no further remedy by way of a  
 declaration was available still any party could file a suit  
 for mesne profits at any time which would not be  
 barred by Article 120 of the Limitation Act (providing 6  
 years limitation) and in such a case the magistrate would  
 have to decide the title. It was held that the magistrate  
 would be obliged to decide the title in  
 favour of that party. In the present case it has been held

been held that as suit for possession cannot be filed  
 hence Section 28 Limitation Act (1963) is not attracted  
 and right to property was not lost. Under Section 28 of  
 the old Limitation Act (1908) only where suit  
 for possession is not filed within time, the remedy as well  
 right is lost. However, it is held in Ismael Farooqui's case that  
 for declaration, where only remedy may be lost but  
 the right.

In suit no. 4 the prayers were that the  
 property in suit is mosque, for delivery of possession  
 may be made if deemed necessary. In Ismael Farooqui's case the Court  
 and for a direction to the statutory provisions of the Limitation Act  
 India as per direction of the Supreme Court. In Ismael Farooqui's case  
 Farooqui's case, 1994) to handover the property to the  
 plaintiff have been made. In Ismael Farooqui's case  
 for injunction restraining the defendant from interfering  
 in the plaintiff's right and right of other Muslims to offer  
 prayer therein has been made. In Ismael Farooqui's case  
 the plaint it has been stated that the defendant is a Hindu. In



proceedings under Section 1 Cr.P.C. a  
 appointment of receiver, Muslim deprived of  
 legal and constitutional rights of offering prayers in  
 said Mosque. Similarly, in para 18 it has been stated  
 result of the injunction (temporal order passed in suit  
 no. 1 is that while Hindus are permitted to perform *Puja*  
 of the idols placed by them in the Mosque Muslims are  
 not allowed even to enter the Mosque. In para 21-  
 the plaint added in 1995 it has been stated that even  
 after demolition of the Mosque building  
 miscreants the land over which the building stood is still  
 Mosque and Muslims are entitled to offer prayers  
 thereon. In para 23 of the plaint dealing with accrual  
 cause of action firstly it has been stated that cause  
 action arose on 23.12.1949 since when Hindus were  
 causing obstruction and interference with the rights  
 of the Muslims in general particularly of saying prayers in  
 Mosque. It has further been stated in the said para that  
 injuries so caused are continuing.

Accordingly, the prayer a read other allegations in the plaint may n t nclude prayer for declaration to the entitlement n prayers continuously and for direction! i unction a In this regard reference may made a ull Bench Authority of Alliahabad High Court reported in Faqira and another **Vs. Hardewa and others** R 1928 All 172 (FB) wherein it has been held that if by reading the plaint as a whole, relief not specifically asked for may be granted then it shall be granted

Similarly in Bhagwati **Prasad Vs.** andrarnaul 'AIR 1966 **S.C.** 735 it has been held that if a plea is not specifically made out but is covered some ssue by implication then it shall be considered. In the said case plaintiff had described defenda na . However, defendant denied tenan asserted 'an arrangement which was found by the Cou the nature of licence. The u u eviction of defendant was permissible according

his own say in his possession leave and  
 licence of the plaintiff even if the plaintiff has been  
 any such plea.

In *Madan Gopal Kanodia vs. Mamraj Maniram*  
 AIR 1976 SC 461, *Udhav Singh Vs. Madhav Rao*  
*Scindia*, AIR 1976 SC 744, *Manjushri Raha*  
*Gupta*, AIR 1977 SC 1158 & *K.C. Kapoor Vs. Radhika*  
*Devi*, AIR 1981 SC 2128, it has been  
 pleadings should not be construed too technically

The Privy Council in *Hukumat Chand Maharaj*  
*Bahadur*, AIR 1933 P.C. 193 (page 197) has  
 that obstruction in right of Prayer/worship or starting new  
 type of prayer is continuing wrong hence every  
 obstruction provides a fresh cause of action and is  
 starting point for the limitation.

It is also important to note that since the morning of  
 23.12.1949 Puja, bhog (religious activities  
 Hindus) were going on inside the constructed portion of  
 the premises in dispute. The administration

permitted it in the name of                      ru                      a                      r.

Thereafter the City Magistrate while passing preliminary order under Section 145, Cr.P.C.                      .12 1

directed for **the** same, however afterwards

sentence was scored off.                      n                      origina record

sentence is there in one complete li                      a                      it h                      been

scored off by drawing a li                      over                      words However

the cutting is not even initialled or s                      n                      h nce its d

cannot be ascertained. Sri                      Sharma receiver,

who was required to submit scheme for management for

approval, submitted the scheme t                      . .,                      izabad

(undated) mentioning therein                      *most important*

*item of management is                      maintenance of the Bhog*

*and Puja in the condition                      which                      carried*

*when I took over charge."* It is admitted to all the parties

that since 23.12.1949 (if                      before that)                      a

Shog continued in the constructed portion

premises in dispute and no Muslim offered or                      uld offer

Namaz therein. According                      aforesaid view of the

Privy, Council of continuing (Section  
Limitation Act, 1908) applies  
NO.4. It also applies to suit according  
plaintiff Nirmohi Akhara, its right of title and possession  
etc. is constantly being denied.

**Fifth reason**

Even if suit nos. 4 and 3 are barred  
at this time still the Court is required to record finding  
and pronounce judgment on all issues as per order  
14 Rule 2(1) C.P.C. which is quoted below:

*Notwithstanding that a case may  
be disposed of on a preliminary issue, the Court shall,  
subject to the provisions of sub-rule(2), pronounce  
judgment on all issues",*

Accordingly we are required to record finding  
regarding right and title also. In case if suit nos. 4 and 3  
are held to be barred by limitation still if title and right of  
plaintiffs of any of these suits exist  
the property in dispute will have to be released in its favour

as irrespective of dismissal suit n 9 u  
 delay, determination of the rights entitlement  
 possession will be there.

In this regard reference may b made Ases  
**Kumar Misra vs, Kisssori Mohan A.I.R. 1924 Calcutta**  
 812 . In the said case the facts were that in proceedings  
 under Section 145/146 r.i- in between a private  
 person and a society magistrate concluded  
 proceedings by holding that he was nable to decide the  
 possession hence attachment

Thereafter some third pa fi recovery  
 money against some members of the society  
 dismissed but findings owners recorded  
 against the society. Even basis nding  
 magistrate handed over the property o the other party  
 (private person) in proceedi

Cr.P.C. even though he was not a party in the civil

The High Court fully approved

held that it was in accordance with law

**Suit no. 5:- (Deity perpetual minor?)**

As far as suit no.f concerned (instituted 01.07.1989) the plaintiffs of th it parties in any other suit however, in view f my above finding that due to wrong order passed magistrate dated 30.7.1953 limitation remained suspended (first reason), and for the fifth reason it it is within time.

However, at this juncture a ument earned counsel for the plaintiff suit n .5 ui noticed. The argument is deity being perpetual minor, is entitled to the benefit f Sections (1) or 7 Limitation Act 1963 which are quoted below:

*U6(1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot) he may institute the suit or make application within the same period after*

*disability has ceased, would otherwise have been allowed from the time specified therefor in the third column of the Schedule*

***Disability of one of several persons.-***

*Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased."*

In this regard the sole bench has been placed upon the following sentence of the Supreme Court authority reported in **Bishwanath vs. Sri Thakur Radh Ballabhli**, A.I.R. 1967 SC 1044.

*"An idol is in the position of a minor and when the person representing it leaves it in a lurch a person interested in worship*



*certainly be clothed power  
representation to protect interest.” (para 1*

In the said authority the question involved was as to whether a worshipper could file a suit for possession of properties illegally sold by Shabait. The Supreme Court held that in normal course and represented by Shabait in it however, where action of Shabait was against a worshipper could file suit on behalf of I

Complete Paragraph No 10 of the said authority quoted below:-

*“10. The question such a person represent the idol when the Shabait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with the power of representation to protect its interest. a*

pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Stiebeit's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him take steps to recover property, such procedure will be rather a prolonged and complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the property for the idol. It has been held in a number of decisions that worshippers may a suit praying possession of a property on behalf of endowment; see *Radhabai Chimnaji*, (1878) 3 Bom 27, *Zafaryab Ali Bakhtawar Singh*, (1883) ILR 5 All 497 *Chidambaranatha Thambirarn v. P. Nallasiva Mudaliar*, 6 Mad LW 666 : (AIR 19 18 Mad 464), *Dasondhay v. Muhammad Abu Nasar*, (191

*ILR 33 All 660 at p. 664.* 1 17 *Mad 112*) (FB),  
*Radha Krishnaji v. Rameshwar Prasad Singh*, AIR  
 1934 Pat 584, *Manmohan Haldar* *Dibbendu*  
*Prasad Ray*, AIR 1949 1 ”

In my opinion the observation an li In  
 position of a minor is confined aspect  
 just as minor himself can fi it a duri h  
 minority if a suit is to be filed, it n be filed only through  
 his guardian similarly idol can fi suit y If a it  
 can be filed only through someone else who is normally  
 to be a Shabait and in exceptional cases other  
 worshipper. The above observati n nnot be extended  
 to mean that for all other purposes a an ld a  
 minor (a perpetual minor).

Section 6(1) of the Limitation deals with  
 three types of persons i.e. minor, a nsane It  
 cannot be applied to a other person natura  
 juridical. Moreover Section 9 a fresh period  
 limitation 'after the dis-ability has ceased According

it pre-supposes that disability likely to cease. In case of idol this contingency can never arise as it is perpetual minor then, it can never become major. Such a situation is not covered by Section 6(1) of the Act.

If the argument advanced is learned from the plaintiff of suit no. 5 is accepted against the property of the (debutter) one can mature title by adverse title through prescription) for the reason that by virtue of Section 27 of new Limitation Act) title matures through prescription the determination of the period for instituting possession of any property. a perpetual minor then limitation will never come and (determine)

In the following authorities, it has been held that an idol cannot be treated to be (perpetual minor) for the purposes of limitation in suit for possession of immovable property and on behalf of idol within the prescribed period.

12 years, the debutter property lost through adverse possession and the person in possession acquires right through prescription under Section 10 of the Limitation Act (Section 10 of the Limitation Act).

AIR 1926 All 392 (DB), hita nchu

In this authority, it has specifically held Section 7 of Old Limitation Act (New Limitation Act) is not applicable to the case of an idol it cannot be deemed to perpetual minor purposes of limitation. That was a case, which was for recovery of possession of immovable property of an idol illegally alienated by In the authority, the opinion of learned author on Hindu Law (Sastry's Hindu Law) page 726 V Edition was not accepted and it was held that it had not been followed by a Bench. In the said proposition was placed upon the

authorities reported in Jagdind Hemantah, 1  
 Indian Appeals 203 and Damodar . Adhikari  
 Lakhan Das, 37 Indian Appeals 1

Similar view has been taken In arkasdas  
**Janki Ballabha,** AIR- 1926 Oudh which  
 incidentally, was related a property in same  
 locality, i.e Mohalla Ram Kot Ayodhya, where property  
 in dispute in the instant suits . In the said case  
 it was not specifically held being minor  
 entitled to the benefit of Sections 6 & 7 of Limitation Act,  
 however it was held that debutter property could be lost  
 by adverse possession and was actually found  
 'such in the said case. Reliance for the said proposition  
 was placed on several authorities including the following  
 Privy Council authorities:

- 1) Subaiya Pandaram Vs. M. Mustafa, IR 1923 P.C. 175
- 2) Gnanasaumbanda S. Vs. lu Indian Appeals 69
- 3) Damodar Das Vs. Adhikari Lakha Indian Appeals 147.

The leading case of *Calcutta High Court in Nilmony Singh Vs. J. Roy, (1896)* is also referred.

In *Naurangi Lal Vs. Ram Charan Das*, 1930 Patna 455 (DB), the above authorities of Allahabad High Court and Oudh have been followed and it has been held that an idol cannot be treated to be minor for the purposes of Sections 6 & 7 of Limitation Act. In the said case, Hon'ble Justice Fazal Ali (who was later elevated to the Federal Court and after the enforcement of the Constitution was sworn in as a judge of the Supreme Court) discussed several authorities (in number) and held that he was taking a different view against his initial tentative view. The authorities of different High Courts taking contrary view were noticed in the said judgment of the Patna High Court. The above authorities of the Privy Council, the leading authority of Calcutta High Court in *Nilmony Singh*,

supra were also considered.

Even though the said judgment reversed Privy Council in Ram Charan Naurangi Lal and Ors. AIR 1933 **P.C.75** however principle at property could be lost by adverse possession reversed. The Privy Council disagreed on question of starting point of limitation.

Similar view was taken in **Radha Krishan Das** Radha Raman, AIR 1949 Orissa. It was held in Para-15, after discussing several authorities that idol was minor and its property could be acquired (by the idol property) through adverse possession.

Calcutta High Court in **Surendra** Bhubaneswari, AIR 1933 Cal **295** held that the doctrine that idol is perpetual minor is an extravagant view. Privy Council authority of Damodar **Das**, supra. Judgment of Surendra was confirmed by Privy Council in Sri Sri Iswari Bhubaneshwari **Thakurani** v. Brojo Nath Dey and others, AIR 1937 **P.C. 1**.



In the following authorities Supreme Court even though question of perpetual minority of idol was not considered but it was held that math could lose title through adverse possession if idol is treated to be minor (perpetual), question of losing property through adverse possession.

In **Dr. Guranditta Mal Kar v. Amar Das**, AIR 1965 SC 1966, hereinafter referred to as **.M. Kapur**, 1965 (by a Bench of three Hon'ble Judges), the view that adverse possession cannot start unless there is a Mahanth or Shabait is not approved. This argument was referred to as novel contention in Para-11. In Para-12 of the said judgment it was held that the appellant had completed more than 12 years of adverse possession against debutter property hence it was held that the appeal was bound to be dismissed. Para-12 is quoted below:-

“12. We may point Mahant of Akhara represents the Akhara and has both the right to institute a suit on its behalf as also the duty to defend one brought against it. The law on the subject has been stated very clearly at pp. 274 and 275 in Mukherjea's Hindu Law of Religious and Charitable Trust, 2nd. It is pointed out that in the case of an execution sale of debutter property it is not the date of death of the incumbent of the Mutt but the date of effective possession as a result of the sale from which the commencement adverse possession of the purchaser is computed for the purposes of Art. 144 Limitation Act. This is in fact what the Privy Council has laid down in *Sudarsan Das v. Ram Kripal*, 77 Ind App 42 : (AI R 1950 PC 44). A similar view has been taken by the Privy Council in *Subbaiya v Mustapha*, 50 Ind App 295 : (AIR 1923 PC 175). What has been said in this case would also apply to a case such as the present. Thus if respondent No. 2 could be said to have represented the Akhara in the two earlier suits, decrees made in them would bind the respondent No. 1 as he is successor in office of respondent No. 2. On the other hand if respondent No. 2 did not represent the Akhara, the

*possession of the appellant under decree passed in these suits would clearly be adverse to the Akhara upon the view taken in the decisions of the Privy Council just referred to. first respondent's suit having been instituted after the appellant has completed more than 12 years of adverse possession must, therefore, be held to be barred by time. For these reasons disagreeing with the courts below we set aside the decrees of the courts below and instead dismiss the respondent No. 1 with costs in all the courts."*

In *Sarangadeva Periya Matam Goundar*, AIR 1966 SC 1603 (hereinafter referred to as *Matam, 1966*), by a Bench of three Hon'ble Judges, it has been held that even in the absence of a *de-jure* or *de-facto mathadhipathi* rule of limitation is suspended. In the said authority, it was held that plaintiff had acquired title by prescription in the said property. Paragraphs NO.6 & 10 of the said authority are quoted below:-

*"6. We are inclined to accept the respondents*

contention. Under Art. 144 of the Indian Limitation Act, 1908, limitation for a suit by a math or by any person representing it for possession of immovable properties belonging to it runs from the time when the possession of the defendant becomes adverse to the plaintiff. The math is the owner of the endowed property. Like idol, the math is a juristic person having power of acquiring owning and possessing properties and having the capacity of suing and being sued. Being an ideal person, it must of necessity act in relation to its temporal affairs through human agency. See *Babajirao v. Luxmandas*, (1904) ILR 28 Bom 1 (223). It may acquire property by prescription may likewise lose property by adverse possession. If the math while in possession of its property is dispossessed to if the possession of a stranger becomes adverse, it suffers an injury and has the right to sue for the recovery of the property. If there is a legally appointed mathadhipathi, he may institute the suit on its behalf; if not, the de facto mathadhipathi may do so, see *Mahadeo Prasad Singh v. Karia Bharti*, 62 Ind App 47 at p. 51: IR 1925 PC 44 at p. 46), and where, necessary, a disciple or other beneficiary of the math take

steps for vindicating legal rights by the appointment of a receiver having authority to sue on its behalf, or by the institution of a suit in its name by a next friend appointed by the Court. With due diligence, the math or those interested in it may avoid the running of time. The running of limitation against the math under Art. 144 is not suspended by the absence of a legally appointed mathadhipathi; clearly, limitation would run against it where it is managed by a de facto mathadhipathi. See *Vithalbowa v. Narayan Daji*, (1893) ILR 18 Bom 507 at p. 511, and we think it would run equally if there is neither jure nor a facto mathadhipathi.

10. We hold that by the operation of Art. 1 read with S" 28 of the Indian Limitation Act, 1908 the title of the math to the suit lands became extinguished in 1927, and the plaintiff acquired title to the lands by prescription. He continued in possession of the lands until January, 1950. It has been found that in January, 1950 he voluntarily delivered possession of the lands to the math, such delivery of possession did not transfer math.

*The suit was instituted 1954 within time."*

The Privy Council in *Indian appeals 203*, *Jagadindra Roy Vs. Hemanta* had held if Shabait of an idol was mi then would benefit of Section 7 of Limitation Act and fresh starti point for limitation would be available hi after attaining majority. This authority clearly meant that the Privy Council was of the view nn 9 benefit of Section 7 of Lim n (otherwise there was absolutely no question of extending benefit of the said section to the Shaba Even otherwise a In can not be appointed guardian other minor. Bishwanath's (1967) case authority been referred to. In the authority of the Supreme Cou Matam (1966), the said view of the Privy u slightly doubted and it was Para-8 by the Supreme Court as follows:

UB. In Jagadindra Roy's case (1904) ILT Cal 129 (PC), the dispossession of the idol's lands took place in April 1 only shebait of the idol was then a minor, and he sued for recovery of the lands in October 1BB9 within three years of his attaining majority. The Privy Council held that the plaintiff being a minor at the commencement of the period of limitation was entitled to the benefit of S. 7 of the Indian Limitation 1877 (Act XV of 1877) corresponding f the Indian Limitation Act, 19GB, and was entitled to institute the suit within three years coming of age. This decision created an anomaly, for, as pointed out by Page, J. in ILR 51 Cal 953 at p. 958: (AIR 1925 Cal 140 at pp. 142-143), in giving the benefit of S. 7 of the Indian Limitation 1877 to the shebait, Privy Council proceeded on the footing that right to sue for possession is to be divorced from the proprietary right to the property which is vested in the idol. We do not express any opinion one way or the other on the correctness of Jagadindra Nath Roy's case, (1904) ILR 32 Cal 129 (PC). For the purposes of this case, it is sufficient to say that we are not inclined to extend the principle of that case. In that case, at the commencement of the period of

*limitation there was a shebait in existence entitled to sue on behalf of the idol, and on the institution of the suit he successfully claimed that as the person entitled to institute the suit at the time from which the period is to be reckoned, he should get the benefit of S. 7 of the Indian Limitation Act, 1877. In the present case, there was no mathadhipathi in existence in 1915 when limitation commenced to run. Nor is there any question of the minority of a mathadhipathi entitled to sue in 1915 or of applying S. 6 of the Indian Limitation*

It is interesting to note

J. was a member of the Bench, which decided

**Matam's** case (1966) as which

decided **Bishwanath** (1967) judges

judgment of **Bishwanath** 'ble

Subba Rao, C.J. as by that ti h h h

Justice of the Supreme Cou

**In Bishwanath** (1967), n was

decided was regarding right fi it

recovery of immovable property wrongly



*Shabait*. On that point all authorities different High Courts were considered and two cases which took contrary view, *Idhar Handra and others Vs. Sri Sri Shyam Lal Thakur and others*, AIR 1938 Patna 394 and *Artatran Alekhagadi Brahma and others Vs. Sudersan Mohapatra and others*, AIR 1954 Orissa 11 were specifically overruled. Eight cases, three by Madras High Court, Allahabad High Court, one by Calcutta and Patna High Courts taking note of the approval by the Supreme Court were also mentioned.

In view of this, it cannot be said that the Supreme Court in *Biswanath's case* intended to overrule the sentence in Para-10 (quoted above) intended to impliedly overrule scores of cases of different High Courts and Privy Council on the question that idol is not a minor (perpetual minor) for the purposes of limitation. The doctrine of adverse possession/ prescription (debutter property) can also be established through adverse possession/ prescription.

In two judgments of the Supreme Court delivered one and two years before judgment **Bishwanath's case**, i.e. **Dr. G. Kapur** (1 ) supra and **S.P. Matam** (1966) supra judges Benches of Supreme Court had already taken 's property could be lost through adverse possession. Hon'ble Subba Rao, J., who delivered judgment the **Bishwanath's** case was of judges Matam's case, three Judges Bench. It cannot therefore be said that the bench which decided **Bishwanath's** case (1966) was not aware of earlier cases both by benches of three judges

Moreover in **Bishwanath's** case, J. K. Mukherjee's observation in "The Hindu Religious and Charitable Trust" 2nd Edition is quoted with approval in Para-11, which is quoted below:

*"11. There are two decisions Privy Council, namely, Pramatha Nath Mullick v. Pradyumna Kumar Mullick, 52 Ind App (AIR*

1925 PC 139) and *Kanhaiya v. Hamid Ali*, Ind App 263: (AIR 1933 198 (1)), wherein the Board remanded the matter to the High Court order that the High Court might appoint a disinterested person to represent the idol. No doubt in both the cases no question of any deity filing a suit for its protection arose, but the decisions are authorities for the position that apart from Shebeit, under certain circumstances, the idol can be represented' by disinterested persons. B. K. Mukherjea in his book "The Hindu Law of Religious and Charitable Trust" 4th Edn., summarizes the legal position by way of the following propositions, among others, at p. 249 .

1) An idol is a juristic person in whom the title to the properties of the endowment vests. But it only in an ideal sense that the idol is the owner. It has to act through human agency, and that agent is the Shebait, who is, in law, the person entitled to take proceedings on behalf of the idol. The personality of the idol might, therefore, be merged with that of the Shebait.

(2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of

must some other agency  
 right act for the idol. The  
 right in persons  
 take proceedings

reason

B.K. Mukherjee in the same book, a few pages  
 before, opined that an idol is a perpetual minor for the  
 purposes of limitation:

"A Hindu Idol is sometimes spoken of as a  
 perpetual infant, but the analogy is not only  
 incorrect but is positively misleading. There is no  
 warrant for such doctrine in the rules of Hindu law  
 and as was observed by Rankin, C.J. In *Surendra  
 V Sri. Sri Bhubaneswari*, it is an extravagant  
 doctrine contrary to the decision of the Judicial  
 Committee in such cases as *Damodar Das Vs.  
 Lakhan Des*. It is true that the deity like an infant  
 suffers from legal disability and has got to act  
 through some agent and there is a similarity also  
 between the powers of the shebait of a deity and

*those of the guardian of an infant. But the analogy really ends there. For purposes of Limitation Act the idol does not enjoy any privilege and regarding contractual rights also the position of the idol is the same as that of any other artificial person. The provisions of the Civil Procedure Code relating to suits by minors or persons of unsound mind do not in terms at least apply to an idol; and to build up a law of procedure upon the fiction that the idol is an infant would lead to manifestly undesirable anomalous consequences."*

(In first edition it page a In III  
edition it is on pages 201 a )

The Supreme Court did not question that opin It  
cannot therefore be assumed Supreme Court n  
Bishwanath's case just by sentence ntended  
lay down that for the purposes limitation  
be treated as perpetual mi

Even if it is assumed upreme Court  
**Bishwanath's** case held r purposes  
limitation idol is perpetual minor still the said a  
Bench of two Hon'ble Judges being directly In nfli

with two earlier authorities of the Supreme Court each by a Bench of three Hon' Judges.

Kapur (1965) and S.P. Matam (1966) not be said to be a correct law to be 'followed' by the authorities of 1965 and 1966, both being by three Judges binding upon us in preference to the authority of Bishwanath (1967) if it is assumed that

of Bishwanath, it was held for the purposes of limitation idol is to be treated as minor (perpetual in

The privy counsel in Mosque known as Masjid Shahid Ganj and others Vs **Shiroman**urdwara Parbandhak Committee, Amritsar other AIR 1940 **P.C.** 116 has held that both Muslim as well as Hindu religious properties may be lost by adverse possession

*"But there has never been any doubt that the property of a Hindu religious endowment – including a thakurbari is subject to the law of limitation" (1911).*

constitution bench of the Supreme Court In **Il** Farooqui (1994) supra has approved the ratio

of the Privy Council and in para SCC) h  
equated mosque with other religious places like Chu  
temple etc. in the matter limitation/adverse  
possession and acquisition.

Accordingly, it is held idol/deity n mer  
(perpetual) for the purposes limitation a debutter  
property may be lost through adverse possession

Accordingly, suit no., 5 a not to  
barred by limitation.

11- Res-judicata and/or admissibility f  
judgment and assertions made r mitted be  
**made in the pleadings of Suit no.61/280 of 1885**

Issues No.7, 7(b), 7(c), ) & 8 of Suit No 4,  
Issues No.5(a), 5(b), 5(c) ) 0.1,  
Issue No.23 of Suit No 5

It has strenuously been a plaintiffs  
Suit nO.4 that the judgment in ab it rates  
res-Judicata. Details of pleadi s a JU In  
the said suit have been given in u n part of

this judgment. Section 11 C.P.C. alongwith Explanati

IV and VI is quoted below:-

11. *Res judicata*.- No suit shall be brought in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard, and finally decided by such Court.

Explanation I ..... not quoted

Explanation II. .... not quoted

Explanation III ..... not quoted

Explanation IV- Any matter which might have been made ground of defence or attached in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V .....not quoted

Explanation VI.- Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right or, for the purposes of this section, be deemed to be persons so litigating.

The first and foremost question to ascertain



what was the matter which was finally decided In it  
of 1885. In-fact the judgment in suit d n  
decide anything substantial . The only thing which was  
decided was that in view peculiar topography  
(worshipping places of both un situate  
within the same compound/bou ll a ng  
common entrance) and due likely hood of riots  
of very high level between un  
plaintiff of the suit Mahant Raghu r not be  
permitted to raise construction over abootra  
Ultimately, in the final judg it status  
quo (order which is almost invariably passed only as an  
interim order) should be maintained. it  
therefore dismissed. Refusal decide controversy  
is the actual decision in the said suit. In some moments  
of weakness I also thought should al adopt the  
same course. However, I resisted ptation  
promptly. Accordingly, as nothing was decided  
in the said suit hence main part of the Section-11 C.P.C.

is not attracted.

It was specifically argued by learned counsel for the Muslim parties (plaintiffs in suit no. 11 and in other suits) that Explanation IV is not squarely attracted. Elaborate argument was argued that the plaintiff of suit no. 1 might have asserted that the land shown in the map annexed to the Mosque and in possession of Muslims is not a Mosque and not in possession of Muslims, but a part of the said suit categorically admitted that the constructed portion and the surrounding yard is a Mosque and in possession of Muslims, hence there was no sense in asserting otherwise. Accordingly, in view of Explanation IV is also not attracted.

In view of the above findings, the question arises on the occasion to decide applicability of Explanation VI does not arise.

Now the question comes regarding admissibility

the judgment particularly \_\_\_\_\_ In  
 judgment and the assertions made omitted  
 made and the admissions in p s sa  
 suit. Normally question of ad ibil a piece  
 evidence is not covered by In nstant  
 suits also no such issue has d. However, as  
 the judgments and the pleadi f it if  
 admissible will have lot rl n severa issues  
 henr.e it is appropriate to r ibi or  
 otherwise at this juncture, n a ons  
 Evidence Act are relevant i. n 13 a  
 said sections and Section 43a quoted below:-

**13. Facts relevant when right of custom In**  
 question.-- Where the question is as to  
 existence of any right or custom, the following facts  
 are relevant---

(a) any transaction by which the right or custom In  
 question was created, claimed, modified,  
 recognized, asserted, denied, or which  
 inconsistent with its existence;

(b) particular instances in which the right or  
 custom was claimed, recoqni r exercised or in

which its exercise                      disputed      asserted  
departed from.

**42. Relevance and effect**  
or decrees, other than **those**  
section 41..... Judgments, orders or decrees other  
than those mentioned in section 41, are relevant  
they relate to matters      a public nature relevant to  
the enquiry; but such judgments, orders or decrees  
are not conclusive proof of that which they state.

**43. Judgments, etc., other than**  
**mentioned in sections 40 to 42. when**  
Judgments, orders or decrees, other than those  
mentioned in sections 40, 41 and 42, are irrelevant,  
unless the existence of such judgment, order or  
decree, is a fact in issue. or is relevant under some  
other provisions of this

The previous judgment itself may                      n

covered under the definition                      word      transaction

used in Section 13 however,                      case      up

parties in the previous litigation                      a                      in

judgment obviously fall within                      a bit                      the word

'transaction'. Even otherwise if it is assumed                      a

previous judgment does not fall under Section 13

Evidence Act on its strict, narrow construction still if

judgment is relevant under Section 42 then it

taken into consideration and c placed thereupon. Section 42 is squarely applicab earlier judgment related to matters of a public nature

In State of Bihar vs, Radha **Krishna** Singh A.I. 1983, **S.C.** 684 it was held that previous judgment n In between the parties to the subsequent litigation n admissible under Section 13 of Evidence Act.

Para 121:- Some Courts have used Section 13 to prove the admissibility of a judgment as coming under the provisions of S.43, referred to above. We are however, of the opinion that where there is a specific provision covering the admissibility of a document, it is not open to the court to call into aid other general provisions in order to make a particular document admissible. In other words if a judgment is not admissible as not falling within the ambit of Sections 40 42. it must fulfil the conditions of S.43 otherwise it cannot be relevant under S.13 of the Evidence Act. The words "other provisions of this Act" cannot cover S.13 because this section does not deal Judgments at all.

However, in this rega some previous authorities of the Supreme Court were not taken nto consideration In "Tirumala Tirupati Devasthanams v. K. M Krishnaiah" AIR 1998 SUPREM **COURT** 11 it

held that a previous judgment in which plaintiff subsequent suit was not party admissible under Section 13 of the Evidence In authority rlier Supreme Court authorities were also considered

Para 8: It was argued by the learned counsel the plaintiff respondent that the earlier judgment In O.S. 51 of 1937 dated 15.6.1942 was rendered In favour of the TTD against Hathiramji Mutt, that plaintiff was not a party to that suit and hence any finding as to TTD's given therein is not admissible as evidence against the present plaintiff in this suit.

Para-9 In our view, his contention is clearly contrary to the rulings of this Court as well as those of the privy Council. In *Prinivas Krishna Rao Kango vs. Narayan Devji Kango & Others* [AIR 1954 SC 379], speaking on behalf of a Bench of three learned Judges of this Court, Venkatarama Ayyar, J. held that a judgment not inter parties is admissible in evidence under section 13 of the Evidence Act as evidence of an assertion of a right to property in dispute. A contention that judgments other than those falling under sections 40 to 44 of the Evidence Act were not admissible in evidence was expressly rejected Again B.K. Mukherjea, J. (as he then

was) speaking on behalf a Bench of four learned Judges in *Sital Das ant Ram & Others* [AIR 1954 SC 606] held that a previous judgment no inter partes, was admissible in evidence under section 13 of the Evidence Act as a 'transaction' in which a right to property 'asserted' and

'recognised'. In fact, much earlier, Lord Lindley held in the Privy Council in *Dinamoni vs. Brajmohini* [1902] [ILR 29 Cal. 190 (198) (PC)] that a judgment, not inter partes was admissible in evidence under Section 13 to show who the parties were, what the lands in dispute were and who was declared entitled to retain them. The criticism of the judgment in *Dinamoni vs. Brajmohini* and *Ram Ranjan Chakerbati vs. Ram Narain Singh* [1895 ILR 22 Cal 533 (PC)] by Mr John Woodroffe in his commentary on the Evidence Act (1931, P 181) was not accepted by Lord Blanesburgh in *collector of Gorakhpur vs. Ram Su* [1915 ILR 157 (61 IA 286)].

Unfortunately in this authority the authority of State of Bihar vs. R.K.Singh (1969) 1 sup was not considered. Both the authorities are on a par with the Judges each. Similarly in *State of Bihar vs. R.K.Singh* (1969) 1 sup authority the earlier two Supreme Court decisions were overruled by three Hon'ble Judges and the present case was decided by three Hon'ble Judges (both referred to in *State of Bihar vs. R.K.Singh* (1969) 1 sup). In *State of Bihar vs. R.K.Singh* (1969) 1 sup, the authority of *Devasthanams* (1998) 1 sup was not considered.

In any case even if Section 13 of the Evidence Act is ignored, the judgment of 1969 is admissible under

## Section 42 of the Evidence

In my opinion the more important question which to be decided is as to whether admissions and assertions made and omitted to be made in pleadings of 1885 suit are admissible or not. There cannot be any doubt that pleadings are covered by the definition of 'transactions' as given under Section 13 Evidence Act. In this regard reference may be made to **Hari Lal vs. Amrik Singh** AIR 1978 Allahabad 292 wherein it has been held in para-1 that admissions in earlier suit not inter partes are admissible under Section 13 of Evidence Act. In the same authority it has also been held that recitals in deeds between third parties are admissible. In the present proposition reliance was placed on the following authorities:-

1. **Ms. Katori vs. Prakash** (AIR 1978 Allahabad 351)
2. **Rangayyan v Innasim u Mudali** (AIR 1950 Madras 226) and,



3. Natwar vs. Alkhu 1 1 11 1).

In "Harihar Prasad Singh Deonarain Prasad" AIR 1956 SUPREME COURT 305 it is held that if in a mortgage deed the land is described as private land, it is not admission of mortgagee but it is admissible under Section 13 of Evidence Act. In particular mortgagee was claiming under mortgage deed in the said authority it has been held that a transaction etc. which is a motam (before the start of the dispute or the lis) is more reliable than litem motam (after the start of the dispute/litigation) transaction.

As far as the question of admissibility of judgment of 1885 under Section 13 of Evidence Act is concerned, reference may be made to the Supreme Court authority reported in Rupakshayya Shankarayya v. Neelakanta Shivacharya Pattadadevaru" AIR 1995 SUPREME COURT 2187. In the said case the dispute regarding Padadayya

of the Math. There was an earlier decision Privy Council of the State in that regard. The Supreme Court held that even though explanation Section 11 C.P.C. was not attracted as in earlier litigation present plaintiff was not party however relevant judgment was admissible under Section Evidence. Reversing both the judgments of the courts below Supreme Court passed the judgment in accordance with the earlier judgment of Privy Council of the State.

It is therefore held in the above judgment dated 15 admissions and assertions made or omitted to be made in the pleading of the said suits are admissible under Section 42 Evidence Act as well as Section 13 read with Section 42 of the Evidence Act.

111- **When the structure in the disputed premises was constructed and by whom and what was its nature:-.**

This point covers the following issues

Issue No.1, 1(a) & 1- Issue No.4

Issue NO.6 of Suit No.1,  
 Issues No.1 & 5 of Suit .3,  
 Issues No.9 & 15 of Suit .5

Muslim Parties particularly Waqf Board plaintiff of  
 Suit NO.4 has asserted the disputed premises  
 including the constructed portion therein as a mosque  
 constructed by Babar (or his orders) in 1526. Babar  
 came to India in 1526 and died in 1530. Muslim  
 parties have pleaded either solely or in first instance  
 that the premises in dispute were never constructed  
 as a mosque either by Babar or anyone. However, some  
 of the Hindu parties in the alternative have pleaded  
 that some attempts were made during the period of Babar,  
 to convert the existing temple into a mosque but the attempts  
 did not succeed/ fully succeed. The second alternative  
 case taken by most of the Hindu parties is that even if  
 it was assumed/ proved that the premises in dispute or the  
 constructed portion and the inner courtyard was a mosque  
 still it ceased to be a mosque since 1857 when during a  
 riot the same was substantially damaged and at

thereafter no Muslim offered prayer/ *namaz* n sa premises.

Paras 23 & 24 of Suit 5 deal with the construction at the premises in dispute. These paragraphs also do not state anything categorically. First few lines of paragraph No.23 are quoted below:

*'The books of history public records unimpeachable authenticity, establish indisputably that there was an ancient Temple of Maharaja Vikramaditya's time at Sri Rama Janma Bhumi, Ayadhya. That Temple was destroyed partly and an attempt was made to raise a mosque thereat, by the force of arms, by Mir a commander of Baber's hordes. The material used was almost all of it taken from the Temple including its pillars which were wrought out of Kasauti or touch-stone, with figures of Hindu gods and goddesses carved on them. There was great resistance by the Hindus and many battles were fought from time to time by them to prevent the completion of the mosque. To this day it has minarets, and no place for storage of water Vazoo. Many lives were lost in these battles. The last such battle occurred in 1855. Sri Rama Janma Bhumi, including the building raised during Babar's*

*time by Mir Beqi, was possession and control of "Hindus at that time."*

Thereafter, an extract. — 1 Faizabad Gazetteer has been quoted wherein it mention in 18, Babar came to Ayodhya and destroyed the a e pie and on its site built a mosq ll known bar's Mosque. In Para-24 of the plai it is mentioned that such a structure (referred to in para-23 of the plaint) raised the force of arms on land belonging e laintiff Deities after destroying the ancient e situate thereat, with its materials including the Kasauti pillars with figu indu gods carved thereon, could b a mosque and d become one inspite of the attempts to treat it as a mosque during the British rule after annexation of Avadh. Thereafter, in sub-paras (A) ), it has been mentioned that the building so erected could not be a u r Muslim Law. In Para-26, it has been mentioned that at a rate no payers have ever been offered in e ilding in dispute recorded as 'Janmasthan Masjid riuri ritish

times. Thereafter, it is mentioned that after destruction of substantial parts of the domes of the shrine in the year 1934, no one dared to offer namaz therein even though the building was got rebuilt by the Government.

The Muslim parties in support of their assertion regarding construction of mosque at the *pulpit* and the other Gate. However, admittedly inscriptions were either totally destroyed or badly damaged in the riots of 1857 and were replaced. Muslim parties also claimed that the replaced inscriptions were exactly the same, which existed since before. Original inscriptions are reproduced in the I. Report titled as The Sharqi Architecture of Jaunpur by Arthur H. H. published in 1889 and in Babar translated in English by A. S. Beveridge (published in compact book form in 1921). Inscriptions are also published in Epigraphia Indica Arabic and Persian volume 1 and 1965 published by A. H. H., the authenticity of these three inscriptions is highly doubtful.

Moreover A.S.1. Epigraphia Indica of 1965 being post *litem motam* cannot be given much weight vide State of Bihar Vs. R.K. Singh, AIR 1968 & Bihar Prasad Singh Vs. D. Prasad 1968. The manner in which Epigraphia Indica 1964 and the book claim to have obtained the copies of the originals is such that not much reliance can be placed thereupon. There is also vast variation in different inscriptions/copies. It is alleged that the inscriptions in some verses denoting the date of construction (in some language every alphabet is allotted a number and the numbers of alphabets of all inscriptions for the year) The names of some persons are given. In such manner that adding the, number of their names, their year of birth is ascertained (In some called historical names). Relevant inscriptions in one of the copies of the inscriptions denote 935 Hijari corresponding to 15. 18. 19. However, as the inscriptions 9 are given and the reports have not been proved by copies

originals and they cannot be termed as evidence hence on the basis of these inscriptions it cannot be that either the building was constructed by or under orders of Babur or it was constructed in 1588. In this regard detailed reasons have been given by my learned brother S. Agarwal, J. with which I fully agree

However, there are several documents which indicate that at least since the middle 18<sup>th</sup> Century, the mosque was popularly known as Babari Masjid. It is mentioned as such in several Gazetteers, municipal and official records and different applications filed before different authorities for different purposes. Most of the parties in their pleadings as well as evidence have stated that the mosque was constructed by Babur under orders of Babur. One has pleaded that if there is any evidence in the premises in dispute then it was constructed during the period of any other ruler except Babur.

In one of the copies of the inscription it is stated that Mir Baqi under orders of Babur constructed a mosque. Babarna



Babur has extensively been quoted particularly its translation by Beve was originally written in Turkish and thereafter translated in Persian. Thereafter translated in several languages including and Hindi. However, Babur himself mentioned that some pages of his diary were lost in a storm. The pages include the pages from 1528 to 18. In the pages of 28<sup>th</sup> March & 2<sup>nd</sup> April, it is mentioned that Babur had reached towards other side of the River Sarju/ Ghaghara and gone for hunting on 02.04.1528. It has also been mentioned in the Babarnama, there is no mention of the name of Mir Baqi.

As relevant pages of Babur's diary are missing, hence no light on the question as to whether the fort was constructed by Babur or not.

Sri P.N. Mishra, learned Advocate, learned in Suit No.4 very strenuously for such

a person who could not construct a mosque either after demolishing a temple or at a place which was held sacred by Hindus. Learned counsel has argued that it was Aurangzeb who attempted a pie, however his forces succeeded only in and could only damage to some extent the existing temple and In days thereafter Hindus reoccupied same However, written statement filed by Defendant No.20 no such case has been taken.

Joseph Tieffenthaler also mentioned that th  
was constructed by Aurangzeb demolitio

he adds that accord

mentions

the cradle)

766-7

ny such

about 60 to

event

of the people of Ayod

Tieffenthaler must have been there should  
heard it as first hearsay, i.e. from their fathers, uncles etc.

Sri Jadunath Sarkar has written a U Inous k  
on Aurangzeb in early Century e Book  
considered to be quite authentic. In book  
Sarkar has been extremely critica religious policy  
Aurangzeb and has described hi as religious bigot  
fanatic. He has mentioned that Aurangzeb demol  
several temples. In Volume-3, Appen  
list of all the temples wh according hi were  
demolished by Aurangzeb. There is a ly n  
of any such demolition at Ayodhya. There is n  
that in Ayodhya Aurangzeb constructed a ue and  
that also at a place, which was held sacred by the Hindu

William Finch a foreign traveller came to India in 1  
and remained here till 1611 wrote exten unts  
of his travels in India. There is no mention a mosque  
in his account relating to Ayodhya. Similarly In Ain-e-  
Akbari compiled by Abul Fazal during Akbar's period there  
is no mention of any mosque. However, omission a

mosque in both these books does di ste  
of mosque. These two books do not purport to 9 details  
of all the religious places pa la f mosques In a  
particular area.

The first Gazetteer wh mentions something a  
Ayodhya is of 1828 by Walter amilton. Relevant portion  
is quoted below:-

*"Pitqritns resort to this vicinity, where remains of  
the ancient city of Oude, and capital of the great  
Rama, are still to be seen, but whatever may have  
been its former magnificence it now exhibits nothing  
but a shapeless mass of ruins. The modern town  
extends a considerable way along the banks of the  
Goggra, adjoining Fyzabad, is tolerably well  
peopled; but inland it a mass of rubbish and jungle,  
among which are the reputed site of temples  
dedicatedlll to Rama, Seeta, wife, Lakshman,  
his general, and Nanimaun (a large monkey}, his  
prime minister. The religious mendicants who  
perform the pilgrimage to Oude are chiefly of the  
Ramata sect, who walked round the temples and  
idols, bathe in the pools, perform the  
customary ceremonies."*

Dr. Buchanen had surveyed eastern parts of the country including Ayodhya — 1807 to 1860 and sent his reports to England. Montgomery Martin published parts of the said reports in 1838 in a six volume book, titled as "History, Antiquities and Topography and Statistics of Eastern India". Relevant portion of the same is quoted below:

*“ if these temples ever existed, the smallest trace of them remains to enable us to judge of the period when they were built; and the destruction is very generally attributed by the Hindus to the furious zeal of Aurungzebe, to whom also is imputed the overthrow of the temples in Benares and Mathura. What may have been the case in the latter, I shall not now take upon myself to say, with respect to Ayodhya the tradition seems very ill founded. The bigot by whom the temples were destroyed, is said to have erected mosques on the situations of the most remarkable temples; but the mosque at Ayodhya, which is by far the most entire, and which has every appearance of being the most modern, is ascertained by an inscription on its walls (of which a copy is given) to have been built by Babur, five generations before Aurungzebe.”*

Thereafter, in the same it mentioned follows:-

*"Ttie bigot by whom temples were destroyed, is said to have **erected mosques on the situations of the most remarkable temples**; but the mosque at Ayodhya, which is by far the most entire, and which has every appearance of being the most modern, is ascertained by an inscription on its walls (of which a copy is given) to have been built by Babur, five generations before Aurungzebe ... The only thing except these two figures and the bricks, that could with probability be traced to the ancient city, are some pillars the mosque built by Babur. These are of blackstone, and of an order which I have seen nowhere else, . they have been taken from a Hindu building, is evident, from the traces **images being observable on some of their bases, although the images have been cut off to satisfy the conscience of the bigot.**"*

In the Thornton's gazeteer 1854/1 n in 1993 by low price publication, a e page s been devoted to oude (Avadh/Ayod ). In gazetteer heavy reliance is placed Buchan s report o later

on took the name of Hamilton) In Thornton's gazetteer it is mentioned that Bairagis were n lng anu nqan and other Hindu mendica . It al mentioned close to the bank of Ghogra a Ins sa to be those of the fort of Ram of Oude of the Ramayan. Thereafter the following observation Buchanan has been quoted:

*"tbet the heaps of bricks, although much seems to have been carried away by the river, extend a great way; that is, more than a mile in length, and more than half a mile in width; and that, although vast quantities of materials have been removed to build the fvlahomedan Ayodha or Fyzabad, yet the ruins in rnany parts retain a very considerable elevation; nor is there any reason doubt that the structure to which they belonged has been very great, when we consider that it has been ruined for above 2,000 years."*

Thereafter Thornton writes as ||

*"The ruins still bear the name of Ramgurh, or "Fort of Rama;" the most that from which, according to the legend, Rama took his*

flight to heaven, carrying people of his city; in consequence of which it remained desolate until re peopled by Vikramaditya, king of Oojein, half a century before the Christian era, by him embellished with 360 temples. Not smallest treces of these temples, however, now remain; and according to native tradition, they were demolished by Aurungebe, who built a mosque on part of the site. The falsehood of the tradition is, however, proved by an inscription on the wall of the mosque, attributing the work to the conqueror Baber, from whom Aurungzebe was fifth descent. The mosque is embellished with iourteen columns of only five or six feet in height, but very elaborate and tasteful workmanship, said to have been taken from the ruins of the Hindoo fanes, to which they had been given by the monkey-general Hanuman, who had brought them from Lanka or Ceylon. Altogether, however, remains of antiquity in the vicinity of this renowned capital must give very idea of the state of arts and civilization of the Hindoos at a remote period. quadrangular coffer of stone, whitewashed, five ells long, four broad, and protruding five or six inches above ground, is pointed out as the cradle in which Rama was born, as the seventh avatar of Vishnu, and is accordingly abundantly honoured



*pilgrimages and devotions of the Hindoos."*

Afterwards it has also been mentioned that Ayodhya was totally deserted several times and that it was rebuilt by Vikramaditya.

However in the preface Thornton has mentioned that the gazetteer printed in 1858 was based on the Gazetteer published by him in 1854 with some retrenchment and insertion of much new matter. The original edition of 1854 has not been filed. It is possible to know the extent of addition in relation to 'Oudh' in the 1858 Gazetteer.

Cunningham in Archaeological report 1862-63 mentions about Ayodhya (at ) as follows

*"There are several very holy Brahmanical temples about Ajudhya, but they are all of modern date, and without architectural pretensions whatever. But there be no doubt that most of them occupy the sites of more ancient temples that were destroyed by the Muslims."*

AND

*"Close by is the Lakshman Ghat, where*

*brother Lakshman bathed and about one-quarter of a mile distant] in the very heart of the city, stands Jenem Asthen, or "Birth-place temple" of Rama."*

He does not mention a construction mosque after demolition of temple.

Thereafter, comes a historical sketch Tehsil Fyzabad District Fyzabad a ciating Commissioner and Settlement Officer It was published' in 1870. Carnegie mention at Ajudhia is to the Hindu what Macca the Mahomedan and Jerusalem to the Jews. is further mention at ancient city of Ajudhia is said to have covered an area 48 kos (96 miles). Thereafter, reference Ram d Ramayan has been made. Thereafter, it oned that after the fall of the last of Rama's li udhia and e

it was converted

keorah. Thereafter it is

restored e a

Thereafter, it is at

was Ramkot "the strong hold

Ramchandar" which covered a large extent of around  
 according to ancient manuscri it was surro  
 bastions" (names of all those bastions are mentioned

"Within the fort where eig royal mansion where  
 dwelt the patriarch Dasrath, his a Rama  
 deified son one of eight his mansi

of Kosilla .... his wife of Raja . he other on

mentioned as Janam Asthan ( a s birth place

Thereafter, it is mentioned according

Bikramajit's constructed 360 temples at Ajudh on which  
 only 42 were known to the present 9 . It is rther

mentioned that as there are but few things a real

old to be seen in Ajudh , most these u

comparatively recent resto n. list of these rines is

given as Appendix A. Appendix A contains 209 items. The

first item is Janam Asthan which is stated have been

founded/restored by Ram Das Ji 166 years before

In the first paragraph remarks column In  
 Appendix-A it is mentioned as follows

*"Great astonishment been expressed the*

*recent vitality of the Hindu religion as Ajudhia and it was to test the extent of this chiefly that with small amount of labour, statement has been prepared. As the information it contains may permanently useful I have considered it well to give a place here. This information is as correct as it can now be made, and that is all that I can say."*

Thereafter, comes the most emphasised portion  
Carnegy's historical sketch under the title *Janasthan*  
and other temples' which is quoted below

*The **Janmasthan** and other temples* It is locally affirmed that at the Mahomedan conquest there were three important Hindu shrines, with but few devotees attached, at Ajudhia, which was then little other than a wilderness. These were the "Janmasthan," Sargadwar mandir" also known as "Ram Darbar" and the "Tereie-ke-Thakur"

On the first of these Emperor Babar the mosque which still bears his name, A.D. 1 the second Aurangzeb did the same A.D. 1658-1707, and on the third that sovereign, or his predecessor, built a mosque, according to the well known Mahomedan principle of enforcing their religion on all those whom they conquered.

*The Janmasthan marks the place where Ram Chandr was born. The Sargadwar is the gate through which he passed into Paradise, possibly the spot where his body was burned. The Tareta-ka-Thakur was famous as the place where Rama performed a great sacrifice, and which he commemorated by setting up there images of himself and Sita.*

**Babar's mosque** – *According to Leyden's memoirs of Babar that Emperor encamped at the junction the Serwa and Gogra rivers two or three kos east from Ajudhia, on the 28<sup>th</sup> March 1528, and there he halted 7 or 8 days settling the surrounding country. A well known hunting ground is spoken of in that work, 7 or 8 kos above Oudh, on the banks of the Surju. It is remarkable that in all the copies of Babar's life now known, the pages that relate to his doings at Ajudhia are wanting. In two places in the Babari mosque the year in which it was built 935 H., corresponding with 1528 A.O. is carved in stone, along with inscriptions dedicated to the glory of that Emperor*

*If Ajudhia was then little other than a wild, it must at least have possessed a fine temple in the Janmasthan; for many its columns are still existence and in good preservation, having been used by the Musalmans the construction of Babari. Mosque. These of strong close-grained*

dark' slate-colored or black stone, called by natives *Kasoti* (literally touch-stone,) and carved with different devices. To my thinking these strongly resemble Buddhist pillars that I have seen at Benares and elsewhere. They are from seven to eight feet long, square at the base, centre capital, round or octagonal intermediately

### **Hindu and Musalman differences.-**

Janmasthan is within a hundred paces of the Hanuman Garhi. In 1855 when a great rupture took place between the Hindus Mahomedans, the former occupied the Hanuman Garhi in force, while the Musalmans took possession of the Janmasthan. The Mahomedans on that occasion actually *cherqet!* up the steps of the Hanuman Garhi, but were driven back with considerable loss. The Hindus followed up this success, and at the attempt, took the Janmasthan, at the gate of which 75 Mahomedans are buried in the "Martyrs' grave" (Ganj-shahid) Several of the King's Regiments were looking on all the time, but their orders were not to interfere. It is said that up to that time the Hindus and Mahomedans alike used to worship in the mosque-temple. Since British a railing has been put up prevent disputes, within which in the mosque Mahomedans pray) while outside fence

*Hindus have raised a platform which make their offerings.*

The recording of existing position is an important piece of evidence. Recording of local tradition and belief may also be taken into consideration to some extent. However when writers prepare the report they take upon themselves the task of history writing and such parts are admissible on the condition that the writers are historians. The portion: *"a mosque, according to the well known Mahomedan principle of enforcing their religion on all those whom they have conquered."* The second paragraph of the above quoted portion is merely a view of a person who is neither expert historian nor a student of religion. Since the British period Aurangzeb was the favourite whipping boy whenever doubt, dispute or allegation is expressed, raised or made regarding the demolition of temple and construction of a mosque at the site thereof. If the above observation had been correct, no temple particularly in villages and towns would have survived. Richard M. Eaton in his recent book *Pie*

Desecration and Muslim States Medieval India  
published in 2004 by Hope mentioned  
subsequent rulers attacked those glorious  
places/temples which were support of sovereignty for the  
previous rulers. Seeking religious support for sovereignty  
was not unknown in olden times. Christians, Muslims  
and Hindus. The other reason for such dastardly act was  
wealth particularly in the form of diamonds  
accumulated in the temples. Babar, Humayun, Aurangzeb  
none of these reasons existed in India.

At that time, Englishmen were vainly suffering  
from the delusion that only they could rule (nay the  
entire World) as all others were incompetent, corrupt,  
tyrant, intolerant and bigots. To snatch their  
delusion from them was like snatching a  
diamond from a tigress.

Even though the above three copies of inscriptions  
can not be held to be the original  
inscriptions however as in the above inscriptions



containing the name of Babar is mentioned even in Thornton's gazette of 1854/58. Carnegi and Nevi Gazetteers have mentioned about these inscriptions.

In the gazetteer of 1905 and 1911 by H.R. Girdhar mentioned that in 1528 Babar came to Ajodhya and destroyed the ancient temple and on its site a mosque still known as Babar's mosque and the material structure were largely employed and are in good preservation which is called Kasauti 100 feet in length. It is further mentioned that mosque has two inscriptions one of the outside and the other on the pulpit giving year of construction as 1528. The portion has been quoted in para-23 of the plaint of S. Ramdas. It has been reproduced in the earlier part of the heading of pleading and sub-heading. Thereafter, it is mentioned therein as follows

*'This desecration of the most sacred spot in the city caused great bitterness between Hindus and Musalmans. On last occasions the feeling led to bloodshed and in 1885 an open fight occurred, the Musalmans occupying the Janamsthan in force and*

thence making a desperate assault on the Hanuman Garhi they charged up steps of the temple, were driven back with considerable loss. The Hindus then made a counter attack and stormed Janamasthan at the gate which Musalmans were buried."

Thereafter it is mentioned in same follows-

"It is said that upto Hindus Muslims used to worship in the same building, but since mutiny an outer enclosure has been put up in front of the mosque and the Hindus who are forbidden access to the inner yard, make their offerings on a platform which they have raised in the outer one."

In all the Gazettes, which have heavily relied upon by the Hindu parties, it is mentioned constructed portion of the premises in dispute is a mosque. Tiffin Thaler mentioned it is a mosque. In various government records, it is on a mosque. In the plaint of suit of 1885, it is a mosque. Particularly in the map and a plaint.