CA 2894/2011

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 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:-

Mohammad Hashim ... Appellant

Versus

Mahant Suresh Das and others ...Respondents

PAPER-BOOK

VOLUME - XXXIII

(CIVIL APPEAL NO. OF 2011)

(Pages 8534 - 8719)

I.A. No.	OF 2011	Application for Substitution of Legal Heirs.
I.A. No.	OF 2011	Application for Exemption from Official Translation.
I.A. No.	OF 2011	Application for Stay.
I.A. No.	OF 2011	Application for Condonation of Delay in Substitution.
I.A. No.	OF 2011	Application for Condonation of Delay in Re-filing.

974

FILED BY:-

[M.R. SHAMSHAD]

ADVOCATE FOR THE APPELLANT

VOLUME – XXXIII

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[M R SHAMSHAD]
Advocate for the Appellant

A

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IN THE MATTER OF:

Mohammad Hashim..... Appellant

Versus

Mahant Suresh Dass and Ors. Respondents

OFFICE REPORT ON LIMITATION

1. The petition is within time. - Yes

2. The petition is barred by time and there is delay of ____ days in filing the same against order dt. _____ and petition of _____ days delay has been filed.

3. There is delay of .....day in filing the petition and petitioner for condonation of ..... days in refilling has been filed.

Drawn on 09.02.2011

Filed on: 14.02.2011

New Delhi

[M.R.SHAMSHAD]
Advocate for Appellant

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LISTING PROFORMA

IN THE SUPREME COURT OF INDIA

1 Nature of the matter . . Civil Matter . .

2. (a)Name(s) of Petitioner(s)/Appellant(s). .....Mohammad Hashim

(b) e-mail ID..... (I) N/A.....

3. (a)Name(s) of Respondent (s) .. ..Mahant Suresh Das Chela

Sri Pram Hans Ram Chandra Das & Ors

(b)e-mail ID..... N/A .....

4. Number of case..... .. CIVIL APPEAL . No. of 2010 .....

5. (a)Advocate(s) for Petitioner(s)..... MR M R SHAMSHAD.....

(b)e-mail ID..... shamshadmr@gmail com.....

6. (a) Advocate(s) for Respondent (s)..... N/A.....

(b) e-mail ID..... N/A.....

7. Section dealing with the matter ..... Section –

8. Date of the impugned Order/Judgment ..... 30 09 2010.....

8A. Name of Hon'ble Judges ..... Hon'ble Mr. Justices S.U. KHAN, SUDHIR AGGRAWAL & D V SHARMA.....

8B: In Land Acquisition Matters :

i) Notification/Govt. Order No. u/s. 4,6).. .....Not Applicable.....

dated..... N/A .....issued by Centre/State of. ..... N/A.....

ii) Exact purpose of acquisition & village involved..... N/A.....

8C. In Civil Matters :-

i) Suit No., Name of Lower Court....O.O.S. NO.4 of 1989 (along with O.S.No. 1, 3&5 of 1989) passed by three Hon'ble Judges of Special Bench Hon'ble High Court of Allahabad, Lucknow Bench Lucknow.

Date of Judgment..... 30.09.2010

8D. In Writ Petitions :-

"Catchword" of other similar matters ..... N/A

8E. In case of Motor Vehicle Accident Matters :

Vehicle No..... N/A.....

8F. In Service Matters

(i) Relevant service rule, if any..... N/A.....

(ii)G.O./Circular/Notification, if applicable or in question..... N/A.....

8G. In Labour Industrial Disputes Matters :

I.D. Reference/Award No., if applicable ..... N/A.....

Nature of urgency . In view of the fact the respondent has floated new Tender.....

9. In case it is a Tax matter :

a) Tax amount involved in the matter. ..... NIL.....

b) Whether a reference/statement of the case was called for or rejected..... N/A.

c) Whether similar tax matters of same parties filed earlier (may be for earlier/other Assessment Year)?.. .....NIL.....

d) Exemption Notification/Circular No..... .....Nil.....

11. Valuation of the matter . NIL

12. Classification of the matter :

(Please fill up the number & name of relevant category with sub category as per the list circulated)

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No of Subject Category with full name

No of sub-category with full name

13. Title of the Act involved (Centre/State) 1) Limitation Act 1908.

2) Limitation Act,1963.

3) Wakf Act 1963

4) Wafk Act 1995

5) U P Wakf Act 1936

6) Transfer of Property Act.

7) Registration Act 1908

8) Muslim Law- Amir Ali

9) Constitution of India

10) Indian Evidence Act

11) Code of Civil Procedure 1908

12) Code of Criminal Procedure 1973 etc.

14. (a) Sub-Classification (indicate Section/Article of the Statute).....

(b) Sub-Section involved.....

(c) Title of the Rules involved (Centre/State).....

(d) Sub-classification (indicate Rule/Sub-rule of the Statute).....

15. Point of law and question of law raised in thecase

(i)Whether faith and belief of one community can take away the established rightd of other communily

(ii) Wehether the contesting respondents case was not barred by estoppel & Resjudicata

(iii) Whether the issue of Limitation can be applied in such manner in the facts & circumstance? Pendency of Section 145 CrPC proceedings shall not stop the limitation?

(iv) Whether the court is entitle to pass stricture againstthe experts in their respective fiels without hearing them

(v) Whetehr the courts can rely upon selective part of evidence to prove about the faith and belief of time immemorial running into estinated time of 2 crores of years before?

16. Whether matter is not to be listed before any Hon'ble Judge?

Mention the name of the Hon'ble Judge.....N/A.....

17. Particulars of identical/similar cases, if any

a) Pending cases.....CIVIL APPEAL NO 821 OF 2011.....

b) Decided cases with citation.....N/A.....

17A. Was SLP/Appeal/Writ filed against same impugned Judgment/order earlier? If yes, particulars..... CIVIL APPEAL NO. 821 OF 2011

18. Whether the petition is against interlocutory/final order/decree in the case N/A

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 Mr. Justices S.U. KHAN, ...SUDHIR AGGRAWAL & D.V SHARMA

20. If the matter was already listed in this Court :

a) When was it listed?.....N/A.....

b) What was the Coram?.....N/A.....

c) What was the direction of the Court..... N/A .....

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. .....N/A.....

22. Is there a caveator? If so, whether a notice has been issued to him?.

23. Whether date entered in the Computer?.....N/A.....

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24. If it is a criminal matter, please state :

a) Whether accused has surrendered.....N/A.....

b) Nature of offence, i.e. convicted under Section with Act.....N/A.....

c) Sentence awarded ..... N/A.....

d) Sentence already undergone by the accused..... .....N/A.....

24 e) (i) FIR/RC/etc..... N/A.....

Date of Registration of FIR etc..... .....N/A. ...

Name & place of the Police Station..... .....N/A..... .....

(ii) Name & place of Trial Court ....N/A..... .

Case No. in Trial Court and Date of Judgment..... N/A.....

(iii) Name and place of 1st Appellate Court..... N/A.....

Case No. in 1st Appellate Court & date of Judgment..... N/A . . ..

Drawn on 09.02.2011

Filed on: 14.02.2011

New Delhi

[M.R.SHAMSHAD]
Advocate for Appellant

B

SYNOPSIS, LIST OF DATES & EVENTS

The Appellant in the present appeal is the Plaintiff (No.7) in Regular Suit No 12 of 1961 (O.O.S.No.4 of 1989) filed on 18.12.1961. The Appellant has deposed before the Learned Trial Court and has subjected himself to cross examination for at least 14 days deposing inter-alia that he is local resident of the area where the Mosque was situated and the disputed site is located, he offered Namaz for the first time inside the Mosque in the year 1938 and since then he continued to offer Namaz till 22.12.1949. Not only the Appellant herein, there are at least 11 other witnesses including PW-2 to PW-9, PW-14, PW-21 and PW-23 who have appeared before the Trial Court and deposed that they had been offering their Namaz in the Mosque and the courtyard till 22.12.1949. All the witnesses have been subjected to detailed cross examination by the contesting parties.

It is material to point out that the Appellant and the other witnesses, indicated above, have deposed on the basis of their personal knowledge and the facts they have themselves seen through and not on the basis of the records and history as far as the nature of the building and user of the premises was concerned. The Appellant is witness to the fact that till 22.12.1949 none other than Muslims had any kind of possession inside the inner courtyard including the building of Mosque. It is also proved in the impugned judgment, by concurrent findings of all the three Judges, that the idols were placed inside the building in the night intervening 22nd and

23rd December, 1949 by the crowd of 50 - 60 persons claiming to be followers of Lord Ram and in view of this trespass having been committed, an FIR was lodged on 23.12.1949 and in view of the said FIR, the Mosque, building was attached in terms of Section 145 Cr.P.C. on 29.12.1949 and Receiver was appointed who took over the charge on 05.01.1950. In the proceedings arising out of Section 145 Cr.P.C, the Appellant started acting as Pairokar and pursued the said case while the Mosque remained under the custody and possession of the said Receiver. In the meantime, Regular Suit No 2 of 1950 (O.O.S. No. 1 of 1989) was filed on 16.01.1950 by Gopal Singh Visharad against Zahoor Ahmed & Ors seeking injunction against removal of the idols placed inside the Mosque on 22/23rd of December 1949. The Appellant also started acting as Pairokar on behalf of the Muslim community in the said Civil Suit.

In this background, the issue with respect to the fact of Namaz being offered in the premises upto 22.12.1949 on regular basis becomes relevant and material rather than looking into the so called faith and belief of a community which first committed trespass and thereafter started pursuing the so called belief and faith by pointing out the area falling exactly under the Central dome of the Mosque claiming the said place to be the place of birth of Lord Ram. Here, it is very material to point out that the era in which Lord Ram was born, according to the witnesses produced by the contesting parties for temple site, goes back to at least nine lacs years to one crore seventy five lacs years before and the said belief that Lord Ram might have born exactly at the same place or under

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the central done of the Mosque is certainly an unbelievable proposition which has been upheld to be correct in terms of the impugned judgment. The impugned judgment with respect to the alleged belief and faith pointing out the place where the Mosque existed is also not in consonance with the guarantee given to all the citizens of this country in terms of Articles 25 and 26 of the Constitution of India. In the present case, the Muslims had been offering Namaz in the said building and the premises for more than four centuries which fact is supported by the evidence adduced by the other side.

It is further stated that the Learned Judges have proceeded, by ignoring and mis reading of the evidence of the Muslims on several issues like possession and user of the said premises etc ignoring the objections filed by the Appellant and other Muslim parties with respect to A.S.I report, estoppel and resjudicata with respect to the earlier proceedings etc.

The Appellant and the other co plaintiffs filed Civil Suit in 1961, numbered as OOS 4/1989 in the High Court and pursued the said Civil Suit till final its disposal of the same on 30.09.2010. The Issue No.11 in Suit No. 4 that "Is the property in suit the site of Janam Bhumi of Sri Ram Chander Ji?" is an issue of fact. The belief of Hindus about the birth of Lord Ram, as stated above, goes back to 9 lacs years to one crore seventy five lacs of years before, of which the evidence cannot be produced as to whether Lord Ram was born at a particular place or not. Even the belief of followers of Lord Ram presuming and assuming a particular place to be the place of

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birth of Lord Ram has not remained static and specific about any one place but the said belief about the birth place of Lord Ram has remained changing from time to time and it is only about the middle of the 20th Century that the belief of Hindus was said to be attached to the place under the central dome of the Mosque as the place of birth. It is very much evident from the pleadings, evidence and judgement in Case No.61/280 of 1885 that the said belief was attached to Chabutra in the outer court yard of the Mosque and prior to that the said belief was attached to another place known as the Janmsthan Temple situated in the North side of Babri Masjid, across the road and not to the place below the Central Dome of the Mosque.

The material facts relevant for disposal of the present Appeal are that in the year 1528 a Mosque was constructed with a courtyard surrounded by a boundary wall in an area, presently situated in Mohalla Ramkot, Ayodhya, District Faizabad, Uttar Pradesh (hereinafter to be referred as Babri Mosque). Since 1528 the members of Muslim community had beed offering their prayers in the said Mosque and had continued their prayers in the Mosque till 22.12.1949. However, the courtyard of the said Mosque was divided by placing brick and iron grill wall around 1857 thereby separating the outer courtyard from the inner courtyard. The said bifurcation did not affect the outer boundary of the Mosque and the entrance of the Muslims to the Mosque remained continuing through the Main Gate which was previously in the eastern side [illegible]

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of 19th Century another gate was opened in the northern side of the said outer boundary wall.

Since around the year 1857 a Chabutra with a dimension of 17 X 21 ft had come into existence in the outer courtyard and in 1885 it existed there with a small wooden structure on the top of it in the shape of a tent.

In January 1885, one Mahant Raghubar Dass, claiming himself to be Mahant of Janam Asthan instituted Original Suit No. 61/280 of 1885 against the Secretary of State for India in Council for permission to build a temple, on the said Chabutra of 17 x 21 feet, in the court of the Civil Judge, Faizabad believing that place to be the birth place of Lord Ram. Mohammad Asghar, the then Mutawalli of Babri Mosque filed impleadment Application in the said suit which was allowed and the said Mohd. Asghar contested the suit. The site plan filed with the plaint of the said suit mentioned the Mosque in the Western side of the suit property. Vide Order dated 24.12.1885, the said Suit No. 61/280 of 1885 was decided by *Pt. Hari Krishna* by dismissing the said Suit. An Appeal bearing Civil Appeal No.27 of 1886 was filed by the said Mahant against the said Judgment dated 24-12-1835 which was dismissed by the then District Judge, Faizabad on 18/26.03.1886. Yet another Appeal was filed against the said judgment of the District Judge as Second Civil Appeal No.122 of 1886 before the Judicial Commissioner, Oudh and on 01.11.1886 the said Second Appeal was also dismissed with a finding that *"There is nothing whatever on the record to show*

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that plaintiff is in any sense the proprietor of the land in question".

In the night intervening 22nd/23rd December, 1949, when the Muslims had gone after offering their last Namaz in the late evening, the idols were stealthily placed by some Hindus inside the Mosque under the Central Dome of the said Mosque in a forcible manner by a crowd of 50 - 60 Hindus claiming themselves as the devotees and followers of Lord Ram. In the early morning few thousand of people had gathered and started raising slogans. F.I.R. of this incident was lodged by Ramdeo Dubey, S.O. Ayodhya on 23-12-1949.

Keeping in view the said dispute the Mosque was attached on 29.12.1949 under Section 145 of Criminal Procedure Code and a Supurdgar (Receiver) was appointed for the management of the same. The Receiver took over the charge on 05.01.1950.

On 16.01.1950, O.O.S. No. 1 of 1989 was filed as Regular Suit No.2 of 1950 by Gopal Singh Visharad in the Civil Court, Faizabad and interim injunction was granted in favour of the Plaintiff against the removal of the idols from the Mosque and for performance of Puja. The said order of temporary injunction was modified on 19-1-1950 on the basis of an application moved on behalf of the District Magistrate of Faizabad. The said modified order dated 19-1-1950 was to the effect that the Darshan and Puja will continue as was being done on 16-1-1950. The said order was virtually replaced by means of order dated 1-2-1986 passed by the District Judge Faizabad, whereby, in a Miscellaneous Appeal, filed by a

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stranger to the Suit, he had directed the District Magistrate and S.S.P. of Faizabad to remove the Locks of the 2 Gates of the building (Babri Masjid) in order to enable the General Public to enter the main building of the Mosque for the Darshan and Puja of the idols kept under the central dome of the Masjid. This order of opening of locks dated 1-2-1986 was challenged by the appellant before the Hon'ble High court, Lucknow Bench on 3-2-1986 as there was an apprehension to the building of the Mosque and the court had granted order to maintain status-quo of the building in suit.

Another Writ Petition against the same order dated 1-2-1986 was filed on behalf of the Sunni Waqf Board in May 1986. Both these Writ Petitions were dismissed as infructuous on 30-9-2010 by the Hon'ble High court at Lucknow along with the main suits.

Regular Suit No. 25 of 1950 (numbered as O.O.S. No. 2 of 1989 in the High Court) was filed by Param Hans Ram Chandra Das. In the Written Statements filed in both these suits by the State Govt. through Collector and S.P., Faizabad etc., it was admitted in Paragraphs 12 and 13 that the said building was a Mosque and not a temple of Sri Ram Chandra and Muslims had been offering prayers in the same in which Idols were placed in a stealthy and wrongful manner in the night of 22nd December, 1949.

The third Suit was filed by Nirmohi Akhara which was registered as Regular Suit No. 26 of 1959 (numbered as O.O.S. No. 3 of 1989 in the High Court) in which prayer was made for delivery of charge from the Receiver.

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The fourth Suit (O.O.S No. 4 of 1989) was filed on 18.12.1961 as Regular Suit No. 12 of 1961 by U.P. Sunni Central Board of Waqf and 8 other Muslims seeking relief of declaration as well as possession of the Mosque along with the land of graveyard and thereafter all the Suits were consolidated and Regular Suit No. 12 of 1961 was made the leading suit.

In an Appellate proceeding arising out of the said Civil Suit, the entire record of the suit was called in the High Court and sent to Lucknow Bench. In the meantime, an Application was moved on 25.01.1986 in the Court of Munsif, Sadar, Faizabad for opening of locks which was posted for some other date in view of the fact that the file of the suit was in the High Court. Against the said order of fixing the date on the application, the Applicant Shri Umesh Chandra Pandey, Advocate (not being party in any of the Suits) filed an Appeal before the District Judge, Faizabad without impleading any Muslim or Waqf Board as a party in the said Appeal. The Learned District Judge fixed the said Appeal for 1-2-1986 and summoned the District Magistrate as well as SSP, Faizabad to appear before him. On coming to know about the pendency of this appeal before the District Judge Faizabad, on 1-2-1986 the appellant and Mr. Farooq Ahmad who are plaintiffs in Regular Suit No. 12 of 1961, moved applications for impleadment in the aforesaid appeal. The said applications were heard on the same date and without hearing any arguments on the appeal the learned District Judge had fixed the said

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applications for orders on the same date but at the time of pronouncement of orders passed on these applications for impleadment the learned District Judge not only rejected these applications of Muslims but also allowed the appeal and directed the District Magistrate and S.S.P, Faizabad to implement his order of opening of the locks (of Babri Masjid) forthwith. Accordingly, after the pronouncement of the order at about 4.25 p.m., the locks of the Babri Masjid were broken at about 5.00 p.m.on 01.02.1986.

On 1st July, 1989 another suit was filed in the court of Civil Judge, Faizabad on behalf of Bhagwan Sri Ram Lala Virajman and others which was marked as Regular Suit No. 236 of 1989(OOS No. 5/1989).

An Application was filed in the High Court U/S 24 C.P.C by the State of U.P, in December 1987 and by an order dated 10.07.1989 all the above 5 Suits were withdrawn from the District Court, Faizabad and were transferred to the Aliahabad High Court at its Lucknow Bench and were assigned to a Full Bench of three Hon'ble Judges for trial of the said cases. The State Govt. moved an Application for seeking temporary injunction to maintain status quo over the entire property involved in the said Suits and the said Application was allowed by the High Court in November, 1989.

In October 1991, the State Government of U.P. acquired 2.67 acre land, including the land of the graveyard and outer portion of Babri Masjid to provide facilities for the pilgrims.

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The said acquisition was challenged by means of several Writ Petitions and the arguments were concluded in October 1991 and the case was reserved for judgment. The said judgment was pronounced on 11.12.1992 quashing the notifications of acquisition (after the demolition of the Mosque on 6.12.1992).

After demolition of Babri Masjid, the Central Government promulgated an Ordinance on 7th January, 1993 and simultaneously a Reference was made by the President of India to this Hon'ble Court for giving its opinion about the question whether there ever existed any religious structure at the site in question. In terms of Section 4(3) of the said Ordinance all the suits pending in the High court regarding the adjudication of title of Babri Masjid were abated. This Ordinance was replaced by an Act of Parliament. The said Ordinance was simultaneously challenged by various parties before this Hon'ble Court and the said cases were decided on 24.10.1994 by a Constitution Bench of this Hon'ble Court (*reported at (1994) 6 SCC 360*) whereby Section 4(3) of the Acquisition Act was quashed and the suits were revived. Thereafter, the proceedings in the said Civil Suits once again started before the Special Full Bench of the High Court.

Pursuant to the said judgment of this Hon'ble Court, the proceedings of the said suits started in January 1995 and after amendment in the pleadings, the oral evidence started in July 1996 which concluded in March 2007. Arguments in the case started in April 2007 which could not be completed till August 2008 when Hon'ble Justice O.P. Srivastava had retired (after

getting one term of Ad hoc appointment as he had earlier retired in June 2007). Arguments were restarted on 29-9-2008 before the reconstituted Bench in which Hon'ble Mr. Justice Sudhir Agarwal was included in place of Mr. Justice O.P. Srivastava. Arguments of Muslim parties and Nirmohi Akhara had been concluded and arguments of the plaintiff of O.O.S. No. 1 of 1989 were continuing when it was reported that presiding member of the Bench Mr. Justice S.R. Alam was being appointed as the Chief Justice of Madhya Pradesh, High Court and as such further arguments could not be heard by that Bench. After the elevation of Mr. Justice S.R. Alam as Chief Justice of M.P. High Court, the Bench was again reconstituted and Mr. Justice S.U. Khan was included in the Bench in place of Mr. Justice S.R. Alam. This reconstituted Bench had started hearing arguments afresh on 11-1-2010 and had concluded the hearing on 26-7-2010 and on 30-9-2010 impugned judgements were pronounced.

LIST OF DATES & EVENTS

1528	Mosque was constructed where Muslim community started offering prayers since 1528 (which continued till 22.12.1949)
January, 1885	Original Suit No. 61/280 of 1885, filed by Mahant Raghubar Dass (claiming himself to be the Mahant of Janam Sthan), against the Secretary of State for India in Council, for permission to build a temple on the Ram Chabutra of 17X21 feet situated in the outer courtyard.

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24.12.1885 The Trial Court Sub-Judge, Faizabad dismissed the Suit No.61/280 of 1885 declining the permission to construct Temple on the site of Chabutra.

18/26.03.1886 Civil Appeal No. 27 of 1886 filed against the order dated 24.12.1885 was dismissed holding, inter-alia, as under:-

> "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 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 Judicial Commissioner, Oudh dismissed Second Civil Appeal No.122 of 1886 filed against the order dated 18/26.03.1886 passed in Civil Appeal No. 27 of 1886. The said judgment in Second Appeal, inter alia, provides as under:-

> "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 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 the precincts adjoining the mosque and they have for a series of years been persistently tying to increase those rights and to erect buildings on two spots in the enclosure:

(1) Sita Ki Rasoi

(2) Ram Chander Ki Janam Bhumi.

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

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 the Plaintiff's claim.

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

1934	Babri Masjid partly damaged in a communal riot and repairs made at the cost of the Government.
22/23.12.1949	In the night intervening 22/23 December, 1949, 50 – 60 Hindus trespassed into the Mosque and placed idols below the Central Dome of the Mosque.
23.12.1949	F.I.R. lodged about the said incident of placing idols in the Mosque in a stealthy manner.
26.12.1949	The Govt. of U.P instructed the DM, Faizabad to remove the idols from inside the Mosque.
27.12.1949	The DM Faizabad refused to abide by the direction of the Govt. for removal of the idols.
29.12.1949	Additional City Magistrate, Faizabad passed order of attachment of the Mosque and appointed Shri Priya Dutt Ram, Chairman, Municipal Board as Receiver.
05.01.1950	Shri Priya Dutt Ram took the charge of Receiver and made inventory of the attached properties.
16.01.1950	Regular Suit No. 2 of 1950 (O.O.S. No.1 of 1989), Gopal Singh Visharad V/s. Zahoor Ahmed and others filed, and an interim injunction was granted in favour of the Plaintiff against the removal of the

idols from the Mosque and for performing Puja at the site.

19.01.1950 The order of Temporary Injunction was modified on the basis of an application moved on behalf of the District Magistrate, to the effect that darshan and puja shall continue as was being done on 16.01.1950. 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 with Puja etc. as at present carried on."

03.02.1950 Upon the Transfer Application No. 208, filed by Sri Anisur Rahman, for the transfer of Section 145 Cr.P.C. proceedings from Addl. City Magistrate, Faizabad to some other Court of competent jurisdiction outside the District Faizabad and also for stay of the proceedings in the meanwhile (u/s 526,528 Cr.P.C.), the High Court stayed further proceedings and passed the following order:-

"Issue notice. Stay meanwhile. A copy of the order may be handed over to the learned counsel on payment of the necessary charges."

01.04.1950 Civil Court, Faizabad appointed the Commissioner in terms whereof, Shri Shiv Shankar Lal Vakil prepared Map of the entire premises against which

objections were filed by the Muslim side for naming Sita Rasoi, Bhandar, Hanuman Dwar etc. which has been recorded in the Order dated 20.11.1950.

25.05.1950 — Two site plans of the building premises and of the adjacent area, 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. 25 of 1950 (O.O.S. No.2 of 1989); *Paramhans Ramcharan Dass Vs. Zahoor Ahmed and others* filed with similar prayer and reliefs as claimed in Regular Suit No. 2 of 1950 (The only difference was that first suit was filed without notice under Section 80 C.P.C. to the State Government and its officers but the second suit was filed after giving the aforesaid notice and on 18.09.1990, the said suit was withdrawn).

03.03.1951 — Interim injunction order confirmed stating that:-

> *"The interim injunction order dated 16.1.50 as modified on 19.1.50 shall remain in force until the suit is disposed of."*

04.08.1951 — Regular Suit No. 2 of 1950 and 25 of 1950 consolidated together by an Order of Civil Judge, Faizabad.

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30.07.1953	Proceedings under section 145 CrPC consigned to records with the order that the same shall be taken up after the disposal of the Suits.
26.04.1955	First appeal from the order dated 03.03.1951, being F.A.F.O No. 154 of 1951, filed in the High Court at Allahabad, was dismissed and suit was directed to be decided expeditiously.
17.12.1959	Regular Suit No. 26 of 1959 (O.O.S. No. 3 of 1989), *Nirmohi Akhara Vs. Babu Priya Dutt Ram & Others was filed.*
18.12.1961	Regular Suit No. 12 of 1961 (O.O.S. No. 4 of 1989), Sunni Central Board of Waqf & Others Vs. Gopal Singh Visharad & Others was filed.
09.03.1962	Issues were framed by the Civil Judge, Faizabad in Regular Suit No. 2 of 1950 and Regular Suit No. 25 of 1950.
17.05.1963	Issues framed in Regular Suit No. 26 of 1959.
06.01.1964	By an Order of the Civil Judge, Faizabad all the four suits were consolidated together and Regular Suit No. 12 of 1961 was made the leading suit.

21.04.1966	Finding given by the Civil Judge Faizabad on Issue No. 17 etc. regarding the validity of notification issued under Section 5(1) of U.P. Muslim Waqf Act, 1936.
18.12.1985	A Trust was formed for the construction and management of a Ram Temple, called the Ram Janambhoomi Nyas and registered on the same day by Sub- Registrar, S.D.No.1, at Delhi.
01.02.1986	Order passed by the District Judge, Faizabad, in a Miscellaneous Appeal, filed by a stranger to the suit, 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 thereby virtually replacing the Order dated 19.01.1950.
03.02.1986	A Writ Petition was filed by the Appellant before the Hon'ble High Court, Lucknow Bench challenging the order of District Judge Faizabad, dated 01.02.1986.
May 1986	Another Writ Petition against the aforesaid order of the District Judge, Faizabad, dated 01.02.1986 filed by the Sunni Waqf Board.

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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 to importance 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 (O.O.S. No. 5 of 1989) was filed in the Court of Civil Judge, Faizabad by three plaintiffs namely, (1) Bhagwan Shri Ram Virajman at Shri Ram Janam Bhumi, Ayodhya, represented by next friend Sri Deoki Nandan Agarwala, (2) Asthan Shri Rama Janama Bhumi, Ayodhya represented by next friend Sri Deoki Nandan Agarwala and (3) Sri Deoki Nandan Agarwala himself.
10.07.1989	On the Applications u/s 24 C.P.C. all the five Suits were withdrawn and transferred to the Allahabad High Court, at its Lucknow Bench (and were assigned to a Full 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.
07/10.10.1991	The Government of U.P. issued notification for acquisition of a part of the property in dispute including outer courtyard of the Mosque.

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22.03.1992	The B.J.P. Government in U.P. with the active connivance of local administration demolished the temples knows as Sumitra Bhawan, Sita Koop, Laxman Tekri, Loomash Chabutra, etc. in Ayodhya.
06.12.1992	Babri Mosque demolished.
11.12.1992	The notification of acquisition was struck down by the High Court, Lucknow Bench.
07.01.1993	An Ordinance named 'Acquisition of Certain Area at Ayodhya Ordinance' issued by the Central Government for acquisition of 67.703 acres of land in Ayodhya, including the land of demolished Mosque and some adjoining areas and also abating all the suits pending in the High Court. A Reference also made to Supreme Court on the same day under Article 143(1) of the Constitution of India.
09.03.1993	The Acquisition of Certain Area at Ayodhya Ordinance, 1993 (No. 8 of 1993), replaced by the Acquisition of Certain Area at Ayodhya Act, 1993 (No. 33 of 1993).
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 Supreme Court struck down Section 4(3) of the Acquisition of Certain Area at Ayodhya

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Act, 1993 (No. 33 of 1993) and revived all the Civil Suits for adjudication by the High Court and declined to answer the Special reference and returned the same.

24.07.1996	Oral evidence started in the Suits.
18.01.2002	The Full Bench of the High Court decided to take assistance of the Archeological Survey of India and passed orders in terms thereof by directing ASI to survey the disputed site by Ground Penetrating Survey/ Geo Radiology Survey.
05.03.2003	High Court directed the A.S.I. to excavate the site and give its Report about the temple/ structure beneath the disputed building.
12.03.2003 To 07.08.2063	Excavations were carried out at the disputed site.
22.08.2003	ASI filed report of excavation before the High Court.
October 2003	Objections filed by Muslim parties against the A.S.I. Report.
04.12.2006	The Full Bench of the High Court passed Order on the objections against ASI report, inter-alia, in the following terms:-

"So we order that this ASI report shall be subject to the objections and evidence of the

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parties in the suit and all these shall be dealt with when the matter is finally decided"

23.03.2007	Oral evidence concluded.
25.04.2007	Arguments started.
29.09.2008	Arguments restarted before the reconstituted Bench in which Hon'ble Mr. Justice Sudhir Agarwal was included after retirement of Hon'ble Mr. Justice O. P. Srivatsava.
11.01.2010	Arguments restarted after the Bench was reconstituted, with Hon'ble Mr. justice S. U. Khan after elevation of Hon'ble Mr. Justice S. Rafat Alam as Chief Justice of the M.P.High Court.
26.07.2010	All the hearings concluded in all the Suits.
30.09.2010	Impugned Judgments pronounced by all the three judges separately. In terms of the said judgments the following directions/preliminary decree has been passed:-

- According to *Justice S.U.Khan*, the three parties i.e Muslims, Hindus and nirmohi Akhara have been declared joint title holders having one third shares each of the property/premises in dispute marked as

ABCDEF in the Map Plan –I prepared by Shri Shiv Shankar Lal, Pleader and the potion below the Central Dome will be allotted to Hindus in final decree while the portion shown as Ram Chabutra and Sita Ki Rasoi will be allotted to Nirmohi Akhara.

- According to *Justice Sudhir Agarwal*,

(i) the area covered by the central dome of the three domed structure, i.e., the disputed structure being the deity of Bhagwan Ram Janamsthan and place of birth of Lord Rama as per faith and belief of the Hindus, belong to plaintiffs (Suit-5) and shall not be obstructed or interfered in any manner by the defendants. This area is shown by letters AA BB CC DD is Appendix 7 to the judgment.

(ii) The area within the inner courtyard denoted by letters B C D L K J H G in Appendix 7 (excluding (i) above) belong to members of both the communities, i.e., Hindus (here plaintiffs, Suit-5) and Muslims since it was being used by both since decades and centuries.

(iii) The area covered by the structures, namely, Ram Chabutra (EE FF GG HH in Appendix 7) Sita Rasoi (MM NN OO PP in Appendix 7) and Bhandar (II JJ KK LL in Appendix 7) in the outer courtyard has been declared in the

share of Nirmohi Akhara (defendant no. 3 of suit 4) and they shall be entitled to possession thereof in the absence of any person with better title.

(iv) The open area within the outer courtyard (A G H J K L E F in Appendix 7) (except that covered by (iii) above) has been directed to be shared by Nirmohi Akhara (defendant no. 3) and plaintiffs (Suit-5).

(iv-a) It has been directed that the share of Muslim parties shall not be less than one third (1/3) of the total area of the premises.

- According to *Justice D.V Sharma*, the entire building premises and the adjescent area shown in the site plan prepared by Shri Shiv Shankar Lal and annexed to the plaint as Annexure I & II has been declared to belong to the plaintiffs No 1&2 (the alleged deities) of O.O.S No. 5 of 1989. The defendants, including the Appellant have been restrained permanently from interfering with or raising any objection to, or placing any obstruction in the construction of the temple at the said site.

It may be relevant to mention here that Justice Sharma has decreed the Suit even in respect of the area beyond the area covered by the inner and outer court yard of the building in suit regarding which this Honb'e Court had declared in its judgement dated 24.10.1994

that the same stood acquired by the Government of India and vesting of the same in the Government was complete and it was not open to adjudication by the High Court.

10.12.2010 The High Court heard the objections by the parties to the draft preliminary decree prepared by the High Court. Orders on the said objections were reserved. The High Court further directed that the order directing status quo in terms of the judgment dated 30.09.2010 shall remain in operation till 15.02.2011.

14.02.2011 Hence this appeal

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. OF 2010
(C. A. U/S. 96 read with sec. 109 of the CPC read with Articles 133/134-A/136 of the Constitution of India)

IN THE MATTER OF :

Mohammad Hashim, S/o Late Karim Bux, resident of Mohalla Kutiya, Panji Tola, Ajodhiya city, District Faizabad, State of U.P.	**Plaintiff No. 7**	**Appellant**

Versus

1.	Mahant Suresh Das Chela Sri Param Hans Ram Chander Das, resident of Digambar Akhara, Ajodhia City, District Faizabad. (U.P.)	Defendant No. 2/1	Contesting Respondent
2.	Nirmohi Akhara situate in Mohalla Ram Ghat, through Mahant Rameshwar Das, Mahant Sarbarakar, resident of Nirmohi Akhara, Mohalla Ram Ghat, City Ajodhiya, District Faizabad (U.P.).	Defendant No. 3	Contesting Respondent
3.	Mahant Raghunath Das Chela Mahant Dharm Das and Sarbarakar Nirmohi Akhara Mohalla Ram Ghat, City Ajodhiya, Dist. Faizabad (U.P.)	Defendant No. 4	Contesting Respondent
4.	The State of Uttar Pradesh through Chief Secretary to the State Government, (U.P.)	Defendant No. 5	Contesting Respondent
5.	The Collector, Faizabad Collectrate Compound Faizabad, (U. P.)	Defendant No. 6	Contesting Respondent
6.	The City Magistrate, Faizabad. Collectrate Compound Faizabad (U. P.)	Defendant No. 7	Contesting Respondent
7.	The Superintendent of Police, S.P. Office Faizabad, Dist. Faizabad (U. P.)	Defendant No. 8	Contesting Respondent

8.	B. Priya Dutt S/o R. B. Babu Kamlapat Ram, R/o Rakabganj Faizabad, Dist. Faizabad (U. P.)	Defendant No. 9	Dead Respondent
9.	President, All India Hindu Maha Sabha, (Pradeshik Sabha), Read Road, New Delhi.	Defendant No. 10	Contesting Respondent
10.	President Arya Maha Samaj (Dewan Hall) Baldan Bhawan, Shradhanand Bazar, Delhi.	Defendant No. 11	Contesting Respondent
11.	President, All India Sanatan Dharam Sabha, Dhaula Kuan, New Delhi.	Defendant No. 12	Contesting Respondent
12.	Dharam Das alleged Chela Baba Abhiram Das, Resident of Hanuman Garhi, Ayodhya, Faizabad (U.P.).	Defendant No. 13/1	Contesting Respondent
13.	Sri Pundrik Misra, son of Raj Narain Misra, Resident of Balrampur Sarai, Rakabganj, Faizabad.	Defendant No. 14	Contesting Respondent
14.	Sri Ram Dayal Saran, Chela of late Ram Lakhan Saran, resident of town Ayodhya, District Faizabad (U.P.).	Defendant No. 15	Contesting Respondent
15.	Ramesh Chandra Tripathi, aged about 73 years, son of Sri Parsh Rama Tripathi, Resident of village Bhagwan Patti, Pargana Mijhaura, Tahsil Akbarpur, District Ambedkar Nagar (U.P.).	Defendant No. 17	Contesting Respondent
16.	Mahant Ganga Das, (Chela of Mahant Sarju Dass), resident of Mandir Ladle Prasad, City Ayodhya, Faizabad (U.P.).	Defendant No. 18	Contesting Respondent
17.	Shri Swami Govindacharya, Manas Martand Putra Balbhadar Urf Jhallu, Resident of Makan No. 735, 736, 737, Katra Ayodhya, Pergana Haveli Audh, Tahsil and District Faizabad (U.P.).	Defendant No. 19	Contesting Respondent
18.	Madan Mohan Gupta, convener of Akhil Bhartiya Sri Ram Janam Bhoomi Punarudhar Samti, E-7/45, Bangla T.T.	Defendant No. 20	Contesting Respondent

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Nagar, Bhopal(M. P.)

19.	Umesh Chandra Pandey, son of Sri R.S. Pandey, Resident of Ranupalli, Ayodhya, District Faizabad (U.P.).	Defendant No. 22	Contesting Respondent
20.	U.P. Sunni Central Waqf Board, 3-A, Mall Avenue, Lucknow (U.P.) through its Chief Executive Officer.	Plaintiff No. 1	Proforma Respondent
21.	Misbahuddin, son of late Ziauddin, Resident of Mohalla Angoori Bagh, Faizabad City, Faizabad (U.P.).	Plaintiff No. 6/1/1	Proforma Respondent
22.	Mohd. Siddiq alias Hafiz Mohd. Siddiq, son of late Haji Mohd. Ibrahim, resident of Lalbagh, Moradabad, Ceneral Secretary, Jamiatul Ulema Hind, U.P, Jamiat Building, B.N. Verma Road (Katchechry Roard), Lucknow (U.P.).	Plaintiff No. 2/1	Proforma Respondent
23.	Maulana Mahfoozurahman, S/o Maulana Vakiluddin, Resident of Village Madarpur, Pergana & Tahsil Tanda,District Faizabad. (U.P.).	Plaintiff No. [illegible]	Proforma [illegible]
24.	Mahmud/Ahmad sonof Ghulam Hasan, resident of Mohalla Rakabganj, City Faizabad, District Faizabad. (U.P.).Dead through its Legal Representatives	Plaintiff No. 9	Proforma Respondent
	24 A. Mr. Maulana Mufti Hasbullah alias Badshah Saheb, aged about 50 years,son of late Maulana Faizullah, R/o 101, Madani Manzil, Mughalpura, Faizabad (U.P.)		
	24 B. Mr. Anwar Ahmad, Aged about 60 years, Son of late Mahmud Ahmad, R/o Rakab Ganj, Faizabad (U.P.)		
25.	Farooq Ahmad, son of late Sri Zahoor Ahmad, Resident of Mohalla Naugazi Qabar, Ayodhya City, Ayodhya, District Faizabad State of (U.P.).	Plaintiff No. 10/1	Proforma Respondent

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CIVIL APPEAL U/S 96 OF THE CODE OF CIVIL PROCEDURE READ WITH SECTION 109 C.P.C. AND ARTICLES 133 / 134-A/136 OF THE CONSTITUTION OF INDIA

To

The Hon'ble Chief Justice of India
And His Companion Justices of the
Hon'ble Supreme Court of India.

The humble appeal of the Appellant named above

MOST RESPECTFULLY SHEWETH

1 That the present Appeal arises out of the Judgment and Preliminary Decree dated 30.9.2010 passed by the Hon'ble High Court of Allahabad, Lucknow Bench Lucknow, by three Hon'ble Judges of Special Full Bench, disposing of O.O.S. No. 4 of 1989 vide their separate judgments (alongwith O.O.S. No. 1, 3 & 5 of 1989) in terms of the same common judgment. On the same day, the Special Full Bench of the High Court has also passed separate order observing that in their opinion Appeal under section 96, CPC would be maintainable.

It is material to state that the said special Bench of the High Court has carried out corrections in the judgment vide order dated 10/12/2010, and the said corrections have been carried by the office of the High Court in the certified copies of the judgements issued to the appellant's counsel.

The findings of the three Hon'ble Judges, which are against the appellant, are being challenged and the Grounds of Appeal are set out herein below.

(a) Copy of the Impugned Judgment dated 30.09.2010 passed by Mr. Justice S.U. Khan disposing of the aforesaid suits, is being filed in **Volume-I**, at pages 1 to 285.

(b) Copy of the Impugned Judgment dated 30.09.2010 passed by Mr. Justice Sudhir Aggarwal disposing of the aforesaid suits is being filed as impunged Judgment in **Volumes II to XXII**, at pages 286 to 5644.

(c) Copy of the Impugned Judgment dated 30-09-2010 passed by Mr. Justice D.V. Sharma disposing of the aforesaid Civil Suits, is being filed in **Volumes XXIII to XXXII** at page 5645 to 8533.

2 It is material to point out that the present appellant had also filed Writ Petition No 746/1986 against the order of the learned District Judge Fiazabad dated 01.02.1986 in Civil Appeal No 8 of 1986 (which arose out of Regular Suit No 2 of 1950. After 24 years, in view of the judgments impugned in the present appeal, the said Writ Petition has has been declared to have become infructuos by a separate order dated 30.09.2010.

3 That while deciding the said Civil Suit bearing no O.O.S No 4/1989, the learned judges have also decided OOS Nos 1, 3 & 5 of 1989 filed in 1950,1959 and 1989 respectively. That the findings of the learned judges on the said issues may be broadly categorized as under:

A. <u>Per S.U.Khan J</u>

i. *Suit No. 4 is within limitation and not barred. Similarly, Suit No.3 and Suit No.5 are also not barred by limitation.*

ii. *The orders in Suit No.61/280 of 1885 and further orders arsing out of the Suit shall not operate as resjudicata. However, admission and assertion made or omitted in*

the pleading of the said Suit are admissible under Section 42, Evidence Act.

iii. On the issue of when and by whom the Mosque building was constructed, it has been held that the construction of the buiding in dispute was done under the orders of Babur and the building was a Mosque. Till 1934 Muslims were regularly offering Namaz and since 1934 till 22.12.1949 only Friday prayers were offered and the Friday prayers were enough to be in possession of the said premises.

iv. On the issue as to whether the site of the premises was treated to be birth place of Lord Rama before construction of Mosque and whether there was any temple standing thereon which was demolished for constructing the Mosque, the Learned Judge has held that until the Mosque was constructed during the period of Babur, the premises in dispute was neither treated nor believed to be the birth place of Lord Ram. A very large area was considered to be birth place of Lord Ram by Hindus and they were unable to ascertain the exact place of birth. Sometime before 1949 Hindus started beliving the place under Central dome to be birth place of Lord Ram. At the time of constructing the Mosque, there were ruins of some Buddist Relious place on or around the land on which the Mosque was constructed and some materials were used in the construction of Mosque. No temple was demolished for constructing the Mosque.

v. On the issue of Ram Chabutra, it has been held that the said Chabutra had come into existence before the visit of Tieffenthaler i.e. 1871 but after construction of the Mosque. Similar is the position of Sita Ki Rasoi.

vi. Muslims have not been able to prove that the land belonged to Babur under whose orders the Mosque was constructed and similarly the Hindus have not been able to prove that there was any existing temple at the place

where the Mosque was constructed. The Hindus have failed to prove that the said 1500 Sq.Yd of land was treated or believed as birth place of Lord Ram before construction of Mosque.

vii. *With respect to nature of Mosque, the Learned Judge has held that the said building was Mosque. However, there may have been certain carvings or sketches but that will not destruct the character of Mosque.*

viii. *The land on which the idols were placed can be deity under Hindu Law need not be decided since in view of the finding that the belief of birth place with respect to the said land was not there before construction of the Mosque.*

ix. *With respect to adverse possession, the Learned Judge has held that before 1885 the parties were in joint possession hence the issue did not need to be decided.*

B. Per Sudhir Agarwal,J

i. *The birth place (Janmsthan) as believed and worshipped by Hindus the area covered under the central dome of three domed structure i.e. disputed structure in the inner courtyard.*

ii. *The orders in Suit of 1885 will not operate as resjudicata as the same was decided against Mahant Raghubar Dass. Accordingly, the said decision will not bar these pleas.*

iii. *The Muslims have failed to prove that the building in dispute was constructed by Emperor Babur or under his Orders or that the same was constructed in or around 1528 AD.*

iv. *On the issue of possession of Muslims from 1528, the Learned Judge has held against the Muslim party and has held that the Muslims have not been in exclusive possession of the premises. The Plaintiffs failed to prove that the property in suit No.4 as marked A,B,C, D in the Map appended in Plaint was in exclusive possession of the Plaintiffs upto 1949. The possession of the inner*

courtyard remained in possession of both Hindus and Muslims. With respect to outer courtyard, the Muslim had lost possession at least from 1856, 1857 onwards.

v. *On limitation, the Learned Judge has held that the Suit No.4 is barred by limitation as the suit was treated to be for declaration and relief of possession was said to be superfluous.*

vi. *The idols placed in the Mosque in the night of 22/23rd December 1949 were also held to be deity although nature of the building was held to be that of a Mosque till 1949.*

vii. *The building of Mosque was not constructed by Babar or during his regime but it was being treated as a mosque atleast for the last 200 to 250 years.*

viii. *Relying upon the ASI Report, it has been held that the claim of Hindus that the disputed structure was constructed after demolishing a hindu structure is pre litem not post litem hence credible, reliable and trust worthy.*

C. Per D V Sharma,J

(i) *On the issue of existence of Temple at the site of the Mosque, it was held that on the basis of ASI report, it can conclusively be held that the disputed structure was constructed on the site of old structure after the demolition of the same which was massive Hindu religious structure.*

(ii) It cannot be construed that there was any valid dedication to the Almighty and if at all the Plaintiff's version(in Suit No.4) is accepted, it would be presumed that the property in dispute was dedicated to Almighty against the divine law of Shariya and against the Hanafi Principles of law. It has been further held that

there was no reliable evidence that the prayers were offered by Muslims from time immorial.

(iii) With respect to limitation, it has been held that the claim of the Plaintiff was governed by Article 120 of the Limitation Act, 1908 and not by Articles 142 and 144 of the said Act and therefore, it was barred by limitation.

(iv) The building in suit cannot be deemed to be a Mosque as there was no provision of water reservoir in the disputed premises for performing Wazu and also because it was constructed against the tenets of Islam and lacks the character of Mosque.

(v) Without any valid notification under the Waqf Act and in view of the finding of Civil Judge dated 21.04.1966 on Issue No. 17, the suit was not maintainable and the Waqf Board was also not competent to institute the Suit.

(vi) On the basis of circumstantial evidence, historical evidence, gazetteers and other epigraphical documents, it is established that after demolishing the temple, the disputed structure was constructed as a Mosque and even pillars of the old Temple were re-used. The Temple was demolished and the Mosque was constructed at the site of old Hindu temple by Mir Baqi at the command of Babur.

(vii) The Plaintiffs (Suit No.4) have proved that idols and objects of worship were installed in the building in the intervening night of 22nd/23rd December, 1949.

(viii) The Muslims have failed to establish that the disputed structure was used by Muslim Community for offering prayers from time immemorial or even from 1858 A.D and onwards without interruption. Thus, the Plaintiffs have failed to prove that they were in exclusively possession of the suit property upto 1949 and they were dispossessed in 1949. Hindus have proved that they were regularly making prayer at the birth place of Lord

Ram and they were in exclusive possession of the outer courtyard and visiting inner courtyard for offering prayers. The Defendant No.3 in (Suit No 4) has also failed to prove that he was in exclusive possession of disputed site.

(ix) It is established that the Hindus have been worshipping the place as Janamsthan i.e. birth place and visiting it as a sacred place of pilgrimage as a right since time immemorial. After the construction of disputed structure, it is not proved that the deities were installed inside the disputed structure before 22/23.12.1949 but the place of birth is a deity.

4. That before the trial court, the appellant and his co-plaintiffs in support of their pleadings, placed relevant and material evidence on record which is being broadly summarized as follows:

i. Ext. 19 (Vol. 5, Page 61-63) complaint of Sheetal Dubey (Fkkusnkj) dated 28-11-1858 about installation of Nishan by Nihang Faqir in Masjid Janam Asthan.

ii. Ext. 20 (Vol. 5, P. 65-68B) - Application of Mohd. Khateeb, Moazzin of Babri Masjid dated 30-11-1858 against Mahant Nihang for installing Nishan in Masjid Janam Asthan.

iii. Ext. OOS 5-17 (Vol. 20, P. 187-197) - Petition of Mohd. Asghar, Mutawalli, regarding Nishan by Nihang Faqir.

iv. Ext. 21 (Vol. 5 P. 69-72A) - Report of Sheetal Dubey (Fkkusnkj) dated 1-12-1858 against Nihang Sikh for installing Nishan.

v. Ext. A-70 (Vol. 8 P. 573-575) - order dated 5-12-1858 about arrest of Faqir.

vi. Ext. 22 (Vol. 5 P. 73-75) - Report of Sheetal Dubey (Fkkusnkj) dated 6-12-1858 (filed by Plaintiff of OOS No. 1 of 1989)

vii. Ext. A-69 (Vol. 8 P. 569-571) - order dated 15-12-1858 about removal of flag (Jhanda) from the mosque.

viii. Ext. 54 (Vol. 12 P. 359-361) - Application of Mohd. Asghar etc. dated 12-3-1861 for removal of Chabutra as Kutiya.

ix. Ext. 55 (Vol. 12 P. 363-365) Report of Supedar dated 16-3-1861 about removal of Kothri.

x. Ext A-13 (Vol. 6 P. 173-177) Application of Syed Mohd. Afzal, Mutawalli dated 25-9-1866, for removal of Kothri, against Ambika Singh and others.

xi. Ext. A-20 (Vol. 7 P. 231) copy of order dated 22-8-1871 passed in the case of Mohd. Asghar Vs. State.

xii. Ext. 30 (Vol. 5 P. 107-116-A,B.C) Memo of Appeal No. 56 filed by Mohd. Asghar against order dated 3-4-1877 regarding opening of northern side gate (now being called by Hindus as Singh Dwar).

xiii. Ext. 15 (Vol. 5 P. 43-45) Report of Deputy Commissioner in the aforesaid Appeal No. 56.

xiv. Ext. 16 (Vol. 5 P. 45) Order of Commissioner dated 13-12-1877 passed in the aforesaid Appeal No. 56.

xv. Ext. 24 (Vol. 5 P. 83-85) Plaint of the case No. 1374 / 943 dated 22-10-82 / 6-11-82 (Mohd. Asghar Vs. Raghubar Das)

xvi. Ext. 18 (Vol. 5 P. 55-57) Application of Mohd. Asghar Vs. Raghubar Das dated 2-11-1883 about 'safedi' of walls etc.

xvii. Exhibit 23 (Vol. 10, Page 135-136) Copy of application moved by Mohd. Zaki and others for compensation of the losses caused in the riot held on 27-3-1934.

xviii. Exhibit A-49 (Vol. 8, P. 477) Copy of order of Mr. Milner White dated 12-5-1934 for cleaning of Babri Masjid from 14-5-1934 and for use of the same for religious services.

xix. Exhibit A-43 (Vol. 8, P. 459) Copy of D.C.'s order (Mr. Nicholson) dated 6-10-1934 for approval of payment of compensation.

xx. Exhibit A-51 (Vol. 8, P. 483-487) Application of Tahawwar Khan (Thekedar) dated 25-2-1935 for payment of his bill regarding repair of Mosque.

xxi. Exhibit A-45 (Vol. 8 P. 467) Copy of order of D.C. dated 26-2-1935 for payment of Rs. 7000/- on the application of Tahawwar Khan.

xxii. Exhibit A-44 (Vol. 8 P. 461-465) Copy of Estimate of Tahawwar Khan dated 15-4-1935 regarding Babri Masjid.

xxiii. Exhibit A-50 (Vol. 8, P. 479-481) Application of Tahawwar Khan (Thekedar) dated 16-4-1935 explaining delay for submission of bill.

xxiv. Exhibit A-48 (Vol. 8, P. 473-476) Copy of Inspection Note dated 21-11-1935 by Mr. Zorawar Sharma, Assistant Engineer PWD, regarding Bills of repair of Babri Masjid.

xxv. Exhibit A-53 (Vol. 8, P. 493-495) Application of Tahawwar Khan Thekedar dated 27-1-36 regarding Bills of repair of Babri Masjid and houses.

xxvi. Exhibit A-46 (Vol. 8, P. 469) Copy of report of Bill clerk dated 27-1-36 regarding the repair of the Mosque.

xxvii. Exhibit A-47 (Vol. 8, P. 471) Copy of order of Mr. A.D.Dixon dated 29-1-36 regarding payment of Rs. 6825/12/- for repair of Babri Mosque.

xxviii. Exhibit A-52 (Vol. 8, P. 489-491) Application of Tahawwar Khan Thekedar dated 30-4-1936 regarding less payment of his bills for repair of houses and Mosque.

xxix) Ext. OOS 5-27 (Vol. 23, Page 665) Sanction letter dated 6-12-1912 for suit u/s 92 CPC issued by Legal Remembrancer, U.P.

xxx) Ext. A-8 (Vol. 6, P. 75-149) Copy of Accounts of the income and expenditure of Waqf from 1306 F. regarding Babri Masjid etc

xxxi) Ext. A-72 (Vol. 7, P. 337-355) Accounts submitted by S. Mohd. Zaki before Hakim Tahsil dated 9-7-1925 regarding Babri Masjid etc

xxxii) Ext. A-31 (Vol. 7, P. 357-377) Accounts submitted by Mohd. Zaki on 31-3-1926 before Tahsildar regarding Babri Masjid etc.

xxxiii) Ext. A-32 (Vol. 7, P. 379-399) Accounts submitted by Mohd. Zaki on 23-8-1927 before Tahsildar regarding Babri Masjid etc

xxxiv) Ext. OOS 5-28 (Vol. 23, P. 667) Letter of E.L. Norton, Legal Remembrancer dated 18-12-1929 for sanction to file suit u/s 92 CPC. regarding Babri Masjid etc

xxxv) Ext. A-19 (Vol. 10, P. 97-98) Certified copy of letter of E.L. Norton dated 18-12-1929 for permission to file suit u/s 92 regarding Babri Masjid etc.

xxxvi) Ext. A-7 (Vol. 6, P. 63-69) Agreement executed by Syed Mohd. Zaki dated 25-7-1936 in favour of Moulvi Abdul Ghafoor, Imam of Babri Masjid, regarding payment of salary of Imam.

xxxvii) Ext. A-61 (Vol. 8, P. 515-517) Application of Abdul Ghaffar, Pesh Imam of Babri Masjid, dated 20-8-1938 for payment of arrears of his salary.

xxxviii) Ext. A-4 (Vol. 6, P. 35-43) Report of Distt Waqf Commissioner, Faizabad dated 16-9-1938 submitted to Chief Commissioner of Waqf.

xxxix) Ext. A-5 (Vol. 6, P. 45-48) Order of Distt Waqf Commissioner, Faizabad dated 8-2-1941 regarding Babri Masjid (copy filed as Ext. 22 in OOS 4 / 89 – Vol. 10, P. 127 - 131)

xl) Ext. A-33 (Vol. 7, P. 401-407) Copy of Accounts dated 25-9-1941 filed by Kalbe Husain before Tahsildar

xli) Ext. A-60 (Vol. 8, P. 514-513) Certified Copy of Application for registration of waqf bearing endorsement dated 27-9-1943 filed before the Sunni Waqf Board.

xlii) Ext. A-66 (Vol. 8 P. 539-545) Application / reply of Syed Kalbe Hussain to Secretary, Sunni Waqf Board. dated 20-11-1943 regarding management of mosque.

xliii) Ext. A-55 (Vol. 8, P. 503-504) Copy of statement of Income and Expenditure of Waqf Babri Masjid for 1947-48 (Account from 1-10-1947) (Also filed as Ext. A-35 – Vol. 7, P. 413-414).

xliv) Ext. A-54 (Vol. 8 P. 501-502) Copy of Report of Auditor for 1947-48 dated 27-7-1948 (Also filed as Ext. A-36 – Vol. 7, P. 415-416)

xlv) Ext. A-62 (Vol. 8, P. 519-521) Copy of letter of Secretary SWB dated 25-11-1948 to Sri Jawwad Hussain regarding Tauliat.

xlvi) Ext. A-63 (Vol. 8, P. 523-527) Copy of Report of Mohd. Ibrahim, Waqf Inspector dated 10-12-1949.

xlvii) Ext. A-64 (Vol. 8, P. 529-535) Copy of Report of Mohd. Ibrahim, Waqf Inspector WB dated 23-12-1949.

xlviii) Ext. A-57 (Vol. 8, P. 507-508) Copy of the Statement of Income and Expenditure of 1948 – 49 filed before the SWB.

xlix) Ext. A-56 (Vol. 8, P. 505-506) Copy of the Report of Auditor of the Board dated 23-02-1950 for 1948 - 49.

l) Ext. A-59 (Vol. 8, P. 511-512) Copy of the Statement of Income and Expenditure for 1949-50 by Jawwad Husain filed before the SWB

li) Ext. A-58 (Vol. 8, P. 509-510) Copy of the Report of Auditor of the Board dated 23-12-1950 for 1949 - 50.

lii) Ext. OOS 5-103 (Vol. 23, P. 703-708) Copy of Plaint of R.S. No. 29 of 1945 dated 4-7-1945 filed by Shia Waqf Board against Sunni Waqf Board (filed by plaintiff of OOS 5 / 89)

liii) Ext. A-42 (Vol. 8, P. 431-452) Copy of Judgement of R.S. No. 29 of 1945 dated 30-3-1946 between Shia Waqf Board and Sunni Waqf Board (also filed as Ext. 20-Vol. 10, P. 101-115)

liv) Ext. 13 (Vol. 10, Page 61-63) Plaint of Suit No. 61 / 280 of 1885 filed by Mahant Raghubar Das (also filed as Ext. A-22) (Vol. 7, P.237-239, 241-243 and as Ext. OOS 5-26) (Vol. 23, P.659-663)

lv) Ext. 14 (Vol. 10, P. 65-74) Written statement of Mohd. Asghar filed in the above case.

lvi) Ext.15 (Vol. 10, P. 75-77) Copy of Report of Commission dated 6-12-1885 with map (Also filed as Ext. A-24 and A-25 in OOS 1/89-Volume 7, P. 271-281)

lvii) Ext.16 (Vol. 10 P. 79-85) Copy of Judgement of Pt. Shri Kishan dated 24-12-1885 (Also filed as Ext. A-26 in OOS 1/89-Vol. 7, P. 283-301)

lviii) Exhibit 17 (Vol. 10 P. 57-91) Copy of Judgement of D.J. Faizabad dated 18/26-3-1886 (Also filed as Ext. A-27 in OOS 1/89-Volume 7, P. 319-323).

lix) Exhibit 18 (Vol. 10, P. 93-95) Copy of Decree of D.J. Faizabad dated 18/26-3-1886. (Also filed as Ext. A-28 in OOS 1/89-Vol. 7, P. 325-329)

lx) Order of Judicial Commissioner passed in Second Appeal arising out of Suit No. 61 / 280 of 1885.

lxi) Vol. 5 of Mr. P.N. Mishra, Page 1-17-Gazetteer of Walter Hamilton (1815 / 1828) page 12, 16, 17 (Book Page 352 / 353) - There is no mention of Ram Janam Bhumi Temple or place of birth of Lord Rama with respect to the land in question.

lxii) Vol. 21, P. 321-322 (107C-1/109-110) (Ext. OOS 5-5) by Montgomery Martin (1838) (Also see Ext. J-22, Vol. 35, P. 211-225) - No mention of Ram Janam Bhumi Temple or place of birth of Lord Rama being inside the Mosque – Tradition prevalent at that time was about the destruction of temple and erection of Mosque by Aurangzeb but Martrin refers to the fallacy of this tradition on the basis of the existence of 2 inscriptions on its walls showing the same built by Babur, 5 generations before Aurangzeb. It was also observed by Martin that Pillars in the Babur's Mosque were taken from a Hindu building and probably these Pillars were taken from the ruins of the palace.

lxiii) Vol. 20, P. 21-23 (107C-1/10-110) (Ext. OOS 5-5) Gazetteer by Edward Thorntone (1858). There is no mention of any

such tradition or belief that any portion inside the Babri Masjid might have been considered as the place of birth of Lord Rama. Referring to Buchanan, the Author (Thorntone) says that out of 360 Temples said to have been constructed by Vikramaditya, no traces were available of any of them and according to native tradition the demolition was made by Aurangzeb who built a Mosque on a part of the site. In this respect Thorntone says that the falsity of the tradition is, however, proved by an inscription on the wall of the mosque, attributing the work to the conqueror Baber from whom Aurungzeb was fifth in descent. The mosque is embellished with fourteen columns of only five or six feet in height, but of 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.

lxiv) **Vol. 20, P. 25-34**, 107C-1/12-16(Ext. OOS 5-6) Four Reports by Alexandar Cunningham – 1862-65(1871 Edn.). In this respect also the places associated with Lord Rama were specifically mentioned including Guptur Ghat, Swarg Dwari and Ram Kot etc. and about the birth place Temple it was specifically mentioned on page 322 (page 29 of Vol. 20) that *"in the very heart of the city stands Janam Sthan or "birth place Temple of Rama"* It is thus evident that in 1862-1865 the tradition and belief / faith was in respect of the Janam Sthan Temple situated in the Northern site of Babri Masjid to be the birth place of Lord Rama.

lxv) **Vol. 20, P. 35-49** (107C-1/17-24-Ext. OOS 5-49) by Carnegy (1870). It was with this Gazetteer that the theory of demolition of Janam Sthan Temple and construction of Babri Masjid at the site thereof was introduced for the first time *but that too was based on no source of History and rather was based only on local belief.* The Author himself says under the heading "The Janam Sthan and other Temples" on page 20 of the Book (page 45 of the Vol.) that

"it is locally affirmed that at the Mohamdan conquest Emperor Babar built the Mosque by demolishing Janamsthan Temple". In the same sequence it is also mentioned on page 21 of the Book:-

"In two places in the Babri mosque the year in which it was built 935 H., Corresponding with 1528 A.D, is carved in stone, with inscriptions dedicated to the glory of that Empror." Carnegy further says about the pillars stating that *"To my thinking these strongly resemble Budhist pillars that I have seen at Benares and elsewhere."*

Thus the so called belief / tradition about the Janam Sthan Temple being demolished and Babri Masjid being constructed on its site starts from this Gazetteer of 1870. These very assertions are repeated in the Reports of Millet, Fuhrer and Nevill etc. being refered as under:-

(a)- Vol. 20, P. 51-53 (107C-1/25-26) Ext. OOS 5-7 - Gazetteer of the Province of Oudh
(b)- Vol. 20, P. 55-62 (107C-1/27-30) Ext. OOS 5-8 - by Millet (1880)
(c)- Vol. 20, P. 63-65 (107C-1/33-36) Ext. OOS 5-9 - by A. Fuhrer (1891)
(d)- Vol. 20, P. 85-91 (107C-1/42-48) Ext. OOS 5-11- by H.R.Nevill (1905)
(e)- Vol. 20, P. 75-79 (107C-1/37-39=312C-1/22-23) Ext. OOS 5-10 Imperial Gazetteer(1908)
(f)- Vol. 20, P. 99-107 (107C-1/49-53) Ext. OOS 5-12 – by H.R.Nevill (1928)
(g)- Vol. 20, P. 109-123 (107C-1/54-61) Ext. OOS 5-13 – by E.B.Joshi 1960

lxvi) Vol. 21, P. 349-367 (107C-1/122) Ext.OOS 5-22 &50 - Ayodhya Ka Itihas by Awadhwasi Lala Sitaram (1932). In this Book there is specific mention of the building in dispute being treated as a Mosque and even the inscriptions of the Mosque have been quoted. See page 152 of the Book

5. The Preliminary Decree/Judgment passed by the Honble Full Bench of the High Court is by mis reading and mis appreciation of evidence and contrary to the case set up by the respondent. The

Facts and circumstance of the case have been completely misconstrued relevant evidence have been ignored, irrelevant materials and facts have been taken into consideration as evidence court, the concept of belief and faith has been given undue impotance, contrary to material evidence on record .The appellant is challenging the findings of Hon'ble Judges separately.

The judgment of Hon'ble Mr Justice S U Khan is challenged on the following, among other, grounds which are independent from each other:-

5.1. Because the learned Judge has improperly interpreted the statement of counsels for the Waqf Board and other Muslim parties recorded under Order X Rule 2 CPC on 22.04.2009 and has given a wrong interpretation by ignoring material part of the said statement. The said statement records that "*for the purposes of this case, there is no dispute about the faith of Hindu devotees of Lord Rama regarding the birth place of Lord Rama at Ayodhya as described in Balmiki Ramayana or existing today....*". It is clear that the statement of Counsels for Muslims is based "*on the faith of Hindu devotees of Lord Rama*" and "*as described in Balmiki Ramayana*" whereas the Learned Judge has proceeded on the premise as if the said statement is based upon factual grounds and not on "*the faith of Hindu devotees*". The very foundation of the observation made by the learned judge would become erroneous by referring to the said statement as if the statement of Counsel was unqualified and based upon facts. This is a serious flaw and may give a wrong impression about the stand of the Muslim Parties with respect to the entire controversy.The Learned Judge has recorded that: "*At this juncture, it may also be noted that Sri Zafaryab Jilani, Learned counsel for Waqf Board and other Muslim parties had given his statement under Order X Rule 2,C.P.C on 22.4.2009 and categorically stated that his parties did not dispute that Lord Ram was born at Ayodhya (previously this was also an area of dispute between the parties). Sri Jilani during arguments repeatedly contended that it was not disputed that Lord Ram was born at Ayodhya, however he very seriously disputed the assertion that Lord Ram was born at the*

premises in dispute". The said observation, without mentioning that the said statement was based on the faith of Hindu devotees of Lord Rama and on the basis of description of Balmiki Ramayana, is not correct and proper.

5.2. Because even as per belief and faith of Hindu devotees of Lord Rama that Lord Rama, as described in Balmiki Ramayana, was born in Ayodhya, there is no description in Ramayana that at which specific place Lord Rama was born. The statement of the Counsels of Muslim Parties recorded on 22.04.2009 was to be read in the same background. In any case no definite knowledge about any specific place of birth of Lord Rama was possible in view of the fact that the Hindu side witnesses themselves have stated that the said birth of lord Ram had taken place more than 9 lakh years ago. OPW.1 Mahant Ram Chander Dass has stated that there is no mention about the period of birth of Lord Ram in *Ram Charitmanas* as he has been considered *Anadi*. The said witness has made the speculation that Lord Ram might have born lacs of years before. (Pages 81 and 82 of the statement). Similarly, another witness being OPW 9 Dr. T.P.Verma has stated that Lord Ram's birth should be 15-16 lacs years before and has further proceeded to say that according to his belief Lord Ram was born 17 Lacs years ago (Page 98 of his statement). The other witness OPW 12 Shri Kaushal Kishore Mishra has similarly stated that Lord Ram's birth should be lacs of years before and the first birth of Lord Ram should be at least 3 Crore years before and has further stated that the era of Lord Ram Chander Ji should be 10 lacs years ago. OPW 16 Ramanandacharya Swami Rambhadracharya has stated that Ram Chander Ji was born in seventh manu era and the era of Dashrat ji was 1 crore 50 lacs 80 thousand years ago. Similarly, the other witnesses DW-2/1-1, Rajinder Singh, DW-3/1 Mahant Bhaskar Dass, DW-3/5 Raghunath Prasad Pandey, DW-3/6 Sita Ram Yadav. DW-3/7 Mahant Ramji Dass. DW-3/20, Raja Ram Chandra Acharya and other witnesses have deposed on the basis of their faith and belief that Lord Ram's era was more than 9 lakh years ago.

5.3 Because in the judgment itself, the Learned Judge has recorded that the Counsels for Hindu parties failed to give specific reply to the query as to whether the "Janam Asthan" or "Janam Boomi" meant the exact place where Kaushalaya, the mother of Lord Rama, gave birth to him or it may be the room in which the birth took place or that meant the entire building where the mother of Lord Rama resided. It is also material that in the Plaint filed by *Bhagwan Sri Ram Lala Virajman (Suit No.5)* no efforts were made to identify or specify the exact place of birth. The above stand and facts itself prove that Issue No.11 (Suit No.4) which states that "*is the property in suit the site of Janam Bhoomi of Sri Ram Chandra Ji*" should have been decided against the Hindus who claimed the disputed building being birth place of Lord Rama.

5.4 Because the Learned Judge has observed that it was not possible that one of the favourite queens of Raja Dashrath would have resided in a mansion constructed only on an area of about 1500 Sq.Yds when the houses of even medium level people used to be of quite large area. The Learned Judge has further observed that contemporary famous writer, Tulsi Dass (1532 to 1623 A.D) wrote Ram Charitmanas due to which the contents of Ramayana could reach to common men and had there been any such belief that Lord Rama was born on the disputed piece of land, he would have mentioned about the same in his Ram Charitmanas and he would have further mentioned about Babar making or constructing Mosque after demolishing the temple or constructing the Mosque at the Janam Asthan of Lord Rama. The said Ram Charitmanas is important piece of evidence which does not mention about the demolition of any temple or about birth place of Lord Ram on the disputed site. This is a material omission in Ram Charitmanas and even on this ground it cannot be assumed that there was any such belief of the Hindu devotees about the birth place of Lord Ram being there on the disputed land in or around 1528 or 1570 AD. However, even after giving such findings the learned Judge has wrongly and illegally accepted the belief of Hindus, though for few decades before 1949 and has illegally allotted the portion of middle dome to Hindus without any basis. This is without

prejudice to the stand of the Appellant that the title and interest etc. of the property in suit cannot be decided on the basis of belief and faith of any section of the people.

5.5 Because the observation of the Learned Judge is wrong, baseless and without any merit that after construction of the Mosque, Hindus started treating / believing the site thereof as the exact birth place of Lord Rama. No material or tenable evidence about any such belief/ faith of Hindus has been placed on record. The Learned Judge has further wrongly observed that in the oral evidence of some Muslims it had come that Hindus believed that the said birth place is beneath the demolished Central dome of the Mosque. Such statements, if any, referred to the belief of post 1949 period and not of pre 1949 period. (*Kindly See Pages 243/244 Volume I of the Judgment*).

5.6 Because the finding about the possibility of there being ruins of some Buddhist religious place on and around the land on which the Mosque was constructed was based on no admissible evidence and was simply a matter of conjecture, without any material basis and without any cogent evidence.(*Kindly See Page 246 Volume I of the Judgment).*

5.7 Because recording of the finding that since 1934 to 1949 only Friday Prayers were being offered in the premises in dispute is against the evidence on record as it was fully established from the evidence on record that regular 5 times prayers were being offered in the building in dispute upto December, 1949. In this respect not only evidence adduced by the Muslims has been ignored but some of the statements made and documents filed by the Hindu parties were also not taken into consideration. *(See Page 231, Volume I of the Judgment).*

5.8 Because the finding that since much before 1855 both the parties were using the premises in dispute as their religious place, is based upon surmises and conjectures and on no material, cogent or reliable evidence.

5.9 Because the Learned Judge has fallen into serious error by wrongly recording that in the year 1949 there was no place for Wazu or that the facility for Wazu was discontinued sometimes after 1885 while the evidence on record including the photograph taken by Sri Bashir Ahmad Khan, Advocate (Vakeel Commissioner) fully established that there was specific place for Wazu etc. on southern side *Chabutra* of the Mosque (*See Page 257, Volume I of the Judgment).*

5.10 Because the finding that the Muslims had not been able to prove that the land belonged to Babur under whose orders the Mosque was constructed is erroneous and uncalled for in view of the fact that it is admitted fact that the building of the mosque was in existence for more than 400 years and undisputedly the Muslims offered Namaz in the said building since its construction. Without prejudice to the said user of the land / building for religious purposes by Muslims, the said finding is incorrect even on the ground that the documentary evidence adduced by the Muslim side, including the historical evidence of the books had amply proved that the vacant land belonged to the king during the entire Mughal period, and this evidence was also ignored by the Learned Judge. It is also relevant to state that the said land has also not been proved to be owned by any temple and as such recording of such finding is erroneous, misconceived and baseless.*(See Page 251, Volume I of the Judgment).*

5.11 Because the finding that both the parties were / are joint title holders in possession of the premises in dispute is perverse, without any legal basis and illegal as the evidence on record fully established that Muslims alone were in possession of the premises in dispute since the day when the Mosque was constructed and on the basis of its long and continuous user as a mosque, its implied dedication to God Almighty was also liable to be presumed.*(See Page 255, Volume I of the Judgment).*

5.12 Because the Learned Judge failed to decide the issue of perfection of title and rights on the basis of Adverse Possession of the

Muslims and misdirected himself by giving a wrong finding of the alleged joint possession since before 1855 (*See Page 260, Volume I of the Judgment).*

5.13 Because the finding recorded by Learned Judge that all the 3 parties *(Muslims, Hindus and Nirmohi Akhara)* were entitled to a declaration of joint title and possession to the extent of 1/3rd share each was based on presumptions and conjectures and not on substantive evidence adduced in the case which lead to the only inference that Muslims alone were entitled for declaration and possession at least for the entire inner portion including inner courtyard and for joint possession in the outer courtyard. (See Page 275, *Volume I of the Judgment*).

5.14 Because the observation of Learned Judge with respect to the allotment of share of different portions to the Muslims, Hindus and Nirmohi Akhara is patently illegal and against the weight of evidence and based on no cogent material available on record. There is no admissible evidence of the possession of Hindus on any portion of the inner part of the building in dispute upto 22-12-1949 and even in the outer courtyard of the building, Nirmohi Akhara was in possession of only 17 x 21 feet area of Ram Chabutra and about 10 x 12 feet area of Sita Rasoi (See Page 275, *Volume I of the Judgment*).

5.15 Because the Learned Judge has wrongly observed that Tieffenthaler had noted the existence of Ram Chabutra at the time of his visit to the area in question between 1766 to 1771 AD and the finding that Chabutra must have been there since before the visit of Tieffenthaler is against the evidence on record. The said Johseph Tieffenthaler had referred to only 'Vedi' of very small dimension and not to 'Ram Chabutra' as was existing in 1885. It is, therefore, totally incorrect to hold that the said Chabutra and Sita Rasoi had come into existence before the visit of Johseph Tieffenthaler (*See Page 249 - 250, Volume I of the Judgment*).

5.16 Because the Learned Judge has wrongly held that the judgment of the suit of 1885 did not decide anything substantially. It was also wrongly observed by him that ultimately in the final Judgment of 1885 suit only status quo was maintained. It is submitted that the claim of Mahant was based upon certain grounds and the said Mahant had claimed certain relief. The said grounds were adjudicated by the competent court of law and the relief claimed was refused. It has been wrongly observed that the court had simply refused to decide the controversy in the suit of 1885 while the fact is that in the Suit of 1885 the courts had given reasoned findings in their judgments of 1885 and 1886 (See Page 191 of the Judgment of S.U. Khan J.). The order passed by the judge in Civil Appeal No. 27 of 1886 filed against the judgment dated 24.12.1885 was given holding, inter-alia, as under:-

> *"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 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".*

Thereafter in Second Civil Appeal No.122 of 1886 filed against the order dated 18/26.03.1886 in Civil Appeal No. 27 of 1886 the learned Judicial Commissioner observed interalia as under:-

> *"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 situate within the precincts of the grounds surrounding a mosque constructed 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 the precincts adjoining the mosque and they have for a series of years been persistently trying to increase those rights and to erect building over two spots in the enclosure:

(1) Sita Ki Rasoi

(2) Ram Chander Ki Janam Bhumi.

The Executive authorities have persistently repressed these encroachments and absolutely forbid any alteration of the 'status quo'.
I think this is a very wise and proper procedure on their part and I am further of opinion that Civil Courts have properly dismissed the Plaintiff's claim.

.....

There is nothing whatever on the record to show that plaintiff is in any sense the proprietor of the land in question".

5.17. Because the Learned Judge has wrongly observed that nothing was decided in the suit of 1885 (as per his assessment) and hence main part of Section 11 C.P.C. as well as Explanation IV and Explanation VI of the said section 11 C.P.C. were not applicable to the instant case. The said observations and interpretation of the provision with wrong basis of fact is completely misconceived, erroneous and illegal. (See Pages 191 /192, *Volume I of the Judgment*).

6. That the Preliminary Decree/Judgment passed by Hon'ble *Mr Justice Sudhir Agarwal* is challenged on the following, among other, grounds which are independent from each other:-

The issues with respect to the disputed site being the birth place of Lord Rama were framed in different Suits as under:-

Issue No.11 (Suit-4):-

Is the property in suit the site of Janam Bhumi of Sri Ram Chandraji?

Issue No.1 (Suit-1):-

Is the property in suit the site of Janam Bhumi of Sri Ram Chandra Ji?

Issue No.22 (Suit-5):-

Whether the premises in question or any part thereof is by tradition, belief and faith the birth place of Lord Rama as alleged in paragraphs 19 and 20 of plaint? If so, its effect?

6.1. Because the issues relating to the belief/ faith of Hindus have been dealt with in the background of the constitutional scheme of right to religion as contained in Part-III of Constitution of India without appreciating that the said fundamental rights are available to all the persons equally. Articles 25 and 26 of the Constitution of India read as under:-

> ***Article 25: "Freedom of conscience and free profession, practice and propagation of religion***
> *(1) Subject to public order, morality and health and to the other provisions of this Part,* ***all persons are equally entitled to freedom of conscience*** *and t he right freely to profess, practice and propagate religion.*
> *(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law –*
> *(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;*
> *(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.*

Explanaion I: *The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion.*

Explanation II: *In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.*

Article 26: Freedom to manage religious affairs: *Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-*

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) *to administer such property in accordance with law".*

The Learned Judge without dealing with the said constitutional guarantee in proper perspective has relied upon the judgment given in the matter of *Commissioner of Police Vs. Acharya Jagdishwarananda Avadhuta and another 2004 (12) SCC 770* to conclude about the belief upon which the religion is founded. This judgment is in relation to a question of law *"whether performance of Tandava Dance in public is an essential practice of the Anand Margi's"*. The entire premise of the judgment is to give a proper perspective, meaning and practice of a particular performance within a particular religious practice without involving the rights of followers of the other religion and without effecting the belief of the other religion. Relying upon the said judgment is entirely misconceived, improper and without context leading to the perverse finding to frustrate, and take away the belief of the followers of other

religion whereby infringing upon the fundamental rights of the other community as guaranteed in Constitution of India.

6.2. Because the other judgment reported at *(2002) 8 SCC 106* relied upon by the Learned Judge is similarly without any basis and out of context for the present case. The said case raised the question of law as to whether the appointment of a person, who is not a Malayala Brahmin as Shantikaran or Pujari of the Temple is violative of constitutional and statutory rights of the Appellant therein or not? The finding of the said judgment as quoted in the impugned judgment herein is in that background as to whether Brahmin or non-Brahmin or Malayala Brahmin would be appointed as Priest in a particular Temple. The said judgment has no relevance in the present case and the said reliance is bad in law.

6.3. Because the Learned Judge himself has stated that the controversy in the instant case involved historical, religious, philosophical, social and sociological aspects and thereafter has discussed about the features of Hindu religion and belief. The entire discussion made by the Learned Judge with respect to religious belief, as quoted from different parts of Vedas, Puranas, history, Hindu philosophy etc. is in one way to support the belief of a particular religion without acknowledging the belief, religion and history of the other contesting party. The entire discussion on the basis of which the finding of this issue has been given in para 4418 is contrary to constitutional guarantee given to the followers of other religions in the country.

6.4. Because the Learned Judge's finding on belief and faith is itself self-contradictory since the Learned Judge has himself raised questions with respect to belief and faith in para 4292 of the impugned judgment by raising question of an outsider as to whether Hindu religion is a museum of beliefs, medley of rites, or a geographical expression.

6.5. Because the Learned Judge has misread and misappreciated the statements of the Counsel for Muslims recorded by the Trial Court under Order X Rule 2 CPC. The statements of the Counsels are based upon the description given in the Balmiki Ramayana and is further qualified with the stand that at the site of Babri Masjid Lord Ram was not born. It is further qualified with the contention that no temple existed at the site of Babri Mosque at any time whatsoever. The Learned Judge has misappreciated the statements of the counsels and has also selectively read the said statements.

The said statement can be read only with exclusion of the disputed place and not to establish the belief of the others about the said place itself. *(See Para 4161 onwards).* The observations made in Para 4372 demonstrate that the exact birth place is not mentioned in any of the historical books including Ramayana. This observation of the Learned Judge is also not proper and justified that; *"We are of the view that the historicity of Lord Rama cannot be restricted by any preconceived notion since, if any such attempt is made out only in respect of Lord Rama but in other matters also, that may result in havoc and will amount to playing with the sentiments and belief of millions of people which are bestowed upon them from generations to generation and time immemoriall."* Such observation is misconceived unwarranted and against the judicial principles.

6.6. Because the Learned Judge has relied upon the inadmissible and untenable evidence to prove the alleged belief of Hindus in relation to the building in dispute. The oral evidence with respect to the said belief is of no avail as the same could not prove the said belief of the followers of Lord Ram even for one hundred years while the era of Lord Ram, as stated by most of the witnesses of Hindu side was very old. The said witness have made the speculation that Lord Ram was born more than 9 lacs of years before. Plaintiff No. 3 of O.O.S. No. 5 of 1989 (OPW 9) Dr. T.P.Verma has stated that Lord Ram's birth should be 15-16 lacs years before and has further proceeded to say that according to

his belief Lord Ram was born 17 lakhs years ago. The Learned Judge has relied upon the unreliable and untenable evidence to prove the belief of one religion in relation to the land in dispute. The oral evidence with respect to the said belief is of very recent period. The era of the said birth of Lord Ram, as stated by various witnesses is very old, being of more than 9 lakhs years ago.

6.7. Because the entire belief as reflected in the history is with respect to Ayodhya town and not the disputed place. The Learned Single Judge has quoted the visit of Guru Nank Deoji of 1510-1511 AD (Para 4384) which shows that the city of Ayodhya was considered to be the place of birth of Lord Rama. In the next paragraph (4386) the learned Judge has gone to the Book of Joseph Tieffenthaler of 18th Century to justify the demolition of the alleged temple for construction of Mosque. Firstly the Learned Judge has omitted the historical part between 1511 to 1750 A.D which is very relevant in the facts and circumstances of the case. Secondly, the record of Joseph Tieffenthaler has been selectively used ignoring the other part of his account.

6.8. Because the Learned Judge has given an erroneous and misconceived finding about the Muslim Rule. The Learned Judge's observation in Para 4398 is not only perverse, unwarranted and misconceived but it gives an indication as if during the Muslim Rule the right to have belief or right to follow religion was taken away in arbitrary manner. The said observation and finding is contrary to the historical facts and evidence.

6.9. Because the reliance upon Gazetteers to prove that the disputed place was as per the belief, the most sacred and pious place do not disclose to the period from when such alleged faith and belief started. The Gazetteers are subsequent development of the 19th Century and they are of no help to record the finding of alleged belief of 1528 AD etc.

6.10 Because the learned Judge himself has observed that the belief existed for last more than 200 years from the date when the

property was attached (see Para 4057) whereas the Mosque was constructed in the year in 1528 AD i.e 225 years (appx) before the belief started, even if the observation of the learned Judge is taken to be correct.

6.11 Because the faith and tradition of followers of Lord Rama has to be linked from the time immemorial, as pleaded, about the actual birth of Lord Rama. The said belief of worshipping cannot start from a particular period after a gap of lacs of years between the birth of Lord Rama and starting of the belief about the place of birth of Lord Rama. The finding of Learned Judge in Para 4407 is flawed and erroneous. The belief/faith that has been relied upon by the Learned Judge is not tenable.

6.12 Because the observations of the Learned Judge with respect to the research of PW-18, Surva Jaiswal are misconceived and erroneous. The said statement of the witness is based upon the research done by her which was also manifested by her published work.

6.13 Because the observation of the Learned Judge stating that several confrontations among Hindus and Muslims in respect to the property in dispute are not on record of history books but still making the reference of the same was uncalled for and unsubstantiated. The judicial pronouncement of the Learned Judge has on the one hand passed highly objectionable remarks against the historians for recording the history in their respective books after their research and on the other hand the Learned Judge is seeking to give an inference that several confrontations among Hindus and Muslims took place but they have not been recorded on the history books. The said observation (Para 4404) is improper, uncalled for, without any justification and against the judicial discipline.

6.14 Because the finding of the alleged worshipping by Hindus in the inner courtyard for several hundred years, as stated by the Learned Judge in Para 4394, is completely misconceived and

without any evidence. The finding of such a nature cannot be given on the basis of oral evidence of witnesses who have the life span of 80 or 90 years approximately. The search of birth place of Lord Rama on the specified disputed place, as stated in Para 4395, is a matter of evidence and cannot be said to be a matter of belief/faith.

6.15 Because the learned Judge has acted illegally and with material irregularity in relying upon the so called belief of Hindus regarding site of the Mosque being the alleged place of birth of Lord Rama even after holding that the contents of the Gazetteers "can not be taken on their face value and cannot be relied to prove a particular aspect of the matter unless it is corroborated." (Kindly See Para 1676 of the Judgement).

6.16. Because learned Judge has wrongly held that Muslim parties had miserably failed to discharge the burden of proof regarding the construction of building in question in 1528 A.D. and a totally vague and incorrect finding has been recorded in this respect (in para 1681) which is based on no evidence and the observations of the learned Judge that "The possibility of change, alteration or manipulation in the inscriptions can not be ruled out" was totally unfounded and based on no evidence and his further finding that the building in dispute might have been constructed probably between 1659 to 1707 A.D. was also a purly conjectural finding based on no evidence. Thus the findings recorded on Issue No. 6 (suit 1), Issue No. 5 (suit 3) and issue No. 1 (a) (suit 4) are illegal, unsustainable and against the evidence on record. (Kindly see paras 1677 to 1682 of the Judgement.).

6.17 Because the learned Judge has misconstrued the application dated 30-11-1858 (Ext. 20 of suit 1) in which the word 'Janam Asthan' was used for Janam Asthan temple situated in the Northern side of the building in dispute. The learned Judge wrongly observed that from the aforesaid document it was clear that "even the Inner courtyard had some Hindu religious signs / Symbols therein and it used to be worshipped by Hindus for last several hundred years."

In this respect the heresay observation of P. Carnegy was also misappreciated and it was wrongly observed that the dispute pertaining to this place was centuries old. It was also wrongly observed that several witnesses of the Muslims side had admitted that Hindus used to come to the disputed place for worship believing it the birth place of Lord Rama. In this respect the learned Judge failed to appreciate the well settled principle of construction of a document and appreciation of evidence that the document should be read as a whole and so also the statement of a witnesses should be read as a whole and not in piecemeal. (Kindly see Paras 1904 - 1908 of the Judgement.).

6.18 Because the learned Judge has failed to appreciate that the so called belief / faith of Hindus regarding birth place of Lord Rama being inside the disputed structure could in no way be said to be either centuries old or continuing for even one century as the said place had been described by the Mahants of Nirmohi Akhara even upto 1941 as a Mosque and not as a place of birth of Lord Rama as was evident from the decree and Commissioner report etc. of Regular Suit No. 95 of 1941 as well as from the documents of 1885 suit.

6.19 Because the learned Judge has failed to appreciate that by applying the test laid down by the learned Judge himself in paragraphs 1898 and 1899, the site in dispute below the middle dome of the Mosque could in no way be held to be the place of birth of Lord Rama as there was no such belief / faith of Hindus coming down from times immemorial in the face of Hindus' own admissions made about the same in the Suit of 1885 as well as in Suit No. 95 of 1941 and in several other papers / documents etc. It was also wrongly observed that such an alleged faith and belief could not be scrutinized through any judicial scrutiny in order to examine as to whether such a belief / faith existed from time immemorial and could in any way be treated as a belief / faith of the entire community continuing for several centuries or even for one century (Kindly see Para 1913 of the Judgement.).

6.20 Because the vagueness of the words "*Janam Sthan*" and "*Janam Bhoomi*" are writ large and nobody could give any definition to these words. It is relevant that in Suit No.5, no efforts have been made to identify, specify and pin-point the alleged place of birth.

6.21 Because the most important piece of evidence has been bypassed by the Learned Judge i.e *Ram Charitmanas* which was written by Goswamy Tulsidas in and around 1570 A.D. The said writer Tulsidas is a celebrated writer among the followers of Lord Ram. In Ram Charitmanas, there is no mention about the demolition of any temple of whatsoever nature for the purpose of construction of Mosque in or around 1528 A.D. The Learned Judge has given finding about the construction of Mosque much later than 1528 A.D probably to avoid the important piece of evidence like Ram Charitmanas which does not mention anywhere about the demolition of temple. It is relevant to mention that *Ram Charitmanas* was written by Tulsidas at Ayodhya and had there been any whisper of demolition of any temple to construct the Mosque, the same must have been recorded by Goswamy Tulsidas in his Book which was written about 40 years after construction of Mosque.

6.22 Because the learned Judge has wrongly relied upon the alleged local belief said to have been referred by Buchanan about the so called demolition of temple by Aurangzeb and construction of Mosque at the site thereof. In this respect the reasoning given by the learned Judge that the period of Aurangzeb was only about 100 years back while the period of Babar was about 275 years more and therefore it was difficult to conceive that the local people were not conversant as to who was responsible for demolition or during whose reign the construction was made particularly when the matter was comparably recent. The criticism made by the learned Judge against the approach of Buchanan to ignore the alleged local belief that the building in dispute was constructed during the reign of Aurangzeb was totally unjustified and unwarranted. It was also wrongly observed by the learned Judge that from plain reading of the text of inscriptions the period mentioned therein

was found to be 923 A.H. or 930 A.H. (kindly see Para 1646 of the Judgement).

6.23 Because the finding of the learned Judge that there was "abundant evidence to show that Hindus were worshiping the said Chabutra believing that it symbolizes and depicts the birth place of Lord Rama" goes to demolish the finding of the learned Judge that the Hindus had been worshiping the inner portion of the building in dispute as the birth place of Lord Rama. (See Para 1976 of the Judgement.)

6. 24 Because there is no consensus among the religious persons as well as historians as to when Lord Ram was born. OPW.1 Mahant Ram Chander Dass has stated that there is no mention about the period of birth of Lord Ram in *Ram Charitmanas* reason being that he has been considered ***Anadi.*** The said witness has made the speculation that Lord Ram might have born lacs of years before. (Pages 81 and 82 of the evidence). Similarly, another witness being OPW 9 Dr. T.P.Verma has stated that Lord Ram's birth should be 15-16 lacs years before and has further proceeded to say that according to his belief Lord Ram was born 17 Lacs years before (Page 98 of evidence). The other witness OPW 12 Shri Kaushal Kishore Mishra has similarly stated that Lord Ram's birth should be lacs of years before and the first birth of Lord Ram should be at least 3 Crores years before and has further stated that the era of Lord Ram Chander Ji should be 10 lacs years before from today. (See Page 51 and 101 of evidence). The OPW 16 Ramanandacharya-Rambhadracharya have stated that Ram Chander Ji was born in seventh manu era and the era of Dashrat ji was 1 crore 50 lacs 80 thousand years before. Similarly, the other witnesses DW-2/1-1, Rajinder Singh, DW-3/1 Mahant Bhaskar Dass, DW-3/5 Raghunath Prasad Pandey, DW-3/6 Sita Ram Yadav. DW-3/7 Mahant Ramji Dass, DW-3/20, Raja Ram Acharya and other witnesses have deposed on the basis of their faith and belief stating that Lord Ram's era was in different periods. The statements based on belief and faith about the birth of Lord Ram is contradictory and self destructive. This aspect of the matter

creates serious issue with respect to the era of Lord Ram even on the basis of faith and belief of the followers of Lord Ram.

6.25 Because the learned Judge has drawn absolutely wrong and unwarranted inferences from the account of William Finch and in this respect the plaintiffs' counsel Mr. Jilani has also been misquoted. It was never argued from the Muslims' side that the account of Willam Finch "lends no credence." As a matter of fact Muslims' counsel had contended that from the said account of William Finch it was evident that in 1608-1611 there was no place of significance known as the birth place of Lord Rama and there was no such belief of the local people that any alleged temple situated on any such alleged Janamsthan was demolished by Babar. It was also wrongly observed by the learned Judge that the plaintiffs' counsel could not suggest that in Ayodhya there was any other place than the disputed site which may be considered to be the Fort of King Dashrath or Lord Rama in ancient times. The description of Oude (Ajodhya) as given in the relevant extract of the Travels Account of William Finch (Ext. O.O.S 5-19 on page 271 of Register 21) refers to "ruins of Ranichand (s) castle and houses which the Indians acknowled (g) e for the great God." He further says that "**In these ruins remayne certaine Bramenes, who record the names of all such Indians as wash themselves in the river running thereby; which custome, they say hath continued foure lackes of yeeres (which is three hundred ninetie foure thousand and five hundred yeares before the worlds creation).** Some two miles on the further side of the river is a cave of his with a narrow entrance, but so spacious and full of turnings within that a man may will loose himself there, if he take not better heed; where it is thought his ashes were buried. Hither resort many from all parts of India, which carry from hence in remembrance certain graines of rice as blacke as gun-powder, which they say have beene reserved ever since. Out of the ruines of this castle is yet much gold tryed. Here is great trade and such abundance of Indian asse-horne that they make hereof bucklers and divers sorts of drinking cups. There are of these hornes, all the Indians affirme, some rare of great price,

no jewell comparable, some esteeming them the right unicorns horne." It is thus evident from this description of William Finch that the aforesaid ruins of the castle and houses were on the river side and not at a distance of about more than 1 km. from the river where the disputed building existed. It was also evident from the aforesaid descriptions of William Finch that he had referred to Oude (Ajodhya) as the seat of Lord Rama and as such there was no occasion for him to have made any reference of any Mosque, including Babri Masjid or any other place of importance of Muslims. The said Mosque was undoubtedly of no historical significance at that time. The said Mosque could have been of any significance had the same been constructed at the alleged place of birth of Lord Rama after the destruction of any temple and had it been so, it would have been definitely taken notice of by William Finch. It was in this light that the said extract of the Travels Account of William Finch was placed by the plaintiffs' counsel Sri Jilani, Advocate with great vehemence to substantiate his argument that no incident of the alleged demolition of any temple had taken place in 1528 AD and else the same would not have gone unnoticed by William Finch (Kindly see Paras 1586-1587 of the Judgement.)

6.26 Because the learned Judge has failed to appreciate the difference between the place of birth of Lord Rama being in Ayodhya and place of birth of Lord Rama being in Babri Masjid. As a matter of fact there was no Cemented faith and belief of the community in respect of the said place of birth being in the inner portion of Babri Masjid. As is evident from own documents of the devotees of Lord Rama and also from the observations of the learned District Judge and Judicial Commissioner made in the appellate Judgements of 1886, it is not at all justified to suggest / hold that the alleged faith / belief regarding the place of birth of Lord Rama being inside the mosque was borne out from any ancient literature and the same was liable to be accepted on its face or that the same may not be tested by a Court of law being beyond the scope of judicial review. (Kindly see Para 3511 of the Judgement).

6.27 Because the learned Judge has wrongly held that there was overwhelming evidence to establish that in the outer courtyard there existed at least 3 structures since prior to 1885. The Commissioner's Map of 1885 suit did not refer to any place as "Kaushalya Rasoi" or "Chhathi Poojan Asthal" and there was no description of Bhandara also in the said Commissioner's Map (enclosed as Appendix 3 to the Judgement.) (Kindly see Para 1971 of the Judgement.).

6.28 Because the learned Judge has wrongly observed that it has not been proved that despite some orders passed by authorities of the then government for removal of the said Chabutra the same continuted to exist and was not removed while sufficient documentary evidence was there to this effect which has remained unrebutted. In this resect Ext. A-13, Ext. 30 and Ext. 15 (suit 1) etc. were quoated by the learned Judge himself on Para 1978 to 1983 but the same were not noticed while making the aforesaid observations. In any case the learned Judge should nave confined his finding about the existence of Ram Chabutra and Sita Rasoi since around 1885 and should not have made vague observations about the existence of these structures "since long."

6.29 Because the learned Judge after referring to Ext. A-13, Ext. 30, Ext. 15, Ext. 16, Ext. 34 and Ext. 17 of suit 1 wrongly observed that the aforesaid documents disprove the claim of Muslims. It is surprising that there being specific averments and proof about the Mosque in question being in the possession of Muslims in the aforesaid documents, the learned Judge has found that the said documents disprove the case of Muslims. (kindly see Para 1978 to 1983 of the Judgement.)

6.30 Because the learned Judge has referred to the comments of Sri Jilani, Advocate about the Book of Lala Sitaram in an incorrect manner in as much as the contents of the said Book regarding the offering of Namaz in the building in dispute were relied upon by the plaintiffs' counsel in order to show that even the evidence of Hindus supported the Muslims' contention about the offering of

Namaz in the building in dispute from 1528 to 1949, either partially or fully. (See Para 1479 of the Judgment).

6.31 Because the learned Judge has wrongly observed that the Accounts of Tieffenthaler referred to worship of the so called 'Bedi' (cradle) by the Hindus inside the building in dispute. The said Bedi was reported to be situated like a square box of the height of about 5 inches only with a size of about 5 X 4 ells. This place was not described as a part of any temple but the belief mentioned about the same was that "once upon a time, here was a house where Beschan was born in the form of Ram." As such it is totally incorrect to say that Tieffenthaler had "noticed worship by Hindus" but was "conspicuously silent about worship by Muslims in the disputed building." (Kindly see Para 1641 of the Judgement).

The Learned Judge has dealt with **Issue No.7/ Suit No.1, Issue Nos. 3 & 8/Suit No.3, Issue Nos. 2,4, 10, 15 and 28/Suit No.4 and Issue No.16/Suit No.5.**

It is material to point out that the Learned Judge has sought to decide the above issues in relation to adverse possession/possession while deciding the issue of limitation in Para 2620 stating "...Moreover, as a matter of fact, the place in dispute continued to be visited by the Hindus for the purpose of worship, Darshan etc. The religious status of plaintiff-dieties remained intact. We do find mention of the factum that despite construction of the building as Mosque, the Hindus visited there and offered worship continuously, but we find no mention, whatsoever, that the Muslims also simultaneously offered Namaz at the disputed site from the date it was constructed and thereafter till 1856-57. At least till 1860 we find no material at all supporting the claim of the Muslim parties in this regard. On the contrary, so far as the worship of Hindus in the disputed structure is concerned, there are at least two documents wherein this fact has been noticed and acknowledged. There is nothing contradictory thereto". This finding of the Learned Judge, while dealing with the

issue of limitation, is without basis and on the basis of mis appreciation of evidence and is liable to be set aside. Similarly, the said observation is without legal basis in the context of deciding the issue of possession/adverse possession in view of cogent and material evidence placed on record by the Plaintiffs of Suit No.4 and for the said purpose, the Appellant seeks to rely upon the statement of Counsels for the Plaintiff in Suit No. 4 as set out in Para 2772. The finding of Learned Judge is misconceived and based on mis-appreciation and wrong interpretation of the evidence on record.

6.32 Because the pleadings from the Mosque side have been very clear and categorical stating that after the Mosque was constructed in 1528 A.D., it has been a Waqf where Muslims have been offering their Namaz continuously. The existence of any temple at that site prior to the Mosque has been clearly denied by stating that even if, though not admitted, the temple on any structure ever existed at that site that will have no consequence since Muslims have been in peaceful possession on the said area and Mosque for over 400 years and due to this Hindus will have no right of any nature to claim any right or title on the said property. The Plaintiffs in Suit No.4 and other supporting parties have placed on record the evidence to that effect. The fact of the matter is that the Mosque existed for a period of more than 400 years. The cardinal evidence to decide the issue of adverse possession would be to see the possession which has been with the Muslims. The Defendants in Suit No.4 and Plaintiffs in other Suits failed to show that they had title over the disputed property and there was no tenable evidence on record to show that any temple was constructed on the said location and was later on demolished for construction of the Mosque.

6.33 Because no plea of adverse possession could be available against the Mosque because the Muslims were in continuous possession of the same upto the year 1949.

6.34 Because the finding of Learned Judge in relation to **Issue No.2, Suit No. 4** stating that the premises marked as A,B.C.D in the Map appended to the Plaint was not in possession of the Plaintiffs upto 1949, is absolutely incorrect, erroneous, misconceived and without legal basis.

6.35 Because the entire claim of the adverse possession, if any, on behalf of the temple side is based upon possession of the Chabutra in the outer courtyard which was managed by Nirmohi Akhara, (the Plaintiff of Suit No.3) but the issue No. 3 in Suit No.3 has been decided against the Plaintiff. In view thereof, if the said Plaintiff did not acquire title due to title by adverse possession , no other Hindu Party could be given any right on the basis of their illegal possession or joint possession.

6.36 Because the entire legal proposition cited by the Learned Judge, though taken from the judgments, texts and dictionaries etc, are matter of record but the same has been applied against the pro-Mosque Party by mis-appreciation of evidence and pleadings. It is the case of the Plaintiff in Suit No.4 that the Mosque existed since 1528 A.D and remained there till 06.12.1992. The pleading of the Plaintiff in Suit No.4 with respect to adverse possession is in clear terms.

6.37 Because the entire premises of deciding the issue of adverse possession is based upon the bifurcation of the entire period into four parts as reflected in Para 2771. The said categorization/bifurcation itself is not proper and correct. The evidence relied upon by the Counsel for the Plaintiffs in Suit No.4, as reflected in Para 2772 in relation to the position between 1528 A.D and 1950 has been completely misinterpreted and misapplied.

6.38 Because the Gazetteer of Thornton was misread and misappreciated. The evidence placed on record about the year 1858 A.D itself shows that the premises was a Masjid. The Learned Judge has misread the evidence supporting the case of the Muslim Party and has given wrong interpretation, to support

the case of the temple. The observation of Learned Judge that the offering of Namaz or possession of Muslims in 1858 A.D was not proved on the disputed site is not proper and contrary to evidence. Further observation that the Muslims and Hindus freely and frequently were visiting the place in dispute for worship, is contrary to the records and the same appears to be mis-conceived.

6.39 Because the requirement of cogent material to show the possession of the Muslims in 1528 A.D is improper as it is not expected that the title deeds or other cogent materials would have been available in 1528 A.D. It is not understandable that for the purpose of showing possession, why cogent materials of 1858 A.D with respect to possession of Muslim parties are required whereas in the case of Hindu parties, burden of proof has been discharged on the basis of belief/faith. The evidence produced by the Muslim parties has been treated differently than the evidence produced by the Defendants in Suit No.4 and hence the approach of the Learned Judge appears to be improper and unfair. The interpretation of documents is not in accordance with the settled principles of law and hence the finding given on Issue No.2, 4,10, 15 and 28 in Suit No.4 in Paras 3111 to 3115 is improper and incorrect and is liable to be set aside.

6.40 Because the Learned Judge has failed to appreciate the documentary evidence of the Plaintiff in proper perspective and has misconstrued the documents by giving incorrect and misleading interpretation to the said documents. Some of these documents in relation to possession are as under:-

1. Ext. 19 (Vol. 5, Page 61-63) complaint of Sheetal Dubey, Station Officer dated 28-11-1858 about installation of Nishan by Nihang Faqir in Masjid Janam Asthan.
2. Ext. 20 (Vol. 5, P. 65-68B) - Application of Mohd. Khateeb, Moazzin of Babri Masjid dated 30-11-1858 against Mahant Nihang for installing Nishan in Masjid Janam Asthan.

3. Ext. OOS 5-17 (Vol. 20, P. 187-197) - Petition of Mohd. Asghar, Mutawalli, dated 30-11-1858 regarding Nishan by Nihang Faqir.
4. Ext. 21 (Vol. 5 P. 69-72A) - Report of Sheetal Dubey, 18 Station Officer dated 1-12-1858 against Nihang Sikh for installing Nishan,
5. Ext. A-70 (Vol. 8 P. 573-575) - order dated 5-12-1858 about arrest of Faqir.
6. Ext. 22 (Vol. 5 P. 73-75) - Report of Sheetal Dubey (dated 6-12-1858 (filed by Plaintiff of OOS No. 1 of 1989)
7. Ext. A-69 (Vol. 8 P. 569-571) - order dated 15-12-1858 about removal of flag (Jhanda) from the mosque.
8. Ext. 54 (Vol. 12 P. 359-361) - Application of Mohd. Asghar etc. dated 12-3-1861 for removal of Chabutra as Kutiya.
9. Ext. 55 (Vol. 12 P. 363-365) Report of Subedar dated 16-3-1861 about removal of Kothri.
10. Ext A-13 (Vol. 6 P. 173-177) Application of Syed Mohd. Afzal, Mutawalli dated 25-9-1866, for removal of Kothri, against Ambika Singh and others.
11. Ext. A-20 (Vol. 7 P. 231) copy of order dated 22-8-1871 passed in the case of Mohd. Asghar Vs. State.
12. Ext. 30 (Vol. 5 P. 107-116-A,B,C) Memo of Appeal No. 56 filed by Mohd. Asghar against order dated 3-4-1877 regarding opening of northern side gate (now being called by Hindus as Singh Dwar).
13. Ext. 15 (Vol. 5 P. 43-45) Report of Deputy Commissioner in the aforesaid Appeal No. 56.
14. Ext. 16 (Vol. 5 P. 45) Order of Commissioner dated 13-12-1877 passed in the aforesaid Appeal No. 56.
15. Ext. 24 (Vol. 5 P. 83-85) Plaint of the case No. 1374 / 943 dated 22-10-82 / 6-11-82 (Mohd. Asghar Vs. Raghubar Das)
16. Ext. 18 (Vol. 5 P. 55-57) Application of Mohd. Asghar Vs. Raghubar Das dated 2-11-1883 about 'safedi' of walls etc.

The above exhibited documents have been misread, misinterpreted out of context and ignored to a great extent by the

Learned Judge leading to an erroneous and misconceived finding on this issue.

6.41 Because the Learned Judge has ignored the documents relating to Civil Suit of 1885 to see that the possession of the mosque was with the Plaintiffs/Muslim Parties. The said documents were relied upon by the Plaintiffs in Suit No.4 and the same were exhibited in the proceedings. The said exhibited documents have not been properly considered and have been given improper meaning contrary to the plain meaning of the said documents to see as to who had possession of the said premises. The said exhibited documents are as under:-

1. Ext. 13 (Vol. 10, Page 61-63) Plaint of Suit No. 61 / 280 of 1885 filed by Mahant Raghubar Das (also filed as Ext. A-22) (Vol. 7, P.237-239, 241-243 and as Ext. OOS 5-26) (Vol. 23, P.659-663)
2. Ext. 14 (Vol. 10, P. 65-74) Written statement of Mohd. Asghar filed in the above case.
3. Ext.15 (Vol. 10, P. 75-77) Copy of Report of Commission dated 6-12-1885 with map (Also filed as Ext. A-24 and A-25 in OOS 1/89-Volume 7, P. 271-281)
4. Ext.16 (Vol. 10 P. 79-85) Copy of Judgment of Pt. Shri Kishan dated 24-12-1885 (Also filed as Ext. A-26 in OOS 1/89-Vol. 7, P. 283-301)
5. Exhibit 17 (Vol. 10 P. 57-91) Copy of Judgment of D.J. Faizabad dated 18/26-3-1886 (Also filed as Ext. A-27 in OOS 1/89-Volume 7, P. 319-323)
6. Exhibit 18 (Vol. 10, P. 93-95) Copy of Decree of D.J. Faizabad dated 18/26-3-1886. (Also filed as Ext. A-28 in OOS 1/89-Vol. 7, P. 325-329)

6.42 Because the learned Judge has not taken into account the material documents of 1934-1936 A.D. in a correct perspective which show that the possession of the premises was with the Muslims. The said documents are exhibited in the Suit which are as under:-

1 Exhibit 23 (Vol. 10, Page 135-136) Copy of application moved by Mohd. Zaki and others for compensation of the

losses caused in the riot held on 27-3-1934.

2 Exhibit A-49 (Vol. 8, P. 477) Copy of order of Mr. Milner white dated 12-5-1934 for cleaning of Babri Masjid from 14-5-1934 and for use of the same for religious services.

3 Exhibit A-43 (Vol. 8, P. 459) Copy of D.C.'s order (Mr. Nicholson) dated 6-10-1934 for approval of payment of compensation.

4 Exhibit A-51 (Vol. 8, P. 483-487) Application of Tahawwar Khan (Thekedar) dated 25-2-1935 for payment of his bill regarding repair of Mosque.

5 Exhibit A-45 (Vol. 8 P. 467) Copy of order of D.C. dated 26-2-1935 for payment of Rs. 7000/- on the application of Tahawwar Khan.

6 Exhibit A-44 (Vol. 8 P. 461-465) Copy of Estimate of Tahawwar Khan dated 15-4-1935 regarding Babri Masjid.

7 Exhibit A-50 (Vol. 8, P. 479-481) Application of Tahawwar Khan (Thekedar) dated 16-4-1935 explaining delay for submission of bill.

8 Exhibit A-48 (Vol. 8, P. 473-476) Copy of Inspection Note dated 21-11-1935 by Mr. Zorawar Sharma, Assistant Engineer PWD, regarding Bills of repair of Babri Masjid.

9 Exhibit A-53 (Vol. 8, P. 493-495) Application of Tahawwar Khan Thekedar dated 27-1-36 regarding Bills of repair of Babri Masjid and houses.

10 Exhibit A-46 (Vol. 8, P. 469) Copy of report of Bill clerk dated 27-1-36 regarding the repair of the Mosque.

11 Exhibit A-47 (Vol. 8, P. 471) Copy of order of Mr. A.D.Dixon dated 29-1-36 regarding payment of Rs. 6825/12/- for repair of Babri Mosque.

12 Exhibit A-52 (Vol. 8, P. 489-491) Application of Tahawwar Khan Thekedar dated 30-4-1936 regarding less payment of his bills for repair of houses and Mosque.

6.43 Because the Learned Judge has not properly appreciated the material documents which show that the control and management of the mosque premises was with Muslims and hence the finding of Muslim Parties not being in exclusive possession of the

premises is incorrect and perverse. The Learned Judge while dealing with these documents, has misconstrued and given wrong interpretation to the same. The said documents are as under:-

1. Ext. OOS 5-27 (Vol. 23, Page 665) Sanction letter dated 6-12-1912 for suit u/s 92 CPC issued by Legal Remembrancer, U.P.
2. Ext. A-8 (Vol. 6, P. 75-149) Copy of Accounts of the income and expenditure of Waqf from 1306 F. regarding Babri Masjid etc.
3. Ext. A-72 (Vol. 7, P. 337-355) Accounts submitted by S. Mohd. Zaki before Hakim Tahsil dated 9-7-1925 regarding Babri Masjid etc.
4. Ext. A-31 (Vol. 7, P. 357-377) Accounts submitted by Mohd. Zaki on 31-3-1926 before Tahsildar regarding Babri Masjid etc.
5. Ext. A-32 (Vol. 7, P. 379-399) Accounts submitted by Mohd. Zaki on 23-8-1927 before Tahsildar regarding Babri Masjid etc.
6. Ext. OOS 5-28 (Vol. 23, P. 667) Letter of E.L. Norton, Legal Remembrancer dated 18-12-1929 for sanction to file suit u/s 92 CPC. regarding Babri Masjid etc.
7. Ext. A-19 (Vol. 10, P. 97-98) Certified copy of letter of E.L. Norton dated 18-12-1929 for permission to file suit u/s 92 regarding Babri Masjid etc.
8. Ext. A-7 (Vol. 6, P. 63-69) Agreement executed by Syed Mohd. Zaki dated 25-7-1936 in favour of Moulvi Abdul Ghafoor, Imam of Babri Masjid, regarding payment of salary of Imam. (Also filed as Ext. 24 in OOS 4 /89 – Vol. 10, P. 139)
9. Ext. A-61 (Vol. 8, P. 515-517) Application of Abdul Ghaffar, Pesh Imam of Babri Masjid, dated 20-8-1938 for payment of arrears of his salary.
10. Ext. A-4 (Vol. 6, P. 35-43) Report of Distt. Waqf Commissioner, Faizabad dated 16-9-1938 submitted to Chief Commissioner of Waqf. (copy filed as Ext. 21, in OOS 4 / 89 – Vol. 10, P. 117 - 123)

11. Ext. A-5 (Vol. 6, P. 45-48) Order of Distt Waqf Commissioner, Faizabad dated 8-2-1941 regarding Babri Masjid (copy filed as Ext. 22 in OOS 4 / 89 – Vol. 10, P. 127 - 131)

12. Ext. A-33 (Vol. 7, P. 401-407) Copy of Accounts dated 25-9-1941 filed by Kalbe Husain before Tahsildar.

13. Ext. A-60 (Vol. 8, P. 514-513) Certified Copy of Application for registration of waqf bearing endorsement dated 27-9-1943 filed before the Sunni Waqf Board.

14. Ext. A-66 (Vol. 8 P. 539-545) Application / reply of Syed Kalbe Hussain to Secretary, Sunni Waqf Board. dated 20-11-1943 regarding management of mosque.

15. Ext. A-55 (Vol. 8, P. 503-504) Copy of statement of Income and Expenditure of Waqf Babri Masjid for 1947-48 (Account from 1-10-1947) (Also filed as Ext. A-35 – Vol. 7, P. 413-414).

16. Ext. A-54 (Vol. 8 P. 501-502) Copy of Report of Auditor for 1947-48 dated 27-7-1948 (Also filed as Ext. A-36 – Vol. 7, P. 415-416)

17. Ext. A-62 (Vol. 8, P. 519-521) Copy of letter of Secretary SWB dated 25-11-1948 to Sri Jawwad Hussain regarding Tauliat.

18. Ext. A-63 (Vol. 8, P. 523-527) Copy of Report of Mohd. Ibrahim, Waqf Inspector dated 10-12-1949.

19. Ext. A-64 (Vol. 8, P. 529-535) Copy of Report of Mohd. Ibrahim, Waqf Inspector WB dated 23-12-1949.

20. Ext. A-57 (Vol. 8, P. 507-508) Copy of the Statement of Income and Expenditure of 1948 – 49 filed before the SWB.

21. Ext. A-56 (Vol. 8, P. 505-506) Copy of the Report of Auditor of the Board dated 23-02-1950 for 1948 - 49.

22. Ext. A-59 (Vol. 8, P. 511-512) Copy of the Statement of Income and Expenditure for 1949-50 by Jawwad Husain filed before the SWB.

23. Ext. A-58 (Vol. 8, P. 509-510) Copy of the Report of Auditor of the Board dated 23-12-1950 for 1949 - 50.

24. Ext. OOS 5-103 (Vol. 23, P. 703-708) Copy of Plaint of R.S. No. 29 of 1945 dated 4-7-1945 filed by Shia Waqf Board

against Sunni Waqf Board (filed by plaintiff of OOS 5 / 89)

25. Ext. A-42 (Vol. 8, P. 431-452) Copy of Judgment of R.S. No. 29 of 1945 dated 30-3-1946 between Shia Waqf Board and Sunni Waqf Board (also filed as Ext.-20-Vol. 10, P. 101-115)

6.44 Because the learned Judge has wrongly recorded that "Sri Jilani fairly admitted during the course of arguments that historical or other evidence is not available to show the position of possession or offering of Namaz in the disputed building at least till 1855." The factual position is that neither any such admission was made by Sri Jilani and nor there was non availability of of historical and other evidence on record to show possession and offering of Namaz even before 1855. In this respect documents referred by learned Judge from paragraph 2315 to paragraph 2383 have been misconstrued, misappreciated and misread leading to wrong observation that the said documents did not support the case of the plaintiffs (Suit-4) that the Muslims were offering Namaz in the building in dispute and the same was continuing in the possession of Muslims. In this respect it has also been wrongly observed that there was admission in some document which could "be treated as a sole conclusive evidence to prove that the disputed building and premises throughout has been in possession of Hindus and not of Muslims." It was also wrongly recorde that: "Had the building in dispute and the inner courtyard been in possession of Muslims," a Chabutra could not have been constructed in the inner courtyard in 1858. In this respect the learned Judge failed to appreciate that the said Chabutra referred to in the complaint dated 30th November, 1858 (Ext. 20 of Suit No. 1-Page 2300) had been removed by Sheetal Dubey Thanedar as was evident form his report dated 12-12-1958 (Ext. A-69 of Suit No. 1) (See Paras 2313,2314, 2317-2321, 2325 & 2327 of the Judgement.).

6.45 Because the learned Judge has wrongly treated the word Duago as a part of the name of "Mohammadi Shah" mentioned in Ext. 23 (Suit-1) and wrongly recorded that Ext. 31 (Suit-1) dated 15-11-1860 was the first document "going to the extent that in the inner

courtyard, the Moazzin used to recite Adhan (Azzan)" (See Para 2327-2333 of the Judgement).

6.46 Because learned Judge has wronglyobserved that there was not even a whisper in any of the documents (mentioned at Para 2315-2341) that the Muslims visited the place in dispute and offered Namaz thereat whereas continuous visit of Hindus and worship by them at the disputed site was mentioned in a number of documents as well as in the historical records. In this respect the material on record was not only ignored and the other documents have been misappreciated and misread by the learned Judge.

6.47 Because learned Judge wrongly recorded that Ext. A-8 (Suit-1) had not been proved while the said document was covered by Section 90 of the Evidence Act as it was more than 30 years old and it was filed in an earlier suit also and its coming from a proper custody was beyond doubt. It further been wrongly recorded by the learned Judge that *"Sri Jilani learned counsel for Sunni Waqf Board could not tell as to how the contents of the said document can be said to have been proved or treated to be correct in the absence of any witness having proved the same."* It was also wrongly observed by the learned Judge that it was not the case of the defendants 1 to 5 (Suit-1) that any legal presumption can be drawn in respect of correctness of the contents thereof under law. As a matter of fact Sri Jilani had strenuously contended that the said document being of the period around 1299-1307 Fasli (around 1900 A.D.) it was almost impossible to produce either the scribe of the said note book or any witnesses of that period and the rule of evidence enshrined in Section 90 of the Evidence Act was fully applicable regarding proof of the said document. It was also vehemently argued by Sri Jilani Advocate, that the details of expenditure regarding lighting in the Mosque, rent of Chandni etc. expenses of making payment of salaries to the Imam and Moazzin of the Mosque etc. fully established offering of the prayers in the said Mosque and possession of the Muslims. It is incorrect for the court to say that the expenses shown in the above document

exfacie do not appear to have any relevance with the building in dispute. (See Para 2355-2362 of the Judgement).

6.48 Because the learned Judge has wrongly observed that Ext. A-6 (Suit-1) of 1934 was not a 30 years old document when it was exhibited and in any case it was wrongly observed that the said document could not be held to be proved even in 2010. Similarly Ext. A-11, A-10 and A-21 (Suit-1) etc. have also not duly considered while there was specific mention about the maintenance of Mosque and inspection of the same by the Government Officials. It has also been wrongly observed that none of these documents throw any light on the fact whether the Muslim public visited the said place for offering Namaz. In this respect the learned Judge failed to appreciate that the use of Mosque by the Muslims can not be said for any other purpose except for the offering of Namaz. (See Para 2387 of the Judgement).

6.49 Because learned Judge has failed to appreciate that the testimony of the witnesses of Muslims side referred on Paras 2460-2541 fully proved the case of the plaintiffs (Suit-4) about the offering of regular prayers in the disputed building upto December 1949 and the testimony of none of these witnesses could be said to be either uncorroborated by other witnesses or based on hearse information or self contradictory or unreliable. It has further been wrongly observed that the evidence produced by the plaintiffs (Suit-4) was not credit worthy so as to believe what they had said. The learned Judge is not justified in making adverse inferences against the witnesses merely on the basis of some minor contradictions and the observations made about the age of certain witnesses being less than what was told by them, specially in respect of PW-2 (Haji Mahboob) etc. is also completely unjustified and the comments made by the learned Judge against these witnesses are totally misconceived and unwarranted.

6.50 Because the learned Judge has improperly and wrongly observed that by a perusal of Ext. A-63 and A-64 (Suit-1) it could not be said that regular prayers were being held in the property in dispute. It

is also relevant to mention here that the this observation is in violation of the basic principles of appreciation of evidence by not appreciating the documents as a whole and else the learned Judge would not have observed on the basis of these two reports mentioned above that regular prayers could not have been held in the property in dispute. (See Paras 2549-2550 of the Judgement.).

6.51 Because the finding of the learned Judge that the claim of Muslims about the daily prayers being held in the building in suit could not be believed or that the inner courtyard had "remained open for all," is based on no reliable evidence rather the said finding has been recorded by ignoring and by misappreciating the oral and documentary evidence produced by the Muslims and Hindus. (See Para 2552 of the Judgment).

6.52 Because learned Judge has wrongly stated that the entire evidence of the Muslims did not touch upon the area covered by the outer courtyard except the use of passage and it is wrong on the part of the court to observe that the plaintiffs were never in possession thereof. In this respect the documentary evidence adduced by the Muslims for the period from 1858 A.D. onwards as well as the oral evidence adduced by the Muslims and also some documentary evidence adduced by the Hindu side have been ignored. (See Para 2554 of the Judgment).

6.53 Because learned Judge has made incorrect observation by stating that the Chabutra said to have been "constructed in the outer courtyard in 1857" was "never interfered or obstructed by Muslims at any point of time" and in this respect wrongly applied the law of limitation for giving alleged rights to the Hindus whereas on the plea of adverse possession based on Section 27 of the Limitation Act the claim of adverse possession made by the Muslims was not accepted by the learned Judge by relying upon the rulings of this Hon'ble court and by observing that since it was not pleaded that who was the real owner, the plea of adverse possession could not be entertained. Regarding the alleged rights of Hindus, the findings recorded by the learned District Judge and Judicial

Commissioner in 1886 has also not been taken into account. (See Paras 2553 to 2557 of the Judgment).

6.54 Because the finding recorded by learned Judge that Hindus in general had also been visiting inner courtyard for Darshan and worship according to their faith and belief and hence it could be said that the inner courtyard was virtually used jointly by the members of both communities is based on no reliable evidence and is an assumption. This finding of the alleged joint possession is absolutely against the evidence of record. (See Para 2558 of the Judgment).

6.55 Because the learned Judge has wrongly observed that there was no mention, whatsoever, that the Muslims offered worship in the Mosque at the disputed side from the date it was constructed and thereafter till 1856-1857. It was also wrongly observed by the learned Judge that at least till 1860 there was no material at all supporting the claim of the Muslim parties in this regard while there were at least 2 documents in which the worship of Hindus in the disputed structure had been noticed and acknowledged and in this respect wrongly relied upon the observations of Tieffenthaler and Edward Thornton as well as Ext. 20 of suit No. 1. (See Paras 2622-2625 of the Judgment).

6.56 Because the learned Judge has wrongly observed that P. Carnegi's **Historical Sketch** (published in 1870) was the first document which mentioned about the worship in the disputed structure by Muslims also and the Gazetteer of W.C. Benett (1877) and the report of A.F. Millitt etc. were also misappreciated and wrongly relied upon against the Muslims. (See Paras 2628 to 2632 of the Judgement).

6.57 Because the learned Judge has wrongly held that Muslims had completely failed to prove their possession, whether adverse or otherwise from 1528 A.D. and onwards and except of bare pleadings nothing has been brought on record to prove the same. In this respect also Travellers accounts of William Finch and

Joseph Tieffenthaler, Gazetteers of Walter Hamilton, Edward Thornton and P. Carnegi as well as Exts. A-13, A-14, A-16, A-17, A-69, A-70 and Exts. 15, 19, 20, 21, 22, 24, 25, 27, 28, 29, 30, 31 and 54 etc. (Suit-1) were either misread or misappreciated and as such the finding of Issue No. 7 (Suit-1) based on the misappreciation / misreading of aforesaid evidence was illegal and unsustainable. (See Paras 2957 to 2993 of the Judgment).

6.58 Because the learned Judge has wrongly observed that claim of Hindus about their alleged possession of the premises of the outer courtyard was not disputed whereas the fact is that neither any such claim was made in 1885 or subsequent thereto and nor the Muslims had ever admitted that the entire premises of the outer courtyard had ever remained in the possession of Hindus upto 22-12-1949. In this respect specific averments were there in the Written Statement of Mohd. Asghar filed in 1885 suit (Ext. A-23 of Suit-1) (Register No. 7, pages 255-261) and even in the plaint of suit No. 4 the possession of Hindus was said to be only on Chabutra. It is also incorrect to say that the Muslims had not placed any evidence to rebut the claim of Hindus regarding the outer courtyard and to show that Hindus and never remained in the possession of entire outer courtyard. It was also wrongly observed by the learned Judge that a lot of documents were on record demonstrating that the Hindus continued to enter the premises in the inner courtyard also and offered worship there and the entrance door in the dividing grilled wall was never locked. It was also wrongly observed that there was no evidence that the Muslims were in the possession of the property in dispute "after its construction in the form of a Mosque by a Muslim Ruler before Tieffenthaler's visit but on the contrary, Hindus continued to enter the disputed premises and worship thereat....." (See Paras 3085 and 3087-3090 of the Judgement).

6.59 Because the learned Judge has wrongly observed that the Revenue entries do not create any right and that the Revenue entries "would not show that a particular party was in possession." It was also not appreciated by the learned Judge that there was no

Mutawalli but rather there was a committee of management appointed by the Board when oral evidence was being adduced and Pesh Imam of the Mosque who had lead the prayers upto 1949 had already expired before the commencement of the oral evidence in the High Court. It was also not appreciated that when the F.I.R. of the incident of 22nd / 23rd December 1949 had already been lodged by the Station Officer of P.S. Ayodhya, there was no occasion for any other complaint being separately filed by any Muslim associated with the management of the Mosque. It was also wrongly observed by the learned Judge that the affidavit of Pesh Imam (Maulana Abdul Ghaffar) filed in the Writ Petition pending before the same court could not be taken notice of although he was dead and could not be produced to appear in the witnesses box. (See Para 3094 of the Judgement).

6.60 Because the learned Judge has failed to appreciate the law laid down by this Hon'ble court as well as by Privy Council and the High Court of Allahabad and Oudh about the evidentiary value of Revenue entries in its correct perspective and the certified copies of the Accounts etc. submitted by the ther. Mutawalli to the Tahsildar / Collector as well as to Waqf Board were also not properly appreciated and it was wrongly observed that the documents referred on Para 3096 had not been proved. In this respect one observation made in one auditor's report (Ext.A-58) was also misappreciated and the provision contained in Section 26 of the U.P. Muslims Waqf Act, 1960 (now substituted by the Waqf Act, 1995) was also not appreciated in which it was specifically mentioned that all copies issued by the Waqf Board shall be received as prima-facie evidence of the record and be admitted as evidence. As such there was no requirement of proving the contents of the said documents by any oral evidence and especially of the documents which were more than 30 years old. (See Para 3096 of the Judgement.).

6.61 Because the learned Judge has observed that after the riots of 1934 no order had been placed before the court to show that the premises in dispute was ever handed over to the Muslims or that

they were allowed to offer Namaz in the building in dispute. In this respect the specific averments made in the order dated 12-5-1934 (Ext. A-49 of Suit-1) referred on page 2922 and other documents referred on pages 2921-2933 were misappreciated and misread. The word "religious services" used in the order dated 12th May 1934 could not be interpreted for any other service except Namaz. (See Paras 3097-3999 of the Judgement).

6.62 Because the learned Judge has wrongly observed that the date of the order given in Ext. O.O.S. No. 5 – 27 (Suit-5) was not legible or that it could not be ascertained as to whom it was addressed and therefore, it could not be relied upon. The learned Judge failed to appreciate that during the course of arguments it was specifically pointed out, which was not rebutted by any one, that the said order was dated 6-12-1912 and was issued by the legal Remembrancer of the Government of U.P. regarding the Mosque built by Emperor Babar known as Babri Masjid situated in village Ramkot, Ayodhya and the description of this document mentioned in the list of documents at serial No. 43 (given in Register No. 20) specifically mentioned therein about the nature of the said document. It was also wrongly observed by the learned Judge that from the order passed u/s 92 C.P.C. it was not evident that as to how and why the said sanction was granted. (See Para 3102 of the Judgement).

6.63 Because the learned Judge has misappreciated and misread the documents referred on Paras 3103-3105 and wrongly observed that these documents "show at the best that, Namaj, only on Friday, used to be offered in the disputed structure in the inner courtyard and for rest of the period the building remain unattended by Muslim." In this respect observation made by the learned Judge that witnesses of the plaintiffs (Suit 4) have expressed their ignorance about the visit of the Waqf Inspector dated 10-12-1949 and 23-12-1949 was also uncalled for and improper as no one had claimed that the said visit was made in his presence. It was also wrongly observed that the certified copies of the said 2 reports had not been proved and the same could not be

termed to be the public document or that the contents of the same were required to be proved. In this respect the learned Judge did not take into account the relevant provisions of the waqf Act as well as the fact the author of these 2 reports (Sri Mohd. Ibrahim) had expired long back and as such he could not be produced to prove the contents of the same. It was also not noticed by the learned Judge that the said 2 reports had neither been doubted in any manner by the other side but rather the same were even relied upon by the other side during the course of arguments and otherwise also. (See Paras 3103-3105 of the Judgement).

6.64 Because the learned Judge has wrongly observed that there was no evidence of the possession of Muslims of the property in suit for the period prior to 1855 and it was also wrongly held that the Muslims did not have the possession of the premises in outer courtyard at least since 1856-1857 when the dividing wall was said to have been raised. In this respect the learned Judge failed to appreciate the large number of documents and references of Historical Books as well as of the Books relied upon by the Hindu side which established that the Muslims were not only in full control of the inner portion of the Mosque but they had the possession and control of the outer courtyard also excluding the portion on which chabutra of 17 X 21 ft. was made around 1857 A.D. It was also not appreciated that the material like 'farsh,' 'pitchers' and the 'broom' etc. were all destroyed by the Hindus who had desecrated the Mosque in the night of 22nd / 23rd December, 1949 and had remained in possession thereof upto the date of attachment. As such there was no question of the aforesaid objects, being used in the Mosque, to have been found by the Receiver when he took over charge of the disputed premises pursuant to the Magistrate's order dated 29-12-1949. It was also not appreciated by the learned Judge that on account of the surcharged and tense atmosphere prevailing at the disputed site from the night of 22-12-1949 it could not be expected of the Muslims to have made complaint about the damage or destruction of the said articles / material which was kept in the Mosque for the use of Namazis upto 22-12-1949 and hence an absolutely

unwarranted and illegal inference was drawn by the learned Judge that no such material existed there and such inferences are also in contradiction with the finding recorded by the learned Judge in para 3109 (P.2961) that there was no abandonment by Muslims of the property in dispute and that maintenance of building by the Muslims to the extent of the disputed structure and partition wall was also evident. The finding regarding the alleged joint possession of both the communities in the inner courtyard was also a perverse finding and based on no reliable evidence. It was also wrongly observed that so far as outer courtyard was concerned, the Muslims had lost possession at least from 1856-57 and onwards. Thus the finding recorded on Issue Nos. 2, 10 and 15 (Suit- 4) and on Issue No. 7 (Suit-1) and on Issue 3 and 8 (Suit-3) were absolutely illegal and against the evidence on record. (See Paras 3107-3114 of the Judgement.).

6.65 Because while deciding Issue No. 28 (Suit-4) the learned Judge has wrongly observed that to the extent of outer courtyard the disputed site can be said to be possessed by defendant No. 3 (Nirmohi Akhara) and premises within inner courtyard remained to be visited by the members of both the communities, meaning thereby, there was no obstruction to any one to enter the same and this position had continued till 22-12-1949. Thus the finding given by Sudhir Agarwal J. on Issue No. 28 (Suit-4) was manifestly illegal and against the evidence on record in so far as it concerned with the claim and possession of the Muslims. (See Para 3113-3114 of the Judgement).

6.66 Because the learned Judge has wrongly observed that Muslims have not used the premises covered by the outer courtyard for any purposes since 1856-1857 and as such it could be said that so far as the outer courtyard is concerned, the right of prayer by Hindus had perfected having continued exclusively for more than a century. Hence the finding on Issue No. 4 (Suit-4) was also illegal and based on no reliable evidence at least to the extent of observations referred to above. The observation regarding the premises within the inner courtyard that the same has been used

by both the sides may be more frequently by Hindus and occassionally or intermittently by Muslims was also illegal and against the evidence on record. (See Para 3115 of the Judgement).

6.67 Because while dealing with Issue No. 16 (Suit-5) learned Sudhir Agarwal J. wrongly observed that the question of loss of title would not arise as the premises in dispute was held to be the alleged birth place of Lord Rama and it was also wrongly observed that the idols kept in the building in the night of 22nd / 23rd December, 1949 continued to remain in possession of the property in dispute. In this respect it was not at all considered that the idols forcibly kept in the Mosque in the night of 22nd / 23rd December, 1949 could never be said to have come into possession of the property in dispute which was being treated as a Mosque till then. (See Para 3117 of the Judgement).

6.68 Because the learned Judge has wrongly observed that there was no occasion of extinction of alleged title, if any, of plaintiffs 1 and 2 (Suit-5) and the plea of adverse possession was not attracted as claimed by defendant No. 4 (Suit-5). (See Para 3123 of the Judgement).

6.69. Because even after referring to the cases of Ballabh Das Versus Noor Mohammad (1936 Privy Council page 83) in Para 3266 and Wali Mohammad Versus Mohd. Buksh (1930 Privy Council page 91) at Para 3267 the learned Judge did not appreciate the value of the extracts of Khasra filed by the Muslims although the aforesaid cases laid down the law that Khasra entries were the instrument which conferred and embodied the right and they were instrument of tile and as such the title of the Mosque was proved by the said Khasra entries relied upon the Muslims side.

6.70 Because the learned Judge wrongly observed that the partition wall dividing the inner courtyard of the building in suit said to have been raised in1856-1857, was constructed when "the Hindu worshippers tried to enforce their right to the exclusion of Muslims some times in 1853-1855." It was also wrongly observed

that even this arrangement could not detain Hindus from continuing to enter the inner courtyard and the "Hindus continuously worshipped in the inner courtyard also though at time the Muslims Friday prayers were also held thereat." All these observations of the learned Judge were based on no reliable evidence and were simply conjectural in nature. (See Para 2731 of the Judgement.).

6.71 Because finding given by the learned Judge on issue No. 1-B (c) (Suit-4) is against the evidence record and it was wrongly observed that "disputed structure in the inner courtyard had been continuously used by Hindus for worship pursuant to the belief that the site in dispute is the birth place of Lord Rama." It was also wrongly held that there was recorded evidence to that effect at least from Second half of 18th century. It was also wrongly observed that "regarding the user of the premises by Muslims no evidence has been placed to show anyhing till at least 1860." It was also wrongly held that "the members of both the communities i.e. Hindu and Muslim had been visiting the building in dispute in the inner courtyard and that "the premises within the inner courtyard.....was not restricted for user of any one community." As such the findings given on issue No. 1 (B) (c) (Suit-4) was against the evidence on record. (Kindly see Para 3448 of the Judgment).

6.72 Because the learned Judge while dealing with Issue No. 1 and 2 (Suit-1), Issue No. 1 (Suit-3), Issue No. 1 (b), 11, 13, 14, 19(b) and 27 (Suit-4) and Issue No. 14, 15, 22 and 24 (Suit-5) misappreciated and misread the pleadings as well as evidence of the parties, oral and documentary both, and the evidence produced by the parties regarding these issues was not taken into account in its correct perspective. In this respect it was also wrongly observed that Sri Jilani had placed documents mentioned on page 3488 in order to show the possession of the Muslims over the site in dispute at least from 1855 to 1885 and then from 1934 to 1949. (Kindly see Para 3449 onwards of the Judgment).

6.73 Because the the learned Judge has not properly appreciated the wordings of inscriptions of Babri Masjid and in this respect observations made regarding the book titled as "The Sharqi Architecture of Jaunpur" by A. Fuhrer and about the article of Maulvi Mohd. Ashraf Husain published in "Epigraphia Indica Arabic and Persian supplement 1964-1965." were incorrect (kindly see Paras 1320-1324 of the Judgement.).

6.74 Because the the learned Judge has failed to appreciate that virtually all the parties, except defendant No. 20 of O.O.S. No. 4 of 1989, had contended that the building in dispute was constructed in 1528 AD and all the Historian witnesses produced before the court had supported the same stand of the parties and all the books of History and Gazettees upto 1960 (except the book of Fuhrer) had given the period of construction of Babri Masjid as 1528 AD and as such there was no justification for the learned Judge to have raised any suspicion about the genuineness of the inscriptions in question as well as about the period of construction of the building in dispute and the comments made in this respect against the witnesses of the Muslims side is totally unwarranted, incorrect and unjustified and the same are depicted with biased approach against the said witnesses of Muslims side (kindly see Paras 1328 to 1367 of the Judgement.).

6.75 Because the learned Judge had castigated and passed extremely uncharitable remarks against some of the expert witnesses of History / Archaeology produced by Muslims while no such comments were made against the so called expert witnesses produced by the Hindu side stating about the same period of construction of the disputed building and giving much more self contradictory statements (Kindly see Paras 1381 to 1386 of the Judgement.).

6.76 Because the learned Judge has failed to appreciate that the inscriptions in question do not appear to have been correctly and fully quoted by A Fuhrer in his book, relied upon by the learned Judge (kindly see Paras 1435 to 1443 of the Judgement.).

6.77 Because the learned Judge has misappreciated the contents of the Gazetteer of Thornton regarding the inscriptions in question.

6.78 Because the learned Judge failed to appreciate that there was absolutely no pleadings much less evidence of any expert who might have expressed any doubt or expressed any suspicion about the alleged forgery of the inscriptions in question and it was not at all appreciated that no parties had made any suggestion about the likelihood of the inscriptions having been affixed at any time between 1528 and 1889 AD when the same were published in the book of Fuhrer and in this respect it was wrongly observed that the same were subsequently implanted and it is also incorrect to say that the correct reading of the said inscriptions could in any way show that the said building was not constructed in 1528 AD (kindly see Para 1319 of the Judgement.).

6.79 Because it has been wrongly observed by the learned Judge that at the time of visit of Tieffenthaler the inscriptions in question were not there in the building in dispute as there was no mention of the said inscriptions in the Accounts of Tieffenthaler (See Para 1641 of the Judgement.).

6.80 Because the learned Judge wrongly drew the inference about the non existence of inscription on the disputed building, either inside or outside, during the period of visit of Tieffenthaler, merely on account of the reason that there was no mention about the same in the Traveller Accounts of Tieffenthaler. In this respect the learned Judge failed to appreciate that from the existence of 12 black stone Pillars it was said by Tieffenthaler that the building was constructed by Babar and he had referred to the existence of 12 of these Pillars supporting the interior arcades of the Mosque. In view of this categorical assertion made by Tieffenthaler there was no occasion for the learned Judge to have drawn the inference that there was no inscription on the disputed building at that time (Kindly see Paras 1645-1646 of the Judgement.).

6.81 Because it has been also wrongly observed by the learned Judge that the person who for the first time noticed the above inscription was Dr. F.C. Buchanan and it was also against his own finding given in para 1601 that Montgomery Martin "was the first person to tell us about inscriptions on the wall of the disputed building.....". This observation of the learned Judge was also totally imaginary and conjectural that as if the work of survey was not the field of expertise of Dr. Buchanan.

6.82 Because the learned Judge has wrongly observed that the inscriptions must have been fixed in the building in dispute sometimes between the visit of Tieffenthaler and survey of Dr. Buchanan (kindly see Para 1648 of the Judgement.). In this respect the learned Judge failed to appreciate that if his finding about the alleged construction of the building during the regime of Aurangzeb was accepted for the sake of arguments, what could be the reason for the inscriptions being placed thereon much after the construction of the building giving the date of construction of the period of Babar?

6.83 Because the observations made by the learned Judge regarding inscriptions in question, in paragraphs 1648-1656 of his Judgement, were totally unjustified, unwarranted and conjectural.

6.84 Because the observations of Learned Judge stating that "We are extremely perturbed by the manner in which Ashraf Husain/Desai have tried to give an impeccable authority to the texts of the alleged inscriptions which they claim to have existed on the disputed building though repeatedly said that the original text has disappeared. The fallacy and complete misrepresentation on the part of author in trying to give colour of truth to this text is writ large from a bare reading of the write up. We are really at pains to find that such blatant fallacious kind of material has been allowed to be published in a book published under the authority of ASI, Government of India, without caring about its accuracy, correctness and genuineness of the subject". The work of the historians tracing out the inscriptions of Emperor Babur which

was inscribed in 8 Persian Couplets placed in the Central entrance of the Mosque and reproduced in a photograph of the said inscription which was brought out in the official publication of Archeological Survey of India; the Epigraphia Indica; Arabic & Persian Supplement (1964 and 1965). The said Book has reproduced a photograph of the inscription from which one can check his decipherment. The said inscription remained in situ position on the entrance of the Mosque until 6th December, 1992 when the Karsewaks, took away the same after their act of demolition. The said inscription has been demolished by the barbaric act of the Karsewaks. The proof of such inscription as published by the Archeological Survey of India has been castigated by the Learned Judge in such a manner as if the work of historians and Archeologists are worth nothing and the Court will decide as to which history is correct and which needs modification.

6.85 Because the learned Judge was totally unjustified and non judicious in making extremely harsh and unwarranted comments about Maulvi Ashraf Husain and Dr. Z.A. Desai etc. while dealing with the question of genuineness of the inscriptions in question (kindly see Para 1463 of the Judgement.).

6.86 Because the Learned Judge has failed to appreciate that there was absolutely no pleadings much less evidence of any expert about any doubt suspicion about the alleged forgery of the inscriptions in question and it was not at all appreciated that no parties had made any suggestion about the likelihood of the inscriptions having been affixed at any time between 1528 and 1889 AD when the same were published in the book of Fuhrer and in this respect it was wrongly observed that the same were subsequently implanted and it is also incorrect to say that the correct reading of the said inscriptions could in any way show that the said building was not constructed in 1528 AD (See Paras 1317-1319).

6.87 Because on the one hand the Learned Judge has relied upon the Gazetteers to support the belief of a particular community and on the other hand the Learned Judge has ignored that the Gazetteers

of the province of Oudh, states in two places that the Babri Mosque was built in the year 935 H corresponding with 1528 A.D.

6.88 Because the learned Judge has failed to appreciate that the details about Sri Syed Badrul Hasan were not required to be given in the article of Sri Ashraf Husain as he appeared to be personally known to Sri Ashraf Husain and as such the observations made by the learned Judge creating doubts about the genuineness etc. of Sri Badrul Hasan were totally unjustified and unwarranted (kindly see Para 1463 of the Judgement.)

6.89 Because the learned Judge failed to appreciate that the Second Book of A. Fuhrer referred on Para 1475 of the Judgment also mentioned about the construction of the Mosque during the reign of Babar and as such finding given by the learned Judge about the construction of the building in dispute between 1608 and 1766 A.D. was totally unfounded and perverse.

6.90 Because the learned Judge has wrongly observed that the plaintiffs' counsel could not in any way co-relate "Mir Baqi" with "Baqi Shaghawal" or "Baqi Tashkandi" to show that they were the same persons (kindly see page 1619 of the Judgement). In this respect it is relevant to mention that the learned Judge failed to appreciate that it was specifically pointed out to him by the plaintiffs' counsel Sri Zarfaryab Jilani that in different translations of Babar Nama including those of Beveridge and Athar Abbas Rizvi etc. there were several descriptions to show that Mir Baqi was a historical personage and actually Babur's Commandant of Awadh (Ayodhya). These entries make it clear that while Babur was on a campaign crossing the Gomti and then the Ganga, 'Baqi Tashkandi' joined his camp coming with the Awadh (Ayodhya) troops on 13-6-1529. On 20th June, 'Baqi Shaghawal' was given leave to return along with his Awadh troops. These references make it clear that (1) Baqi was the commandant of troops at Awadh (Ayodhya), so here the Babri Masjid inscriptions stand confirmed; and (2) he was a native of Tashkant and bore the official title of Shaghawal. The 'Shaghawal' used to be an official

of rank who could not be impeded when fulfilling royal orders by anyone howsoever high. It may also be relevant to mention that an explanation regarding the said "Shaghawal" was offered by Professor Shireen Moosvi (PW 20) also but the same appears to have been ignored by the learned Judge. It is thus evident that the line of reasoning of the learned Judge about the name of Mir Baqi is based on untenable assumptions and conjectures. (Kindly see Para 1639 of the Judgement).

6.91 Because the learned Judge has given undue importance to the misreading of the inscriptions by the person who had tried to read the 2 inscriptions in question in March, 1946 and who had read the words "Asaf-i-sani" as "Mir Baqi Isfahani" but simultaneously he had also read the word "Mir Baqi" as is given in Exhibit 53 (suit 4) (Register 12 page 355-358). It is also relevant to mention here that neither Exhibit A-42 (Register 8, P. 431 to 452) and nor Exhibit 53 referred to above contained the exact language of any of the 2 inscriptions which is evident from the estampages of the same, reproducing the original letters of the said inscriptions, given in Epigraphia Indica-Arabic and Persian Supplement 1965 (Plate XVII, pages 58-62). Almost the same language has been given in paper No. 43-A filed by the defendant No. 20 (suit 4) which is an extract of Babur Nama by A.S. Beveridge, Volume.II, Appendix U (Register 18 P. 45-49). It is thus evident that there was no use of the word "Mir Baqi Isfahani" in any inscription of Babri Mosque and the learned Judge has misdirected himself by relying upon the said incorrect reading of inscriptions. In this respect the argument of Mr. P.N. Mishra, Senior Advocate, was also given unduly more weigtage while the same was totally against the pleadings and evidence on record including the pleadings and evidence of Defendant No. 20. It was also not appreciated by the learned Judge that there was no case of any party about the inscription placed in the outer wall of the middle dome to have been ever implanted after 1528 A.D. and as such there was no question of the language of the same being doubted for any reason whatsoever (See Paras 1480 to 1484 of the Judgement).

6.92 Because the observations of the learned Judge about Martin and Buchanan etc. regarding the inscriptions in question are based on no material on record and the same are not at all ustified (kindly see Para 1601 of the Judgement.)

6.93 Because the observation of the learned Judge that it was "difficult to rely only on the observations of Buchanan based on inscriptions, the language whereof was not known to him and there is nothing to show that he could read or understand it" was based on no evidence and there was no material available on record for making such remark. The learned Judge had even failed to appreciate that the report of Buchanan provided ample proof of his understanding the language etc. also.

6.94 Because the learned Judge has failed to appreciate that the argument of Sri P.N. Mishra that the District Judge, Faizabad who had visited the spot on 18-3-1886 did not find any inscription in the Mosque, was totally unfounded and baseless as the District Judge had no where referred to his visit inside the Mosque and his observations clearly established that the construction of Masjid by Emperor Babar was not at all disputed before him.

6.95 Because the learned Judge has wrongly observed that that the original text of the said inscriptions was not available at all while the fact is that the said text, as admitted by Historians of both the sides, was very much on record and there was no evidence to the contrary except some observations of Fuhrer which were based on misreading of one inscription. In this respect reference made to the Books written in Urdu in 20th century (wrongly referred as 19th century) was unwarranted and these books were wrongly relied upon as none of them was a book of History and it was not at all proved that the author of any of these Books was Historian but rather the same were the Books of fiction.

6.96 Because the learned Judge has failed to appreciate that construction of the building in dispute in 1528 A.D. was not being

disputed either in pleadings of the main contesting parties or in the evidence of Historians of either side and as such there was no justification for the learned Judge to have recorded a finding against the evidence adduced from both the sides by holding that the building in dispute was not constructed in 1528 A.D. by Babur or any of his agents.

6.97 Because the learned Judge has wrongly observed in paras 1657 to 1661 of his Judgment that the counsels appearing on behalf of Muslim parties, in their rejoinder arguments, could not give any substantial reply to the arguments in "this respect," i.e., perhaps about the genuineness of inscriptions, including the arguments mentioned in paras 1633 to 1656 (pages 1759 to the 1785) of the Judgement. As a matter of fact the inscriptions in question were noticed by **Edward Thornton** and by **W.C. Benett**, much earlier than Fuhrer and the dates were also correctly read by them as given in **Thornton's Gazetteer** of 1858 (P. 739) and in **The Gazetteer of the Province of Oudh** edited by W.C. Benett, published in **1877-78**, Volume-1 at pages 6-7. In the Fyzabad District Gazetteer of **H.R. Nevill (1905)** also these inscriptions were specifically referred with similar description. Extracts of these Gazetteers were also filed before the High Court and were referred by Sri Z. Jilani, Advocate during the course of Rejoinder Arguments, apart from submission of a Note pointing out the mistakes committed by A. Fuhrer in the reading of inscriptions in question. In this Note the correct version of the said inscriptions was also given. In this respect the learned Judge wrongly observed that all the Historians "have proceeded mechanically and without properly scrutinizing the texts of the inscriptions, as reported from time to time. The things have been taken as granted." The learned Judge further wrongly observed that the local belief about the alleged destruction and construction by Aurangzeb "was so strong that it continued thereafter for the last 50 years and around 1810 A.D. when Dr. Buchanan visited Ayodhya he also found the same." His further observations that the "subsequent writers were mostly petty employees of East India Company" and that "Nobody made any detailed investigation

whatsoever. At least none tried to find out the actual events which took place and correct historical facts" were also uncalled for and unwarranted and had no basis also. It was also wrongly observed by the learned Judge that "the view, which has prevailed for such a long time apparently, unbelievable and unsubstantialable, followed by the concerned authors and Historians without a minute Scientific investigation, we can not shut our eyes to such glaring errors and record a finding for which we ourselves are not satisfied at all." His further observation that "the doubts created otherwise are so strong and duly fortified ... . that they surpass the required test to become cogent evidence....." were also totally unjustified, unwarranted and based on no material on record.

6.98 Because observations of the learned Judge (in para 1611, page 1730) that ".....the Indian subcontinent was under the attack/ invasion by outsiders for almost a thousand and more years in the past and had continuously been looted by them. Massive wealth continuously was driven off from the Country ....." was based on total ignorance of the learned Judge about the economic history of Medieval India. As a matter of fact there is no such history of Medieval India that India was ever governed from outside during that period and as such there was no occasion for the wealth of the country being continuously driven off from the country during that period. In fact who ever looted any part of India used to live within India except for one or two occasions during the said entire period of one thousand years.

6.99 Because the learned Judge has wrongly observed that from a reading of Babur Nama he found that Babur "was truly religious but it means that he was a complete Islamic person and lacked tolerance at least to the Idol worshippers. He had no hitch in destroying Idols worshipped by the inhabitants of India at that time .....". This inference drawn by the learned Judge was not only incorrect and unwarranted but was also against the inferences drawn by the Historians of repute about Babur.

6.100 Because the observation of the learned Judge that the missing record of Babur Nama of 935 Hijri being "only of 3 days" "non mention of anything about" the building of Babri Masjid "in Babur Nama does not sound to any reason" was also unrealistic and based on misappreciation of Babur Nama. Learned Judge failed to appreciate that about the construction of buildings Babur Nama used to refer only to those buildings regarding construction of which orders were given by Babar himself while inscriptions of the building in dispute clearly indicated that the same was constructed by Mir Baqi.

6.101 Because the learned Judge has wrongly observed that the counsels for Muslims had ever stated that amongst various Books translating "Baburnama" Mrs. Beveridge's translation is the "most authentic and complete." As a matter of fact neither any such statement was given by the counsels for Muslim parties and nor any such querry was made by the court during the course of arguments.

6.102 Because the learned Judge has wrongly observed that Dr. Radhey Shyam had ignored about the breaking of the wine couplets as mentioned on pages 554-555 of Beveridge's Babur Nama. In this respect undue and unwarranted inference was drawn that as if Babur was fond of breaking Idols and the learned Judge failed to appreciate that Babar had ordered for destruction of only naked parts of the idols of Urva Valley.

6.103 Because the observations made by the learned Judge about the averments in Babur Nama (in paragraph 1317 on page 1460 of the Judgement) is neither complete nor correct.

6.104 Because the learned Judge has failed to appreciate that it was fully evident and established from the Books of History that during the Moghal regime also the King was the owner of the entire land of his kingdom except houses and gardens which were permitted to be occupied, retained, purchased or sold by his subjects. In this respect special mention was made to the books entitled as --

(i) Travels in the Moghal Empire, A.D. 1656-1668 by FrancoisBernier,

(ii) "The English Factories in India" (1668-1669) by Sir William Foster.

(iii) "The History of British India" by James Mill (Volume I.)

In this respect the Farman issued by Shahjahan in exchange of the land with Raja Man Singh whose house was taken by Shahjahan for the construction of Taj Mahal, was misconstrued.

6.105 Because the learned Judge has wrongly observed that there was no recorded History for the period of 1528 to 1855 A.D. stating in black and white that the building in dispute was constructed by Babur and then dedicated to Muslims as a public waqf. in this respect the learned Judge failed to consider that once a public Mosque was constructed and Muslims in general were allowed to offer 5 times prayers in the same and if such user had continued for a long time there was no requirement of law for any express dedication or waqf deed being there to prove the said dedication to God Almighty. The learned Judge further failed to appreciate that the dedication is made to God Almighty and not to the Muslims as observed by the learned Judge and the law laid down by this Hon'ble court as well as by the High Courts about the implied dedication was either ignored or misunderstood. In this respect also the Books of History as well as the Books relied upon by the Hindu side and the statements of Historian / Archaeologist witnesses of the Hindu side admitting the construction of the building as a Mosque in 1528 A.D. were ignored. Even the Gazetteers published before 1855 A.D. were not taken into account although 2 historical books were mentioned in the same sequence.

6.106 Because the learned Judge has wrongly observed that "Sri Z. Jilani learned counsel appearing on behalf of Sunni Waqf Board.....also tried to highlight that Babur never entered Ayodhya and did not command Mir Baqi for construction of any Mosque." As a matter of fact no counsel of the Muslims side including Sri Z. Jilani had ever argued that Babur "did not command Mir Baqi for

construction of any Mosque." This position is evident from the Written Statement of Suit-1 and pleadings of Muslim parties in the connected suits. In O.O.S. No. 1 of 1989, The Sunni Waqf Board, defendant No. 10, had stated in para 10 of the Written Statement as under:-

> "10. That the property in suit is an old mosque constructed around the year 1528 A.D. during the regime of Emperor Babar under the supervision of Mir Baqi and the same has always been used as a mosque and it was never used as a temple or as a place of worship for any other community except muslims."

Similar averments were made in para 24 of the written statement of defendant No. 4 (Sunni Waqf Board) in O.O.S. No. 5 of 1989.

(E) Existence of the alleged temple in 1528 AD at the disputed site and alleged demolition thereof

6.107 Because the learned Judge while dealing with the arguments of Sri P.N. Mishra, Advocate about the so called attack and damage to the alleged temple at the time of Aurangzeb and construction of the Mosque in question during that very period failed to appreciate that there was no such pleading and evidence of the defendant No. 20 also who was represented by Sri P.N. Mishra, Advocate and no such issue was also framed and as such the argument of Sri P.N. Mishra, Advocate was liable to be rejected on this ground alone. It was also wrongly observed by the learned Judge that the Book of **Niccolao Manucci** (1653-1708) had made any reference to the so called Janam Asthan temple as he had not even included Ayodhya in the list of 7 places which were referred by him having principal temples. The said Book had not at all made any reference of the place of birth Lord Rama and by such omission in the said book it was evident that there was no belief / faith of Hindus at least upto that time about any alleged place of birth of Lord Rama or about the demolition of any alleged Janam Bhoomi temple and construction of Mosque at the site

thereof. Out the so called 4 chief temples said to have been destroyed by King Aurangzeb one was said to be situated in Ayodhya, though not historically proved, it could also in no way be connected with the so called Janam Bhoomi temple.

6.108 Because while referring to the Book of **Francois Martin** dealing with the period of 1670-1694 A.D. the learned Judge failed to appreciate that there was no mention of demolition of any temple of Ayodhya in the said description given in the aforesaid Book also.

6.109 Because while referring to the observations of **Stanley Lane Pool,** the learned Judge has failed to appreciate that although there was specific mention of the alleged destruction of temple of Vishnu at Banaras, shrine at Mathura and bringing of Idols of the said temples to Agra and burial of the same under the steps of the Mosque but there was no description of the demolition of any temple at Ayodhya even in this Book written by a person who is said to be a staunch opponent of Aurangzeb. (Kindly see page 1757-1758 of the Judgement.)

6.110 Because the learned Judge wrongly observed that Travellers Accounts of Father Joseph Tieffenthaler (Austrian Priest) published in 1786 "mentions about the alleged temples at the birth place as well as its demolition ..... and construction of a Mosque thereat." It is also wrongly observed by the learned Judge that the said Tieffenthaler's work written between 1740-1760 and onwards could not be seen by subsequent Historians. Both these observations of the learned Judge stand belied by the extracts of the said book of Tieffenthaler filed as paper No. 107 C-1 / 96-107 C-1/104 (Ext. 133, Register 12, P.273-319) which was got translated by the court itself and the said translation is given in Annexure IV to the Judgment of D.V. Sharma J., on pages 148-154. On page 255 of the said Book there is a reference of 1767 and as such there was no question of the Book having been completed before 1767. Similarly the said Book no where refers to any temple being situated at the alleged birth place of Lord Rama. The

relevant extracts of the said Book of Tieffenthaler as given in Annexure IV to the Judgment of D.V. Sharma J. on pages 151-153 are being quoted as under:-

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"The most remarkable place is the one which is called Sorgadaori, which means: the celestial temple. Because they say that Ram took away all the inhabitants of the city from there to heaven: This has some resemblance/similarity to the Ascent of the Lord. The city, thus deserted, was repopulated and was brought back to its earlier status by Bikarmadjit-the famous king of Oude (OUDH).

There was a temple in this place constructed on the elevated bank of the river. But Aurengzebe, always keen to propagate the creed of Mohammed and abhorring the noble people, got it demolished and replaced with a mosque and two obelisks, with a view to obliterate even the very memory of the

Hindu superstition. Another mosque built by the Moors is adjacent to the one towards the East.

Close to Sorgadoari is a building constructed lengthways by Nabalray-a Hindu, a formerly lieutenant of the Governor (propraetor) of this region (a).

But a place especially famous is the one called Sitha Rassoi i.e. the table of Sita, wife of Ram, adjoining to the city in the South and is situated on a mud hill.

Emperor Aurengzebe got the **fortress** called Ramcot demolished and got a **Muslim temple with triple domes**, constructed at the same place. Others say that it was **constructed by 'Babor'**. Fourteen black stone pillars of 5 span high, which had existed at the site of the fortress, are seen there. Twelve of these pillars now support the interior arcades of the mosque. Two (of these 12) are placed at the entrance of the cloister. The two others are part of

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the tomb of some 'Moor'. It is narrated that these pillars, or rather this debris of the pillars skillfully made, were brought from the island of Lanca or Selendip (called Ceylan by the Europeans) by Hanuman, King of Monkeys.

On the left (K) is seen a square box raised 5 inches above the ground with borders made of lime, with a length of more than 5 ells and a (L) maximum width of about 4 ells. The Hindus call it

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Bedi i.e. the cradle. The reason for this is that once upon a time, here was a house where Beschan was born in the form of **Ram**. It is said that his three brothers too were born here. Subsequently, Aurengzebe or Babor, according to others, got this place razed in order to deny the noble people, the opportunity of practising their superstitions. However, there still exists some superstitious cult in some place or other. For example, **in the place where the native house of Ram existed, they go around 3 times and prostrate on the floor, The two spots are surrounded by a low wall constructed with battlements. (M) One enters the front hall through a low semi-circular door.**

Not far from there is a place where one digs out grains of black rice, turned into small stones, which are said to have been hidden under the earth since the time of Ram.

On the 24th of the Tschet month, a big gathering of people is done here to celebrate the birthday of Ram, so famous in the entire India.

This vast city is a mile away from Bangla at the east towards E.N.E. such that its latitude also will be greater by about one minute than that of Bangla.

The fortress constructed in square form situated on the elevated bank of the river, is equipped with round and low towers. The walls need to be repaired. It is uninhabited and is not protected. Earlier, the Governors of the province had their

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residence here. Sadat Khan (N) frightened by a bad forecast got it transferred to Bangla. Today, it is destroyed from top to bottom.

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Bangla or Fesabad was founded by Sadatkhan, after he had abandoned the city of 'Oude'. A native of Persia, he was, the Governor of this province, more than 40 years ago. He constructed a place (a) cultivated a nice garden, in the Persian style and established his residence here. Gradually, this place became a city, the length of which is more than a mile.

The Present Governor, grandson of that person, adorned the city with many buildings and gardens, after the entire province was returned to him by the British, in 1765. He also widened the passage which was narrow earlier and provided the fortress with a ditch, round towers and a rampart, so that the thick population could have a city with a big surrounding wall. (P) The geographical latitude of this place, observed in 1767, was situated at 26 – 29.

Goptargath is a place planted with thick trees, a mile away from Bangla, on the southern bank of Gagra. It is situated on a hill which is less steep and is provided with mud towers on four sides. An underground pit is seen in the middle, covered with a medium sized dome. Near it is a very old and big tamarind tree.

A portico extends around it. It is said Ram, after having defeated the Giant Ravan and having returned from Lanka, descended into this pit and disappeared. Deriving from this, this place was named 'Gouptar' which means 'Departure for the Air'. Therefore, you have Descent into the Hell, there, which is similar to 'Rising into the Sky' that you had in 'Oude'. One will be able to have an idea about the locality and shape/form of this place (b) from the figure."

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(Kindly See page 1766 of the Judgement).

6.111 Because while dealing with the issue relating to the existence and demolition of temple, specially Issues No. 1 (b) (Suit-4) and 14 (Suit-5) learned Judge wrongly observed that the oldest document mentioning about existence of temple and demolition of the same at the site of disputed structure is Tieffenthaler's Traveller's Accounts (Ext. O.O.S. 5-133).

6.112 The finding of the learned Judge that the property engaging attention of the High Court in O.O.S. No. 1 of 1989 was not involved in suit No. 61 / 80 of 1885 was based upon the misconception that since the suit of 1885 was not filed in respect of building of the Mosque, it was not involved in the suit of 1885. In this respect the learned Judge failed to appreciate that it was mainly on account of the existence of the Mosque that the suit of 1885 was dismissed (Kindly see para 860 of the Judgement).

6.113 Because issue No. 5 (b) and 5 (c) of O.O.S. No. 1 of 1989 have been wrongly decided by the learned Judge and it has also been wrongly observed by him that no material or evidence had been placed on record to support the contention that Mahant Raghubar Das had filed the suit on behalf of other Mahants and Hindus of Ayodhya and in this respect the pleadings, evidence and Judgements of the Suit of 1885 were not correctly appreciated. It was also wrongly observed by the learned Judge that the assertion about knowledge of Hindus in general and their interest in the subject matter was very vague, uncertain and unreliable in law (Kindly see paras 868 and 870 of the Judgement).

6.114 Because it has been wrongly observed by the learned Judge that since it could not be said that the suit of 1885 was filed on behalf the whole body of persons having faith in Ram Chabutra and as such issue No. 7 (a) of O.O.S. No. 4 of 1989 was wrongly decided.

6.115 Because while dealing with issue No. 7 (d) of O.O.S. No. 4 of 1989 it has been wrongly observed by the learned Judge that neither there was any admission nor any indication in the pleadings and Judgements of the courts regarding the Suit of 1885 to show that Mahant Raghubar Das at any point of time had admitted the title of Muslims on the disputed Mosque. In this respect the plaint map and the Ameen Commissioner map etc. were also not correctly appreciated.

6.116 The learned Judge has wrongly observed that it can not be said that the issues engaged in the present suits were directly and substantially involved in the earlier suit of 1885.

6.117 Because the learned Judge has wrongly observed that there remained virtually no decision or finding on the issue pertaining to ownership of suit property in the suit of 1885 and therefore the plea of resjudicata or estoppel will have no application.

6.118 Because the learned Judge has wrongly held that the necessary indicia to attract plea of resjudicata were wanting and hence issue pertaining to resjudicata and estoppel would not be attracted in O.O.S. No. 1 and 5 of 1989.

6.119 Because while dealing with the question of applicability of the plea of resjudicata in public interest litigation the learned Judge has wrongly observed that the cases referred on pages 1245 to 1250 have no application to the facts of the cases in hand.

6.120 Because the learned Judge has failed to appreciate the meaning of the words "might and ought" used in explanation IV to Section 11 C.P.C. in its correct perspective and in this respect it was wrongly observed by him that the cases referred by the plaintiffs's counsel did not lend support to attract the plea of resjudicata.

6.121 Because the learned Judge has wrongly held that there was no substance in the submission of the plea of estoppels and

abandonment based on the Acquisition notification dated 7-10-1991.

6.122 Because it has been wrongly observed by the learned Judge that in no manner it can be said that anything in the suit of 1885 may be construed or taken to operate as resjudicata or estoppel in the present suits.

6.123 Because the learned Judge has wrongly held that the admissions made by the plaintiff of the suit of 1885 as well as observations made by the courts in the suit of 1885 / Appeals of 1886 were not binding on the parties and the submissions made in this respect were extremely far fetched and too remote to be accepted and applied in the case in hand.

6.124 Because the learned Judge has failed to appreciate that the plea of some of the Defendants in Suit No.4 that they were not aware of the adjudication of dispute in the Suit of 1385 cannot come on the way of application of Principles of Resjudicata. In the previous Suit being Suit No.61/280 of 1885, the plea of belief was available to the Plaintiff and that could have been used as a ground of attack and accordingly the said issue of belief shall be deemed to have been a matter directly and substantially in issue in the previous suit. The said previous suit was dismissed and first and second Appeals were decided against the followers of Lord Rama and hence the said issue could not have been a fact in issue to be decided by the High Court. Even if it is assumed that the belief existed at that time, then the said belief remained confined to the Chabutra in the outer courtyard and not to the inner courtyard. The said plea taken in the previous suit vindicates the fact that the belief of followers of Lord Rama was not related with the inner portion of the Mosque in dispute.

6.125 Because the learned Judge has failed to appreciate that in the Judgements given by the three courts in 1885 Suit, categorical finding was recorded that the Mosque in question was constructed by Babar and none of the parties had disputed this position. In the

Judgment dated 18/26-3-1886 it was also observed by the learned District Judge (Vide Exhibit A-27, Suit-1–Register No. 7 P. 320) that "this Chabutra is said to indicate the birth place of Ram Chandra" but this observation of the learned District Judge was totally ignored while dealing with the issue of faith / belief regarding the inner portion of the building in suit. In this respect the observation of Judicial Commissioner in his Judgment dated 2-9-1886 that "the Hindus seem to have got very limited rights of access to certain spots within the precincts adjoining the Mosque ....." and his further observation that "..... The Hindus of Ayodhya want to erect a new temple of marble .....over the supposed holy spot in Ajudhia said to be a birth place of Sri Ram Chandar. Now this spot is situated within the precincts of the grounds surrounding a Mosque constructed some 350 years ago....." were also not appreciated by the learned Judge while dealing with the question of alleged faith / belief of Hindus regarding the alleged birth place of Lord Rama as well as about the question of erection of the building in suit.

6.126 Because the learned Judge has wrongly decided Issue No. 8 (Suit-3) in negative even after holding that the plaintiff of suit No. 3 had failed to establish the title by adverse possession. In this respect the learned Judge not only misread and misappreciated the evidence on record including the Judgements of 1885 and 1945 suits but also wrongly observed that the case set up in the instant suit was wholly different and inconsistent to what was pleaded and decided in the Judgment of 1946.

6.127 Because the order dated 21-4-1966 given by the Civil Judge Faizabad on issues No. 17, 5 (a) and 5 (c) was not in accordance with law and the same is liable to be set aside.

6.128 Because the finding recorded by the learned Judge on Issue No. 9 (a) of O.O.S. No. 1 of 1989 and on Issue No. 5 (a) of O.O.S. No. 4 of 1989 is not in accordance with law and the same is liable to be set aside.

6.129 Because it has been wrongly observed by the learned Judge that Section 5 of Waqf Act, 1936 would have no application qua rights of Hindus in general and plaintiffs of suit No. 1 in particular and in this respect the law laid down in 1967 Rajasthan page 1, 2006 (6) ADJ-331 and 1996 supplement AWC 189 was wrongly relied upon and it was not appreciated that the same was against the law laid down by the Hon'ble Supreme Court in 1979 Supreme Court 289 and 1992 Supreme Court 1083 etc.

6.130 Because the learned Judge has wrongly observed that "even the counsel for the Waqf Board do not claim that till Issue No. 17 was decided by the Civil Court Judge except of the notification dated 26-2-1944, there was any procedure or method followed by the Sunni Waqf Board to enlist or register the concerned waqf in the Register of the Waqf Board" and it was also wrongly observed that neither it was pleaded nor there was any material on record to substantiate the same. In this respect the pleadings made by the Waqf Board were misappreciated and the documents pertaining to the record of the Waqf Board concerning the said waqf were also not appreciated.

6.131 Because it has been wrongly observed by the learned Judge that the pleadings with respect to registration of the waqf in question in the register maintained u/s 30 of the Waqf Act had no relevance and in this respect it was not appreciated that there being no denial of the said registration, there was also hardly any occasion or necessity to bring on record other documents, including the order of the Waqf Board etc. regarding the registration of the said waqf and it was also wrongly observed that the pleas taken in this respect in the Written Statement of the Board were wholly baseless and not attracted in these matters.

6.132 Because the finding recorded by the learned Judge on Issue No. 5 (e) of O.O.S. No. 4 of 1989 is vague and not in accordance with law as it was settled law that no evidence of express dedication is required if implied dedication could be inferred by the long user of

the property for the religious and pious purposes like the Mosque in question in the instant case.

6.133 Because the finding recorded by the learned Judge on Issue No. 18 of O.O.S. No. 4 of 1989 is not in accordance with law and the same is liable to be set aside.

6.134 Because the learned Judge has wrongly held that the Waqf Act, 1936 did not apply to non-Muslims.

6.135 Because the Learned Judge while dealing with the issue of construction of 1528 A.D, has wrongly been given undue importence to the missing pages of Babur's diary called Baburnama. (Kindly see Para 2939). The claim of the Muslim side that the Mosque was constructed in 1528 A.D, is supported by historical evidence as placed on record by the Plaintiff of Suit No.4. On one hand, the Learned Judge wants to see the direct evidence with respect to creation of Waqf and on the other hand, the Learned Judge has decided the core issues on preponderance and probabilities and further on the basis of faith and belief. It is submitted that there are number of Waqfs having been made by Muslims which are being recognized Waqf by user and the use itself is a proof that the property is a Waqf. There will not be direct evidence available with respect to innumerable Waqfs in the country and not taking cognizance of the fact that the said property is a Waqf by user and not treating them as evidence would lead to a disastrous condition.

6.136 Because the Learned Judge has made perverse and misconceived remarks stating that the contents of the revenue records etc. cannot be relied to prove the title of the parties concerned but they have to prove the same by producing relevant evidence. The said observation of the Learned Judge is improper and misconceived in view of the fact that innumerable properties of Waqf are set out in the revenue records only. The observation/finding of the Learned Judge, in Para 2944, stating that the Waqf Board should have based the claim of adverse possession against the particular

owner of the property is not correct. The claim of Waqf Board or any of the Muslim Party's adverse possession is against all those who claim their rights and beliefs attached to the said piece of land and not the specific owner of the said land as nobody else except the Muslim party could claim title. The Muslim Party's claim on the land is that they had the right to offer Namaz on the said land based upon their Waqf and/or continuance of possession of the premises and nobody else except Muslims could carry out their religious activities on the said land. The Learned Judge has misread and misinterpreted the stand of Muslim parties and has misdirected the entire issue and hence the observation in Paras 2944 and 2945 is improper and incorrect.

6.137 Because the learned Judge has wrongly observed that it was only Mutawalli of the waqf who could claim possession of the property in question according to Islamic Law and that Plaintiff No. 1 of suit 4 (Sunni Waqf Board) had no power, on its own, to claim the possession or custody of any Waqf and that worshippers or beneficiaries of a Waqf also could not claim possession and it was also wrongly observed that the attachment of the property will have no effect upon limitation.

6.138 Because the learned Judge has wrongly observed that "in the entire plaint there is not even a whisper that Babar dedicated alleged Mosque for worship by Muslims in general and made a public waqf property. On the contrary para 1 says that it was built by Mir Baqi under the command of Emperor Babar for use of Muslims in general as a place of worship" (P. 3288). In this respect also para 1 of the plaint was misquoted as para 1 of the plaint reads as under:-

> "1. That in the town of Ajodhiya, pergana Haveli Oudh there exists an ancient historic mosque known as Babri Masjid, built by Emperor Babar more than 433 years ago, after his conquest of India and his occupation of the territories including the town of Ajodhiya, for the use of the Muslims in general, as a

place of worship and performance of religious ceremonies."

It is thus evident that firstly the learned Judge appears to have proceeded on a wrong assumption about the requirement of any expressn "dedication" for creation of the waqf and secondly the learned Judge has failed to appreciate that there was hardly any difference in actual construction having been done by Mir Baqi under the express or implied command of Babar as it is a matter of common knowledge that almost all the constructions are made by the subordinates of the King under an implied command / authority of the King and the same are attributed to the King / Emperor. Similarly in the instant case actual construction having been got done under the supervision of Mir Baqi and the same having been attributed to the command of Babar could not be said to be unusual. Regarding the public waqf or for the benefit of the Muslims in general the learned Judge ought to have relied upon the decision of this Hon'ble court reported in AIR 1956 SC. 713 in order to infer implied dedication as the building in dispute was being treated and used as a Mosque by the Muslims in general and user of the same as a Mosque was admitted by some of the witnesses of Hindu side as well as in the Books relied upon by the Hindu side. It was also wrongly observed by the learned Judge that: "Even if we assume that Emperor Babur was o vner, no material has been placed which may suggest or give even a faint indication that with his permission any public prayer was made in the building in dispute." The learned Judge has gone to the extent oi saying that he did not find any "material to suggest that any public prayer was offered by Muslims at least till 1860."(P.3289) The learned Judge has failed to take into account the entire documentary and oral evidence on the basis of which no other inference was possible but to accept that the Mosque in question was continuing from 1528 A.D. in the use and occupation of Muslims and if a Mosque is being used by the Muslims it has to be inferred that the same is being used for prayers being offered in the said Mosque.

6.139 Because the learned Judge has wrongly observed that although dedication may be inferred from user as a waqf property but the question of long user may not be relevant when the issue was whether a particular person made the dedication or not. This observation of the learned Judge was against the settled principle of 'implied dedication' and learned Judge appears to have proceeded on an absolutely incorrect notion of law regarding dedication.

6.140 Because the learned Judge has wrongly observed that since in the suit of 1885 there was no issue as to whether the building was a Mosque, the Judgements given in the said suit as well as in the appeals arising out of the same would make no difference. In this respect it was not appreciated that the Judgements had decided the alleged right claimed by the so called Mahant of Janam Asthan and the suit was dismissed mainly on account of the existence of mosque being quite adjacent to the said Chabutra of Janam Asthan and the existence of Mosque was admitted to the parties. It was also not appreciated by the learned Judge that Hindu parties of the present suits had not disowned the stand taken by Mahant of Janam Asthan in 1885 suit and it was also not a case of the Hindu parties that the said suit of 1885 was filed by the Mahant of Janam Asthan either in a collusive manner or he had remained in any way negligent and as such the aforesaid Judgements of 1885 suit and appeal were fully binding upon Hindu parties of the instant suit.

6.141 Because the learned Judge wrongly observed that "so far as the identity of the place was concerned, three things, remained unchallenged upto 1950, ...(a) the disputed structure was always termed and known as "Mosque" .....(b) it was always believed and nobody ever disputed that the said building was constructed after demolising a temple and (c) that the disputed site, as per belief of Hindus, is the birth place of Lord Rama.....". As a matter of fact only one of the aforesaid three things, that is mentioned at (a) had remained unchallenged upto 22nd December, 1949 while the other two things mentioned at (b) and (c) above

had remained under challenge since the very beginning of such claims. In this respect the statements mentioned in the Gazetteers were wrongly treated as "entitled to consideration" in so far as the facts mentioned therein pertained to the alleged events of 16th, 17th and 18th centuries.

6.142 Because the learned Judge has wrongly observed that issue No.1 (B) (b) (Suit-4) was irrelevant and hence it had remained unanswered although the learned Judge had found that upto 1950 it was never doubted that the building in dispute was a Mosque."

As such he ought to have held that the building in suit was dedicated to God Almighty as claimed by the plaintiffs of Suit-4 and as such the finding given by the learned Judge suffers with infirmity. In this respect it was also wrongly observed that the building "was constructed as an attempt to descerate one of the most pious, sacred and revered place of specific and peculiar nature i.e. the birth place of Lord Rama which could not be at any other place....."

6.143 Because the learned Judge has failed to appreciate the contradictory statements of the Hindu witnesses regarding the alleged images on the Black Stone Pillars of the Mosque and wrongly held that the said pillars contained some human images and at some place there appeared to be some images of Hindu Gods and Goddesses (P.3411). It was also wrongly observed that due to the existence of certain alleged images on some of the pillars of the mosque, such a place would not be a fit place for offering Namaz. In this respect the statements of the expert witnesses of Islamic theology as well as the extracts of the Holi Quran and Hadith cited by the Hindu side were not correctly appreciated.

6.144 Because in relation to issue on limitation, the following issues were framed by the Learned Trial Court:-

(i) Issue No. 3 (Suit No.4). "Is the suit within time?"

(ii) Issue No.10 (Suit No.1) "Is the present Suit barred by time?"

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(iii) Issue No.9 (Suit No.3),"Is the Suit within time?"

(iv) Issue No.13 (Suit No.5)"Whether the Suit is barred by limitation?"

The issue of limitation has been decided by the Learned Judge in Suit No.4 holding that the said Suit is barred by limitation. However, the finding on the issue of limitation with respect to Suit No 5 has been held not barred by limitation. Appellant is aggrieved by the finding of the Learned Judge given on Issue No.3 in Suit No.4 Issue No 10 in Suit No 1 and Issue no 13 in Suit 5 and accordingly the appellant is challenging the said findings on the following grounds which are independent from each other:-

6.145 Because it is evident from record that Suit No.4 was instituted on 18.12.1961, as admitted by all the parties. It is concurrent finding of all the Learned Judges that the idols were placed in the night of 22nd or 23rd December, 1949. According to the Plaintiffs in Suit No.4 Muslims used to offer Namaz till that date when the idols were placed under the Central Dome. Accordingly, the cause of action started from 23rd December, 1949 since thereafter the Muslims were stopped from offering Namaz inside the Mosque. It is also clear from the records that an order was passed by the Learned Magistrate on 29.12.1949 whereby an order of attachment was passed and receiver was appointed in terms thereof. On 05.01.1950, the Receiver had assumed the charge of the inner portion including the constructed portion of Mosque with idols placed inside. In view of the said order having been passed attaching the building of Mosque and giving its possession to the Receiver, the cause of action of the Plaintiffs in Suit No.4 started on 23rd December, 1949 continued with the passing of Order of attachment on 29.12.1949. The cause of action and continued as no final order was passed under Section 145 of CrPC and the property had remained under the custody of Receiver. The cause of action never stopped and remained continuing.

6.146 Because the Suit for declaration under normal circumstances is filed after final order under Section 145 Cr.P.C. The present Suit

No.4 was filed after attachment and during the pendency of the proceedings under Section 145 Cr.P.C. not even finalized and in view thereof terming the Suit No.4 as barred by limitation is arbitrary and without any legal basis.

6.147 Because the Learned Judge has failed to take into consideration the subsequent event of demolition of the Mosque in 1992 and addition of the relief (bb) in pursuance to the judgment and orderpassed by the constitution bench judgment of this Court in Dr. Ismail Farooqui's case whereby the parties were permitted to amend their pleadings in view of the subsequent events.

6.148 Because the contention of the Defendants that the Suit was barred by limitation because the Plaintiff in Suit No.4 was ousted on 16.12.1949 rather than 23.12.1949 and even for the purpose of Article 142 of Limitation Act, 1908, the Suit was barred, is frivolous and without any basis.

6.149 Because the entire evidence mentiond in Paragraphs 2347 to 2392 has been mis-appreciated and quoted by giving improper meaning. Certain parts of evidence recorded in the said Paragraphs are unreliable and without any basis and hence those parts of the evidence are liable to be ignored and not to be taken into consideration for adjudication of issue of limitation in the present context.

6.150 Because the learned Judge has been wrongly recorded that the counsel for plaintiffs in Suit No. 4 (Sri Jilani and Sri Siddiqi) had castigated the approach of the learned Magistrate in passing the order regarding consignment of the proceedings under Section 145 Cr. P.C. As a matter of fact the counsels for Muslims had relied upon the said order in order to show that there was no final order of attachment and hence the period of limitation could not be said to have come to an end but rather the same was continuing and in this respect the observations made by the learned Judge on page 2242 were incorrect.

6.151 Because the learned Judge wrongly recorded that: "The reading of the entire plaint (suit-4) nowhere shows an averment that the plaintiffs were dispossessed of a property which they already possess." It was also wrongly observed by the learned Judge that: "The plaintiff's cause of action and relief, therefore, are quite divergent." In this respect the learned Judge did not at all take into account the averments of paragraphs 11, 11(a), 13 and 20 of the plaint from a perusal of which it is evident that the plaintiffs had clearly mentioned that Muslims had remained to be in full possession of the Mosque till 22-12-1949 when a large crowd of Hindus had entered the Mosque in the night of 22nd /23rd December, 1949 and desecrated the same by placing idols inside the Mosque. Again it was stated in para 11 (a) that Muslims' possession beginning from the time Mosque was built had continued right up to the time some mischievous persons had entered the Mosque and desecrated the same. In para 13 of the plaint it was mentioned that by order dated 29-12-1949 the Mosque was attached and possession was handed over to Sri Priya Dutt Ram as Receiver who still continues in possession and averments about the building in suit being in possession of Receiver was made in para 20 also. It was also wrongly observed by the learned Judge that the plaintiffs had contended that it was an assumption on the part of the defendants that the plaintiffs are dispossessed of the property in question.

6.152 Because the learned Judge has wrongly observed that the pleadings were extremely vague and that the learned counsels for the plaintiffs (Suit-4) found it difficult to bring out the requisite pleadings so as to attract Article 142 of the limitation Act in the present case. In this respect the learned Judge ignored the cumulative effect of the pleadings contained in paragraphs 11, 11 (a), 13 and 20 etc. and wrongly held that the assertions made in the aforesaid paragraphs were insufficient to constitute a case of "dispossession" or "discontinuance of possession" of the Muslims over the property in dispute. The learned Judge failed to consider the plaint in its right perspective and in the manner in which pleadings are to be interpreted.

6.153 Because the learned Judge has wrongly been observed that much of the submissions in the Written Arguments filed by Sri M.A. Siddiqi, Advocate, have been taken for the first time and that the court had no occasion to seek any clarification regarding the same. As a matter of fact all these submissions had been repeatedly made before the court by Sri M.A. Siddiqi and the gist of these submissions were made by Mr. Jilani before the court specially with reference to the applicability of 12 years period of limitation and in this respect repeated querries were made by all the Hon'ble Judges during the course of arguments. On this issue the learned Judge Judge, had himself observed during the course of arguments that it was the case of discontinuance of possession at least from the date of attachment of the property in suit, if not from 23-12-1949.

6.154 Because the learned Judge has wrongly reached his findings that neither Article 142 and nor Article 144 of the limitation Act, 1908 were applicable in the instant suit and that the suit was covered by Article 120 of the said Act. It has been further wrongly recorded that the prayer of restoration of possession was superfluous and "a mere suit for declaration was necessary".

6.155 Because the findings given by the learned Judge in paragraphs 2283, 2284 and 3077 that there were no averment in the plaint (Suit-4) that the plaintiffs were dispossessed from the property in question at any point of time in 1949 and similarly fin ling given in para 2558 that there was no occasion of dispossession of Muslims or of discontinuation of their possession, are contradictory to his own finding given in paragraph 2439 where the learned Judge has clearly recorde that "the facts pleaded by the plaintiffs show that they were ousted from the disputed premises on 22/23rd December, 1949..... since thereafter they are totally dispossessed from the property in dispute.....". In this respect the findings given by the learned Judge that it was difficult to treat the alleged wrong to be a continuing wrong has been given by ignoring the fact that the property in dispute has remained attached on 29-12-1949 and the attachment had continued thereafter.

6.156 Because the observation of the learned Judge that the authorities cited by Sri Siddiqi, referred in para 2442 (pages 2446-2447) go against the plaintiffs is misconceived and after taking into account various rulings the learned Judge wrongly held that the suit in question (Suit-4) was barred by limitation under Article 120 of the Limitation Act, 1908 and has accordingly the learned Judge has wrongly decided issue No. 3 (Suit-4) in negative.

6.157 Because learned Judge has incorrectly held that in respect of the outer courtyard, th claim of the plaintiffs (Suit-4) is clearly barred by the limitation and hence the suit in its entirety was to be held barred by limitation and wrongly decided Issue No. 3 (Suit-4) against Muslims.

6.158 Because learned Judge's observation that nobody had pressed Issue No. 10 (Suit-1) and that nobody advanced any argument to suggest that suit No. 1 was also barred by limitation is improper. In this respect the argument of the Muslim side was that the alleged right of Darshan and Puja at the site in dispute, if any, stood extinguished in 1528 itself when the building in dispute was constructed as a mosque and as such the alleged right of plaintiff of suit No. 1 was barred by limitation as no action was taken upto 1950.

6.159 Because the learned Judge while deciding issue No. 13 (Suit-5) wrongly held that since the alleged deities themselves are plaintiffs No. 1 and 2, being akin to a perpetual minor, no limitation runs against them and in this respect it is also incorrect to observe that "laws exclusively applicable to Hindu Deities could be had and read in the light of Oudh Laws Act, 1876, could apply the Hindu Dharam Shastra Law, which contains substantive as well as provisions relating to limitation quo Hindu Deities." The finding about the so called continuance of the alleged 2 Deities over the site in question even after the erection of Babri Masjid is neither supported by any evidence nor could be said to be in consonance with the law of the land.

6.160 Because the learned Judge has wrongly reacorded that facts summarized by him in para 2618 were the facts as pleaded by all the parties (including Muslims) whereas the fact is that at the most these facts could be said to be based upon the pleadings of mainly Hindu parties. In this respect it has been wrongly recorded that so far as the plaintiffs in the present suit (Suit-5) are concerned "their status or their worship continued to be observed and followed in one or the other manner." To say that "no action or inaction in the meantime was such whereagainst the plaintiffs could claim a grievance and right to sue" is incorrect. It is further wrongly observed by the learned Judge that the religious status of the so called deities (plaintiffs 1 and 2 of Suit-5) remained in tact.

6.161 Because the learned Judge has wrongly held that suit No. 5 was not barred by limitation.

6.162 Because the learned Judge has failed to appreciate that no reliance could be placed on the extracts of Books like "Hadiqa-E-Shohda" by Mirza Jan, "Amir Ali Shaheed Aur Marka-E- Hanuman Garhi" by Sheikh Mohd. Azmat Ali Kakorvi (1987) and "Tarikh-e- Avadh" by Najmul Ghani Khan Rampuri etc. and placing reliance upon the same was totally against the settled principles of evidence as the said books could neither be said to be Books of History nor there was any information about the status and qualificatioins etc. of the authors of the same and in any case they could not be said to be Historian. Similarly the books published after 1950, when the dispute was already pending before the court, could not be relied upon as admissible piece of evidence, including the extracts of 'Encyclopaedia Brittanica' (1978 edition) and 'Ayodhya' by Hans Baker (published in 1986).

6.163 Because learned Judge has wrongly observed that crucial aspect about the existence of alleged deities under the central dome would be whether the idols kept therein in the night of 22nd / 23rd December, 1949 were placed in such a manner that the people who visit to worship, believe that there exists a divine spirit and that it is a deity having supreme divine powers. In this respect the

learned Judge failed to appreciate that divinity / consecration of these idols was not to be decided merely on the basis of belief and specially so when the divinity was being challenged by the members of the other community who had been worshipping at the place in question as a Mosque and as such the burden to prove the alleged consecration as well as divinity was more heavy upon the persons who wanted the court to believe that the idols in question were duly consecrated. In this respect the statement of Sri D.N. Agarwal has wrongly been relied upon as admittedly he was not present at the site when the said idols were placed under the central dome of the disputed building in the night of 22nd / 23rd December, 1949 and it was also wrongly observed by the learned Judge that OPW-1 (Param Hans Ram Chandra Das) or any other witnesses had proved this fact. It has wrongly been observed by the learned Judge that it could not be said that the idols in question placed there in the night of 22nd / 23rd December, 1949 were not properly consecrated. Further the observation of the learned Judge that that the status of deity could not be assailed by those who had no belief in idol worship is improper and misconceived. Accordingly the findings given by the learned Judge on Issue No. 12 (suit 4) as well as on issue No. 3 (a) and issue No. 21 (suit 5) are illegal and against the evidence on record and it is wrong that plaintiffs No. 1 and 2 of Suit No. 5 were juridical persons and enjoyed the status of deity under Hindu Law.

6.164 Because the learned Judge failed to appreciate that the idols in question having been illegally and stealthily placed below the central dome of the Mosque, there was no occasion for treating the same as deity and for impleadment of the same and in any case non impleadment of such idols could not result in the dismissal of suit. It has been wrongly observed that the plaintiffs of suit No. 4 had sought for a relief of "eviction" of the idol whereas the fact is that the plaintiffs have sought the possession by removal of the said idols which were being treated as objects of worship.

6.165 Because learned Judge has wrognly observed that defendant No. 4 (in suit No. 5) had not proved that the idol in question was stealthily and surreptitiously kept inside the Mosque in the night of 22nd / 23rd December, 1949. The learned Judge has improperly and without taking into consideration of the evidence on record observed that nothing was brought on record to prove it and the observation of the learned Judge that the same was kept after due ceremonies was also based on no cogent and reliable evidence. In this respect the facts and circumstances about the placement of the said idols as given in the First Information Report, in the Written Statements filed by the State Government and District Magistrate, Faizabad etc. as well as in the notings of the official record maintained by the District Magistrate, Faizabad included in the file of the District Magistrate, Faizabad placed in a sealed cover by the order of the court dated 29-5-2009 and in the letters dated 26th and 27th December, 1949 sent by the District Magistrate, Faizabad to Chief Secretary, Government of U.P. etc. were all ignored.

6.166 Because the learned Judge has failed to appreciate that the idols placed on the Chabutra were said to be looked after by the Nirmohi Akhara and as such if the said idols could be said to be a deity there was no justification to observe that there was nothing on record to show that any person claimed himself as shebait of plaintiff No. 1, (alleged deity). In this respect Issues Nos. 2 and 6 (suit 5) were wrongly decided and it was wrongly held that suit No. 5 could not be held as not maintainable on account of defect of pleadings with respect to the status of the next friend or Shebait.

6.167 Because the learned Judge has misapplied the provisions of Oudh Laws Act, 1876 and Judicial Commissioner's Circular No. 174 of July 1860 etc. and wrongly observed that personal laws in the matter of Hindu idol or deity treating it as a person to be protected by the King like a minor were to continue.

6.168 Because the learned Judge has wrongly observed that the Muslims had not placed any evidence contradicting the statement of

O.P.W.1 regarding placement of idols with the alleged due ceremonies and it was also wrongly observed that since the images of Gods and Goddesses as alleged to have been carved on the black stone pillers were there in disputed building in the inner courtyard and therefore entry of plaintiffs (Suit- 3) in the inner courtyard as a mere worshipper at least, till the date of attachment, may not be doubted. It was also wrongly observed that it could not be said that in the preceding 12 years before 1959 the said plaintiffs never had possession over the property in dispute (inner courtyard).

6.169 Because the learned Judge has wrongly held that "deity," once a minor will continue to be treated as minor for all purposes and he further wrongly observed that he found no authority to show as to how and in what circumstances and why there can be a distinction between the status of deity as minor and natural person as minor. In this respect the learned Judge failed to appreciate the innumerable authorities of this Hon'ble Court, Privy council as well as of High Courts (some of which stand referred in the Judgment of S.U. Khan J. between pages 165-189) specially 2 Judgements of the Bench of three Hon'ble Judges of this Hon'ble Court namely Dr. G.M. Kapoor Vs. Amar Das (AIR 1965 Supreme Court 1966) and S.P. Matam versus R. Goundar (AIR 1966 Supreme Court 1603) as well as the constitution Bench case of Dr. Ismail Farooqi (1994) approving the law laid down by the privy council in Masjid Shaheedganj case (1940 Privy council P. 116). The learned Judge also failed to appreciate the specific observations of the courts that an Idol can not be treated to be minor for the purposes of Section 6 and 7 of limitation Act, vide., Naurangi Lal Versus Ram Charan Das, AIR 1930 Patna 455 (D.B.

6.170 Because the learned Judge has failed to appreciate that from Ext. 18 of suit 1 referred on pages 2067-2068 it was fully evident that Raghubar Das, the then Mahant of Janam Asthan, had no right even to make repair of any portion of the inner or outer courtyard or of gate of the Mosque and Mohd. Asghar, the then Mutawalli of the Mosque, was simply asked that he may not lock the outer door

of the Mosque so as to maintain the old practice. This document having been filed and relied upon by Hindu parties themselves it was sufficient to discredit and discard the so called theory of belief of Hindus about the place of birth of Lord Rama being worshipped in the inside portion of the Mosque.

6.171 Because the observations of the learned Judge that nothing has come on record to show as to when Sita Rasoi was actually constructed, is also not based on a correct perusal of record.

6.172 Because the learned Judge has wrongly used the word "building premises" in place of the word "outer courtyard of the building" while observing that witnesses of plaintiffs of suit No. 4 have not disputed the entry of Hindu public before December 1949. In fact the so called admission of any Muslim side witness could be said to be only in respect of the outer courtyard and not about the inner courtyard or 3 domed structures.

6.173 Because the learned Judge has wrongly observed that "law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened" and wrongly relied upon Section 114 of the Evidence Act for such discretion. In this respect the learned Judge failed to appreciate that the presumption could be drawn only from facts and not from other presumptions as was observed by the learned Judge himself that "Presumption is an inference of a certain fact drawn from other proved facts."

6.174 Because the learned Judge, even after holding that "It is well settled that evidence which are totally contrary to the pleadings ought not be entertained by the court" has proceeded to rely upon such evidence and so called belief / faith which was totally contrary to the pleadings of most of the Hindu parties.

6.175 Because the learned Judge has wrongly observed that Haji Mahboob was one of the plaintiffs of Suit 4 while the fact is that he was defendant No. 6/1 in Suit-3.

6.176 Because the learned Judge has wrongly observed that the complaint of Sri Mohd. Hashim 16th May, 2003 against nomenclature of various artifacts "mischievous" and worthless in this respect the learned Judge misappreciate that the complaint was not only genuine but so far reach consequence as it had been in respect of the so called "Devine Couple" that initially the said broken stone was not name Devine Couple and letter on great emphasis was late upon the same by calling it Devine Couple.

6.177 Because the learned Judge has failed to appreciate the practice prevalent at the site of excavation and wrongly late much emphasis upon the signatures of the parties / there counsel / day to day register. The said day to day register did not given full reports of the excavation of each trench but rather the same mentioned about miss items of artifacts and quantity etc. or Bones and it was also not appreciated that all the complaint mentioning about technically details were prepared by nominees of the Muslims side who were Archaeological Experts and there was no reason for any incorrect complaints having been prepared by the said Archaeologists present at the site of the nominees of the Muslims. Parties.

6.178 Because the learned Judge has failed to appreciate that the elementary rules of excavation, as may be seen in any good textbook on Archaeology, lay down that from alterations primarily visible in soil different layers should be established as one digs (see Peter L. Drewett, Field Archaeology – an Introduction, Routledge, London, 1999, pp.107-08), and then the artefacts and other material found in each of these layers are to be carefully recorded and preserved. The lower layers are older than the upper, and this sequence gives one a relative chronology of the layers. It is only through establishing dates of artefacts in different layers, by C-14 dates or thermoluminiscence or inscriptions, or comparisons with artefacts already securely dated, that the periods of different layers can then be keyed to absolute time (centuries BC or AD). See Kevin Green, Archaeology –An

Introduction, New Jersey, 1989, Chapter 3 (Excavation). The first major defect of the ASI's final Report submitted to the High Court is that it plays with periodization of the layers in the most unprofessional fashion (and with undoubted motivation), quite contrary to Justice Agarwal's long-winded defence of their conduct.

6.179 Because the learned Judge has failed to appreciate that the ASI's Report's authors' clumsy manipulations are seen in their gross failure to provide essential data and the blatant contradictions in their period nomenclature.

6.180 Because the learned Judge has failed to appreciate the gross omission in the ASI's Report, i.e., the total absence of any list in which the numbered layers in each trench are assigned to the specific period as distinguished and numbered by ASI itself during the digging. The only list available is for some trenches in the Charts placed between pages 37-38 of the ASI Report. A list or concordance of trench-layers in all trenches with Periods was essential for testing whether the ASI has correctly or even consistently assigned artefacts from certain trench layers to particular periods in its main Report. Where, as we shall see below, in connection with bones, glazed ware and other artefacts and materials, the finds can be traced to trench-layers that are expressly identified with certain Periods by the ASI in its above-mentioned charts, it can be shown that the ASI's assignment of layers to particular periods is often demonstrably wrong and made only with the object of tracing structural remains or artefacts there to an earlier time in order to bolster the theory of a Hindu temple beneath the mosque. The learned Judge was very anxious to give no concession on the score of the ASI's erroneous periodization, "which would ultimately may result in rejection of the entire report itself" (**Para 3846**). So without coming anywhere to grips with the issue of ASI's simultaneous application of the designation 'Medieval-Sultanate' to two different sets of centuries (11^{th}-12^{th} centuries in one portion and 12^{th} -16^{th} centuries in another), Justice Agarwal declares that he found "no reason whatsoever in

the above background to hold periodisation determined by ASI as mistaken" **(Para 3878)**

6.181 Because the learned Judge has acted with a biased approach against the critics of ASI's scheme of periodization and so in **Para 3879** he takes them further to task: They should know that ASI officials "are experts of expert." Then enthused by his own accolade to ASI, Justice Agarwal delivers himself of this opinion in the same **Para 3879**:

> "The result of a work if not chewable to one or more, will not make the quality of work impure or suspicious. The self-contradictory statement, inconsistent with other experts made against ASI of same party, i.e. Muslim extra interest, and also the fact that they are virtually hired experts, reduces trustworthiness of these experts despite of their otherwise competence."

Such a condemnation, in the worst of taste, could attract a suit of defamation if uttered by anyone not a High Court Judge. It needs to be expunged by the apex court.

6.182 Because the learned Judge has failed to appreciate the way in which the entire stratigraphy has been fixed by the ASI, and certain layers obviously of Islamic provenance pressed into pre-Muslim periods (Period VI and earlier) as shown in Annexure No.1, Table 2, attached to the objection of Mr. Hashim dated 8.10.2003 (**Para 3821**). This kind of false stratigraphy has led to situations that are impossible in correctly stratified layers, namely, the presence of later materials in earlier strata. The presence of earlier materials in later or upper layers is possible, but not the reverse except for pits, but these have to be demarcated clearly from the regular layers, as the digging takes place (and not later as an afterthought), which has not been done at all. (Obviously the entire stratigraphy has been frequently played with to invent a temple in "Post-Gupta-Rajput" times.)

6.183 Because the learned Judge has failed to appreciate that while digging up the Babri Masjid, the excavators claim to have found four floors, numbered, upper to lower, as Nos.1, 2, 3 and 4, Floor No.4 being the lowest and so the oldest. In Chapter III of the ASI's Report Floor 3 is put in "Medieval Period" (i.e. 13th-16th century by categorization adopted in this Chapter. It is stated to consist of "a floor of lime mixed with fine clay and brick-crush" (p.41) – in other words a purely surkhi of standard 'Muslim' style. Floor 4, placed in the "Medieval-Sultanate Period", has also a "red-brick crush floor" (p.40), which too can come only from use of surkhi. The word "Sultanate" is apparently employed to explain away the use of surkhi. Floors 3 and 4 are obviously the floors of an earlier qanati Mosque/ Eidgah and mihrab and taqs (niches) were also found in the associated foundation wall (not, of course, identified as such in the ASI's report). Such a floor, totally Muslim on grounds of technique and practice, is turned by the ASI into an alleged temple floor, "over which", in its words, "a column-based structure was built". Not a single example is offered by the ASI of any temple of pre-Mughal times having such a lime-surkhi floor, though one would think that this is an essential requirement when a purely Muslim structure is sought to be represented by the ASI as a Hindu one.

6.184 Because the learned Judge has failed to appreciate that once this arbitrary appropriation has occurred (page 41), we are then asked by the ASI's report to imagine a "Massive Structure Below the Disputed Structure", the massive structure being an alleged temple. It is supposed to have stood upon as many as 50 pillars, and by fanciful drawings (Figure 23, 23A and 23B) in the ASI's Report, it has been "reconstructed", Figure 23B showing the reconstructed temple with 50 imaginary pillars! Now, according to the ASI's Report, this massive structure with "bases" of 46 of its alleged 50 pillars allegedly exposed, was built in Period VII, the period of the Delhi Sultans, Sharqi rulers and Lodi Sultans (1206-1526): This attribution of the Grand temple, to the "Muslim" period is not by choice, but because of the presence of "Muslim"

style materials and techniques all through. This, given the ASI officials' peculiar view of medieval Indian history (apparently shared by the learned Judge also), must have been all the more reason for them to imagine yet another structure below assignable to an earlier time. About this structure, however, it is admitted in the Summary of Results that "only four of the [imagined] fifty pillars exposed during the excavation belonged to this level with a brick-crush floor" (ASI Report, Chapter X, p.269), and it is astonishing that this should be sufficient to ascribe them to 10th – 11th century (the "Sultanate" tag of Chapter III for it, now forgotten) and to assume that all the four pillars belong to this structure. That structure is proclaimed as "huge", extending nearly 50 metres that separate the alleged "pillar-bases" at the extremes. If four "pillar bases" with their imaginary pillars were called upon to hold such a vast roof, it is not surprising that the resulting structure was, as the ASI admits, "short-lived."

6.185 Because the learned Judge has failed to appreciate that the four alleged pillar bases dated to 11th -12th centuries are said "to belong to this level with a brick crush floor". This amounts to a totally unsubstantiated assumption that surkhi was used in the region in Gahadavala times (11th - 12th centuries). No examples of such use of surkhi in Gahadavala period sites are offered. One would have thought that Sravasti (District Bahraich), from which the ASI team has produced a linga-centred Shaivite "circular shrine" of the Gahadavala period for comparison with the so-called "circular shrine" at the Babri Masjid site, or, again, the Dharmachakrajina vihara of Kumaradevi at Sarnath, another Gahadavala site of early 12th century AD, which the Report cites on other matters (e.g. on p.56), would be able to supply at least one example of either surkhi or lime mortar. But such has not at all been the case. One can see now why it had been necessary in the main text of the Report to call this period (period VI) 'Medieval-Sultanate" (p.40): By clubbing together the Gahadavala with the Sultanate, the surkhi is sought to be explained away; but if so, the alleged "huge" structure too must come to a time after 1206, for the Delhi Sultanate was only established in that year. And so, to go by ASI's

reasoning, the earlier allegedly "huge" temple too must have been built when the Sultans ruled!

6.186 Because the learned Judge has failed to appreciate that the way the ASI has distorted evidence to suit its "temple theory" is shown by its treatment of the mihrab (arched recess) and taqs (niches) found in the western wall (running north-south), which it turns into features of its imagined temple. On p.68 of the ASI's Report are described two niches in the inner side of Wall 16 at an interval of 4.60 metres in trenches E6 and E7. These were 0.20 metre deep and I metre wide. A similar niche was found in Trench ZE2 in the northern area and these have been attributed to the first phase of construction of the so-called 'massive structure' associated with Wall 16. Such niches, along the inner face of the western wall, are again characteristic of Mosque / Eidgah construction. Moreover, the inner walls of the niche are also plastered (as in Plate 49 of the ASI's Report) which indicated that the plaster was meant to be visible. A temple niche, if found, would in any case have to be on the outer wall, and if it contained an image the plaster would be on the image, not on the niche's interior. In the first phase of construction, the supposed massive structure was confined to the thin wall found in Trenches ZE1-ZH1 in the north and E6-H5/H6 in the south (p. 41). How then does one explain the location of niches outside the floor area of the massive structure? This is typical of a mosque/ eidgah, which would have a long, wide north-south wall, the qibla being in the western direction, with niches at intervals on its inner face. The ASI is able to produce no example of a similar recess and niches from any temple.

6.187 Because the learned Judge has failed to appreciate that the context and positions of the recess and niches show that these could only have belonged to a Muslim mosque or Eidgah. This has been thrown out of court by Justice Agarwal presumably in conformity with the argument advanced by the "Hindu parties" that the niche (taq) and mihrab (recessed false-doorway) in mosques are invariably arched, and here the niche at least is rectangular. Obviously, he did not check whether this dogmatic assertion

conformed to reality in the 15th and 16th centuries. Had he looked at Fuhrer's Sharqi Architecture of Jaunpur (a book submitted to the Court and cited by the learned Judge in his discussion of Babri Masjid inscriptions), he would have found in its Plate XXVII ('Jaunpur: Interior of the Lal Darwaza Masjid'), a refutation of this facile assumption. The niche (taq) close to the mimbar on the right is rectangular, while the mihrab to the left, on the other side of the mimbar is basically rectangular (flat-roofed) with the arches above being only ornamental. The other side's claim that the floor of the mihrab is always at the same level as the main floor is not at all understandable one, as may be seen from the illustration of mihrabs in the Jaunpur Jami Masjid (Fuhrer, op.cit., Plates LXIII and LXIV), where the floor of the mihrab stands in one case two courses and in the other one course over the main floor. See also Fuhrer's text, p.47, for how the mihrab is always placed 'towards Makka', i.e. to the west. The evidence from the 15th-century Lal Darwaza Masjid is crucially relevant since the Babri Masjid in its design closely followed the style of Sharqi-period mosques of Jaunpur.

6.188 Because the learned Judge has wrongly held in **Para 3928** dismissing all the objections to the attribution of remains of the walls and floors, found under the extant floor of the Babri Masjid, to an imagined temple:-

> "The statements of Experts (Archaeologist) of plaintiffs (Suit-4) in respect to walls and floors have already been referred in brief saying that there is no substantial objection except that the opinion ought to this or that, but that is also with the caution that this can be dealt with in this way or that both and not in a certain way."

The learned Judge wrongly held that there was no substantial reason to doubt the report of ASI in this respect.

6.189 Because the learned Judge has failed to appreciate that the ASI made no use of thermoluminiscence (TL) dating, although this should have been used where so much pottery was involved; and in the case of TL, unlike most carbon-dates obtained from charcoal, the artefacts in the form of fired pottery can be directly dated. Yet only carbon-dating was resorted to, and no explanation is offered why the TL-method was not also employed.

6.190 Because the learned Judge has failed to appreciate that since the entire basis of the supposed "huge" and "massive" temple-structures preceding the demolished mosque lies in the ASI's reliance upon its alleged numerous **"pillar bases"**, these had to be examined. In this respect one must first remember that what are said by the ASI to be pillar bases are in many cases only one or more calcrete stones resting on brick-bats, just heaped up, and ASI admits that only mud was used as mortar to bond the brickbats. (One should not be led astray by a highly selective few "pillar bases" whose photographs appear in ASI's volume of illustrative Plates). In many claimed "pillar bases" the calcrete stones are not found at all. As one can see from the descriptive table on pages 56-67 of the Report not a single one of these supposed "pillar bases" has been found in association with any pillar or even a fragment of it; and it has not been claimed that there are any marks or indentations or hollows on any of the calcrete stones to show that any pillar had rested on them. The ASI Report nowhere attempts to answer the questions (1) why brickbats and not bricks were used at the base; and (2) how mud-bonded brick-bats could have possibly withstood the weight of roof-supporting pillars without themselves falling apart. It also offers not a single example of any medieval temple where pillars stood on such brick-bat bases.

6.191 Because the learned Judge, in Paras **3901 to 3906**, reproduces arguments advanced by Sri M.M. Pandey, though these include statements that are not even made in the ASI Report on a general basis at all, such as (a) brickbats in the pillar bases are not heaped up but are carefully laid in well-defined courses (**Para 3901**); (b)

the foundation of pillar bases has been filled with brickbats covered with orthostat, which prima facie establishes its load-bearing nature (**Para 3903**), and (c) all the fifty bases, more or less are of similar pattern except the orthostate position. (**Para 3903**) These words of wild generalization, quite overlooking the brickbat heaps passed off as pillar bases by the ASI, and the technological wisdom about highly dubious 'orthostats' has wrongly persuaded Justice Agarwal, who in **Para 3907** says shortly: "We find substance in the submission of Sri Pandey."

6.192 Because the learned Judge has failed to appreciate that despite the claim of these pillar bases being in alignment and their being so shown in fancy drawings in the ASI's Report (figures 23, 23A and 23B), the claim is not borne out by the actual measurements and distances; and the plan provided by ASI is also not drawn accurately at all. The fact that the alleged pillar bases do not stand in correct alignment or equal distances is admitted by Justice Agarwal in **Para 3917,** but he speculates on his own that "there may be a reason for having variation in the measurement of pillar bases that the actual centre of the pillar bases could not be pointed out ...." The ASI admitted to no such disability. In this respect the learned Judge even ignored the statements of Experts of Hindu side who had admitted in their statements that the alleged pillar bases were not in an alignment. Moreover, the learned Judge goes on to state that "Figure 3A in any case has been confirmed by most of the Experts (Archaeologist) of plaintiffs (suit-4)," when actually it has been unanimously maintained by them to be inaccurate and fanciful. Indeed, there are enormous discrepancies between Fig. 3A (the main plan) and the Table in Chapter 4 on the one hand, and the Report's Appendix IV, on the other. Trench F7 has four alleged "pillar bases" in the former, for example; but only one in the latter!

6.193 Because the way the ASI has identified or created "pillar bases" is a matter of serious concern. Complaints were also made to the Observers appointed by the High Court that the ASI officials were ignoring calcrete-topped brick-bat heaps where these were not

found in appropriate positions, selecting only such brick-bat heaps as were not too far off from its imaginary grids, and helping to create the alleged "bases" by clearing the rest of the floor of brick-bats. Despite Justice Agarwal's vehement rejection of these complaints, the complaints do not lose their validity.

6.194 Because the most astonishing thing that the ASI so casually brushes aside relates to the varying levels at which the so-called "pillar bases" stand. Even if we go by the ASI's own descriptive table (page 56-57), as many as seven of these alleged 50 "bases" are definitely above Floor 2, and one is at level with it. At least six rest on Floor 3, and one rests partly on Floor 3 and 4. Since Floor 1 belongs to the mosque, how did it come about that as many as seven pillars were erected, after the Mosque had been built, in order apparently to sustain an alleged earlier temple structure! More, as many as nine alleged "pillar bases" are shown as cutting through Floor No.3. Should we then not understand that when the Mosque floor was laid out, there were no "pillar bases" at all, but they were either extant parts of earlier floors (now taken to be or made to look like pillar bases) or some kind of loosely-bonded brickbat deposits, connected with the floors?

6.195 Because the learned Judge has failed to appreciate that even the table on pages 56-67 of the ASI's Report may not correctly represent the layers of the pillar bases, since its information on floors does not match that of the Report's Appendix IV, which in several trenches does not attest the existence of Floor No. 4 at all, though this was the floor the "pillar bases" in many cases are supposed to have been sealed by, or to have cut through or stand on ! For example, "pillar base 22" on pp.60-61 is indicated as resting on floor 4, but there is no Floor 4 shown as existing in Appendix IV of the Report in Trench F2 where this base supposedly stands. Similar other discrepancies are listed below:

Information in text of ASI's Report (PB = Pillar base)	Information in Appendix 4 of Report
PB No.3:ZG2-Fl. 2 (p.56)	Only Fl.1 mentioned (p.8)

PB No.6:ZJ2-Fl. 2(p.57)	Fl.1 mentioned (p.12)
PB No.8:ZG1-Fl. 2 (p.58)	Only Fl.1 mentioned (p.8)
PB No.18:H1-Fl.4 (p.60)	No Fl.4 (p.11)
PB No.22:F2-Fl.4 (p.60-61)	No Fl.4 (p.6)
PB No.27:H5-Fl. 4 (p.62)	3 successive floors. No Fl.4 (p.11)
PB No.28: F6-Fl.4 (p.62)	No Fl.4 (p.7)
PB No.31:F6-F7-Fl. 4 (p.63)	3 floors mentioned for F6 (p.7); Floors 1 and 1A for F7 (p.7)
PB No.32: F6/F7-Fl. 4 (p.63)	3 floors mentioned for F6 (p.7); Floors 1 and 1A for F7 (p.7)
PB No.34, 35: F7-Fl. 4 (p.64)	Only F1.1 and 1A (p.7)
PB No.36:G7-Fl. 4 (p.64)	No Fl.4 (p.10)
PB No.37: F8-Fl.3 (p.65); no.Fl.3 beyond 6 series (p.63)	–
PB No.39: G8-Fl. 4 (p.65)	3 successive floors (p.10)
PB No.45: G9-Fl. 4 (p.66)	3 successive floors (p.10)
PB No.44: F9-Fl. 4 (p.66)	2 floors mentioned (p.8)
PB No.46:H9-Fl. 4 (p.66)	3 floors (p.12)
PB No.47:F10/F10-Fl 4 (p.66)	F10:Fl.1 mentioned (p.5); F10: 2 floors mentioned (p.8)
PB No.48:F10-Fl. 4 (p.67)	2 floors mentioned (p.8)
PB No.49: G10-Fl. 4 (p.67)	2 floors mentioned (p.10)
PB No.49:G10/H10-Fl.4 (p.67)	2 floors each in G10 and H10 (pp.10,12)
PB No.50: H10-Fl. 4 (p.67)	Floors 1 and 2 only mentioned (p.12)

Note: Fl. in the above table is an abbreviation for Floor.
Thus in over 20 cases Floor 4 is presumed in the Report, whereas no proof of this is provided in Appendix IV.

6.196 Because the learned Judge has failed to appreciate that there is also the crucial matter of what happened to the pillars that the alleged pillar-bases carried. Justice Agarwal dismisses this as unworthy of consideration since, in his view, they must have been

demolished when the supposed temple was destroyed to build the mosque (**para 3917**). The learned Judge says that:-

> "One of the objection with respect to the pillar bases is that nothing has been found intact with them saying that the pillars were affixed thereon. The submission, in our view thoroughly hollow and an attempt in vain ... If we assume other cause to be correct for a moment, in case of demolition of a construction it is a kind of childish expectation to hope that some overt structure as it is would remain intact."

The learned Judge wrongly observed that the objection was based on any childish expectation. The simple matter is that destruction does not mean evaporation. If the mosque was built immediately upon the alleged temple's destruction, as Justice Agarwal holds, then, either the 50 stone pillars would have been used in the mosque or their remains should have been found in the debris of the demolished mosque which the ASI dug through. But no such pillar, or any recognizable part thereof, was found. Only one pillar fragment was found and that belonged to the set of 14 non-uniform decorative non-load bearing black basalt pillars which were part of the Babri Masjid structure.

6.197 Because the learned Judge has failed to appreciate that the ASI should have looked about for other explanations of the heaps of brickbats before jumping to its "pillar bases" theory. There is at least one clear and elegant explanation for many of them, first proposed by Dr Ashok Datta (**Para 540** sub-para 10). When Floor No.4 was being laid out over the mound sometimes during the Sultanate period, its builders must have had to level the mound properly, using stones (the latter often joined with lime mortar) and brick-bats to fill such holes. When Floor 4 went our of repair, it received similar deposits of brickbats to fill its holes in order to lay out Floor 3 (or, indeed, just to have a level surface), and this continued to happen with the successive floors. This

explains why the so-called "pillar bases" appear to "cut through" both Floors 3 and 4, at some places, while at others they "cut through" Floor 3 or Floor 4 only. They are mere deposits to fill up holes in the floors. Since such repairs were in time needed at various spots all over the floors, these brickbat deposits are widely dispersed. Had not the ASI been so struck by the necessity of finding "pillar bases", which had to be in some alignment, it could have found scattered over the ground not just fifty but perhaps over a hundred or more such deposits of brickbats.

6.198 Because the learned Judge has failed to appreciate that when Dr. B.R. Mani, the first leader of the ASI team at Ayodhya, excavated at Lal Kot, District of South New Delhi, he thus describes "pillar bases" of "Rajput style", of about 11th-12th century:

> "These pillar bases rest on stone pedestals and are 2.90 m. apart from each other. They might have supported some wooden canopy."

(Indian Archaeology, 1992-93 – A Review, official publication of ASI, New Delhi, 1997, p.9).

Dr. Mani illustrates these four pillar bases in Plates VI and VII of the same publication. Each comprises a number of squarish stone slabs resting on each other with a larger stone slab at the bottom. Yet these were not thought by him to be strong enough to support anything more that "a wooden canopy." And yet at Ayodhya, single calcrete slabs resting on nothing more than brickbats are often held by the same Mr. Mani and his team to have supported stone pillars bearing "massive stone structures!"

6.199 Because the learned Judge has proceeded on wrong assumption against the experts on the Muslim side that they have denied the existence of all pillars and pillar-bases. The Babri Masjid also used quite large pillars to carry the roof, and as we have shown pillars and colonnades were a feature of the Sharqi mosques. Thus Justice Agarwal's contention that all pillar-bases of whatever kind and those especially in the north are being rejected by critics of

the ASI Report and, then, to discredit them on that basis (cf. **Paras 3887 and 3890**) is in effect either due to inadvertence or on account of some misconception . Incidentally, this is at par with his assertion that there was any suggestion on the part of the critics regarding a "north-south row of the wall 16 and 17", i.e. west of the Mosque's western wall **(Para 3895)**, which is just a figment of the imagination. It is, therefore, all the more objectionable that in **Para 3900**, Justice Agarwal attacks the proper objections raised by Dr Jaya Menon and Dr Supriya Verma, in his usual elegant language:

> "... it can easily be appreciated that the mind of two experts instead working for the assistance of the Court in finding a truth, tried to create a background alibi so that later on the same may be utilized to attack the very findings. However, this attempt has not gone well since some of these very pillar bases have been admitted by one or the other expert of plaintiffs (Suit-4) to be correct."

All buildings including the Babri Masjid and its predecessor, the qanati mosque or eidgah, needed to stand on walls and pillars, and only Justice Agarwal could imagine that the concerned plaintiffs' experts would deny the existence of such structures.

6.200 Because the learned Judge has failed to consider the shape and size of the alleged "shrine". The extant wall makes only a little more than a quarter of a circle (ASI Report, Fig.17). Though there is no reason to complete the circle as the ASI does, the circular shrine, given the scale of the Plan (Figure 17 in the Report), would still have an internal diameter of just 160 cms. or barely 5 ½ feet! Such a small structure can hardly be a shrine. But it is, in fact, much smaller. Figs.3 (General Plan of Excavations) and 17 in the Report show that not a circle but an ellipse would have had to be made by the enclosing wall, which it has to be in order to enclose the masonry floor. No "elliptic (Hindu) shrine" is, however, produced by ASI for comparison: the few that are shown are all circular. As Plate 59 makes clear the drawing in Fig. 17 ignores a

course of bricks which juts out to suggest a true circle, much shorter than the elliptic one: this would reduce the internal diameter to less than 130 cms, or 4.3 feet ! Finally, as admitted by the ASI itself, nothing has been found in the structure in the way of image or sacred artefact that can justify it being called a "shrine".

6.201 Because the learned Judge has failed to appreciate that if the ASI insists on it being a shrine, it is strange that it did not consider the relevance of a Buddhist Stupa here. Attention was drawn to Plate XLV-A showing "exposed votive stupas" at Sravasti, in the ASI's own Indian Archaeology, 1988-89 -- A Review. It is indicative of the ASI's bias that while it provided an example of an alleged circular Shaivite shrine from Sravasti, along with a photograph (Report's Plate 61), it totally overlooks the circular structures representing stupas there. As shown above the small size of the so called "circular shrine" at the Babri masjid site precludes it from being a shrine which anyone could enter, and the stupa (which is not entered) is the only possible candidate for it, if the structure has to be a pre-Muslim sacred structure. But the stupa is not a temple, let alone a Hindu temple. It is characteristic that despite no "circular shrine" of this small size being brought to the attention of the court, Justice Agarwal gives his own reasons, based on no example or authority, to say that there could be a circular shrine which need not be entered! (**Para 3947**). He dismisses any other explanation out of hand.

6.202 Because the learned Judge has also misread the A.S.I. report regarding description of circular shrine as the ASI on p.69 refers to a sample from "the deposit between Floors 2 and 3 in the Trench ZH-1", giving the date AD 1040± calibrated to AD 900-1030, which it itself rejected as "too early", the sample being held to be a possible intrusion from disturbed soils. Justice Agarwal in **Para 3937**, however, coolly uses this reference to date the "Circular Shrine", which has no relationship to Trench ZH-1 (far on the northern side of the Masjid) or Floors 2 and 3. He says:

"The structure [the alleged Circular Shrine] may be dated to 9th -10th century. (the ASI carried out (-14 determination from this level and the calibrated date ranges between 900 AD-1030 AD)."

The words in round brackets are, of course, those of Justice Agarwal, and this shows how he uses a carbon-date which could be from disturbed strata according to the ASI itself and has nothing to do with the so-called circular shrine. And why does he not then consider the other sample (BS No.212/) from a similar depth (47 cm), but from a trench G7 adjacent to the "circular shrine", and gives the calibrated range of AD 1400-1620. This date should make it, in Justice Agarwal's language, an Islamic structure.

6.203 Because the learned Judge has wrongly referred to the parnala of the circle shrine as a decisive evidence and wrongly described it "an extremely important feature of this structure" (para 3926). The objection against the same were re-produced by the learned Judge in Paragraph 3929 in which in sub-para 6.10 it is pointed out that the channel cannot be a draining chute at all not only because of its Lilliputian proportions, but also because it is uneven in width, and narrow at the end (see Plate No.60 in the ASI's volume of illustrations); measurements by a levelling instrument revealed it had no slope, and, finally, there were no residues or traces of deposits that are formed within water drains after a period of use. Not only does Justice Agarwal not take any notice of these objections, but in **Paragraph 3937** makes the 'v' cut in a brick into a "gargoyle". A "gargoyle" implies that there is a "grotesque spout, usually with human or animal mouth, head or body, projecting from gutter of (especially Gothic) building to carry water" (Concise Oxford Dictionary). But Justice Agarwal, may have meant only a "drain", with which he, indeed, equates a gargoyle!

6.204 Because the learned Judge has failed to examine the archaeological finds that go entirely against the thesis of there

having been a temple beneath the mosque. In this respect the learned Judge failed to appreciate that the bones of large and medium size animals (cattle, sheep and goats) would be a sure sign of animals being eaten or thrown away dead at the site, and, therefore, rule out a temple existing at the site at that time. In this respect directions were given by the High Court to the ASI to record "the number and wherever possible size of bones and glazed wares". (Order, 10.4.2003, reproduced in **Para 230).** Yet the ASI officials have provided in their Report no chapter or sub-chapter or even tabulation of animals by species, by kinds of bones, whether with cut-marks or not, as is required in any proper professional report of excavation. In fact today, much greater importance is being attached to study of animal bones since they provide to archaeologists information about people's diet and animal domestication. From any point of view ASI's avoidance of presenting animal-bone evidence after excavation must be regarded as a motivated, unprofessional act. The Report in its "Summary of Results" admits that "animal bones have been recovered from various levels of different periods" (Report, p.270). Learned Judge instead of taking the A.S.I. to task for the this great omission made use of the omission of details about the animal bones in the A.S.I. report to provide imaginary explanations.

6.205 Because the learned Judge has failed to appreciate that the statement actually made in the "Summary of Results" concedes specifically that animal bones have been recovered from "various levels". Here, then, it is not a matter of recovery from "pits" that Sri M.M. Pandey and, also the learned Judge enlarge on at length (**Paras 3966 and 3968**). Furthermore "various" in the context means "all" or "most," particularly since the ASI Report provides no reservation that there was any area or layers in which they were not found. Indeed, the above inference is fully supported from even a random examination of the ASI's Day-to-Day Register and Antiquities Register, where the bones recovered are not usually attributed to pits or 'secondary deposits.'

6.206 Because the learned Judge has failed to appreciate that from the Day-to-Day and Antiquities Registers, we find that in Trenches Nos.E-6 (Layer 4), E-7 (Layer 4), F-4/F-5 (Layer 4) animal bones have been found well below Period VII – layers, i.e. in Period VI (Early Medieval or Pre-Sultanate) or still earlier, and in Trenches Nos.F-8, G-2, J-2/J-3, they are found in Layers assigned by ASI to Period VI itself. Thus bones have been found in what are allegedly central precincts of the alleged Rama temple allegedly built in 'Period VI'. The ASI says that a massive temple was built again in Period VII, but in Trenches Nos.E6, F8, G-2 and J-E/J-4 bones have been found in layers assigned to this very Period also in the same central precincts. The above data are given in the Tables produced in Sunni Central Board of Waqfs' 'Additional Objection' dated 3-2-04.

6.207 Because the learned Judge has wrongly made in **Para 3969** a statement laden with unsubstantiated detail:-

> "Moreover, it is a well-known fact that in certain Hindu temples animal sacrifices are made and flesh is eaten as Prasad while bones are deposited below the floor at the site."

He cites no authority for this and we do not find a single temple of this type at Ayodhya today or in the past.

Two points here are worth noting: (a) the divinities to whom the sacrifices are offered are all connected with Lord Shiva, except Yama, god of the dead; on the other hand, Lord Vishnu or any of his incarnations are in no way connected with such rites; and (b) there is nothing said of the worshippers eating the flesh of the sacrificial victims. So far as we know there was no or little prevalence of the Kali cult in the Upper Gangetic basin where Ayodhya is situated. In any case, if one insists on the imaginary temple beneath the Babri Masjid to have contained thrown away animal bones, it would make it not a Rama, but a Kali or Bhairava temple. Yet even so the sacrificed animals' whole skeletons should

have been found, not separate, scattered animal bones, as were actually found in the excavations, according to the ASI's own records.

6.208 Because the learned Judge has failed to appreciate that there was no case of any Hindu party that beneath the Babri Masjid there was a Kali or Bhairava temple revelling in animal sacrifices, and, learned Judge also decides **(Para 4070)** under issue No.14 that the Hindus have been "worshipping the place in dispute as Sri Ram Janam Bhumi Janam Asthan... since times immemorial"!

6.209 Because the learned Judge has wrongly observed in **Para 3970** that "bones in such abundance" precluded the site from ever having been an Eidgah or qanati mosque before the Babri Masjid was built. Here he forgets that it is his own claim, not that of the "Muslim" plaintiffs, that the Babri Masjid was built immediately upon the demolition of a preceding structure. Quite the contrary, the bones and the scattered medieval artefacts like glazed ware, show that the land adjacent to the walls and main structure remained open, as would be the case with an Eidgah or qanati mosque, so that waste matter could be thrown there. Justice Agarwal forgets that during the period of three centuries preceding 1528, Ayodhya or Oudh was a city with a large Muslim population along with its Hindu inhabitants. Given the dietary customs of the two communities "abundance of animal bones" would weigh heavily in favour of there being a Muslim presence in the immediate vicinity of the disputed site.

6.210 Because the learned Judge has failed to appreciate that **Glazed ware**, often called "Muslim" or Medieval **glazed ware**, constitutes an equally definite piece of evidence, which militates against the presence of a temple, since such glazed ware was not at all used in temples. In this respect the learned Judge misappreciated **(Para 3976)** the claim that, after all, there was "glazed ware" also in Kushana times, so why not in Gahadavala times?

In this respect the matter is clarified in the authoritative Encyclopaedia of Indian Archaeology, ed. A. Ghosh (former Director-General, Archaeological Survey of India), New Delhi. 1989, page 260, where we read under GLAZED WARE:-

> "Potsherds, light buff in colour, with a heavy turquoise blue glaze, have been found at Chaubara and Mahauli mounds near Mathura and at several other sites in the country and have been dated to the Kushan period. However, it bears no similarity to the reddish buff Kushan ware which abounds around Mathura and is completely different from the later-day medieval (Islamic) Glazed ware." (Italics ours).

In other words, archaeologists of standing regard the presence of medieval glazed ware as evidence of Muslim presence; and this ware has nothing in common with the Kushana-period glazed ware. This passage disposes of the objection raised by the Hindu side (quoted by Justice Agarwal in **Para 3976)** that the medieval glazed ware was the same as Kushana ware and so was used in Ancient India.

6.211 Because the learned Judge has failed to appreciate that "medieval (Islamic)" glazed ware is all-pervasive at the Babri Masjid site till much below the level of "Floor No.4", which floor is ascribed in the Report to the imaginary "huge" structure of a temple allegedly built in the 11th-12th centuries. The 'Summary of Results' in the ASI's Report tells us that the glazed ware sherds only "make their appearance" "in the last phase of the period VII" (p.270). Here we directly encounter the play with the names of periods. On page 270, Period VII is called "Medieval Sultanate", dated to 12th-16th century A.D. But on p.40 "Medieval-Sultanate" is the name used for period VI, dated to 10th and 11th centuries. As we have noted, the Summary of Results claims (on page 270) that the glazed ware appears only in "the last phase of Period VII". In Chapter V (Pottery), however, no mention is made of this "last phase" of Period VII; it is just stated that "the pottery of Medieval-Sultanate,

Mughal and Late-and-Post Mughal period (Periods VII to IX)... indicated that there is not much difference in pottery wares and shapes" and that "the distinctive pottery of the periods [including Period VII] is glazed ware" (p.108). The placing of the appearance of Glazed Ware in the "last phase" only of Period VII appears to be a last-minute invention in the Report (contrary to the findings in the main text) to keep its thesis of alleged "massive" temple, allegedly built in period VII, clear of the "Muslim" Glazed-Ware, because otherwise it would militate against a temple being built in that period. All this gross manipulation has been possible because not a single item of glazed pottery is attributed to its trenches and stratum in the select list of 21 items of glazed ware (out of hundreds of items actually obtained) on pages 109-111. Seeing the importance of glazed ware as a factor for elementary dating (pre- or post-Muslim habitation at the site), and in view also of the High Court's orders about the need for proper recording of glazed ware, a tabulation of all recorded glazed-ware sherds according to trench and stratum was essential. That this has been entirely disregarded shows that, owing to the glazed-ware evidence being totally incompatible with any temple construction activity in periods VI and VII, the ASI has resorted to the most unprofessional act of ignoring and manipulating evidence.

6.212 Because the learned Judge has failed to appreciate that the Pottery Section of the Report (p.108), the presence of Glazed Ware throughout Period VII (Medieval, 12th-16th centuries) rules out what is asserted on page 41, that a "column-based structure" - the alleged 50-pillared temple – was built in this period. The whole point is that glazed ware is an indicator of Muslim habitation, and is not found in medieval Hindu temples.

6.213 Because the learned Judge has failed to appreciate that the story of **Glazed Tiles** is very similar. These too are an index of Muslim habitation. The two glazed tiles being found in layers of Period VI means that the layers are wrongly assigned and must be dated to Period VII (Sultanate period). There could be no remains of any alleged "huge temple" in these layers, then.

6.214 Because the learned Judge has failed to appreciate that since lime mortar and surkhi are profoundly involved in (a) the dating of the levels they are found in, and (b) resolving the issue whether they could have been used in the construction of a temple structure at all, it is essential, first of all, to be clear about what these are and what exactly is meant by their use. It is acknowledged by the ASI's Report also that lime mortar was used to fix calcrete stones in the so-called pillar bases.

6.215 Because the learned Judge has failed to appreciate that Surkhi is still more elusive in pre-Sultanate ancient India. It is not at all mentioned among mortars or even plasters by the Encyclopaedia of Indian Archaeology, Vol.I, p.295, the volume dealing only with Ancient India. This alone testifies to the rareness, if not absence, of the use of this material in ancient India. We should here take care to understand what the term signifies. It means "pounded brick used to mix with lime to form a hydraulic mortar." No surkhi floor or bonding mortar has yet been found in any pre-1200 AD site in India, whether in a temple or any other building. One rare exception is the presence of surkhi as plaster in the lower levels of the Buddhist temple at Buddha Gaya and between it and the alleged temple at Ayodhya there is a gap of over a thousand years. Nor has the ASI in its Report or the Advocates of the other side been able to produce a single credible example from any Gahadavala or contemporary temple or structural remains.

6.216 Because the learned Judge has failed to appreciate that all the levels, especially Floors 1-4, which all bear traces of lime mortar and/ or surkhi must belong to the period after A.D. 1200 and cannot be parts of a temple. The learned Judge wrongly observed to in **Para 3986** that –

> "whether lime molter or lime plaster from a particular period or not, whether glazed ware were Islamic or available in Hindustan earlier are all subsidiary questions when this much at least came to

be admitted by the experts of the objectionists parties, i.e. the plaintiffs (Suit-4) that there existed a structure, walls, etc., used as foundation walls in construction of the building in dispute and underneath at least four floors at different levels are found with lots of several other structures."

Let us here overlook the inaccurate statement that "lots of other structures" were found, but concentrate on the main argument. The learned Judge is in effect arguing that it just does not matter that the floors underneath the Babri Masjid contained all the standard accompaniments of Islamic (not temple) construction and customary use; the assumption is that anything found beneath the Babri Masjid ipso facto, by faith must be 'un-Islamic' and belong to a temple, irrespective of whether it bears Islamic features (mihrab and taqs) or its material is exclusively of Islamic manufacture and use.

6.217 Because in this regard two more matters were also not considered by learned Sudhir Agarwal J.:-

(a) Underneath a "brick pavement" dated to Period VII, two Mughal coins (Reg. No.69 and 1061, one of which is of Akbar and the other of Shah Alam II, 1759-1806) have been found. (ASI's Report, pp.210-17). Obviously, the ASI's dating of the pavement to the Sultanate period (c.1200-1526) is erroneous, and the floor belongs to recent times (late 18th century or later).

(b) The presence of terracotta human and animal figurines is no index of Hindu or Muslim occupations. In Period II at Lalkot, Delhi, along with Sultanate coins were found 268 terracotta human and animal figurines Muslim children were apparently as drawn to terracota figurines (human as well as animal) as children everywhere in the word.

6.218. Because the learned Judge has wrongly observed in paragraph 3896 as follows:-

> "Normally it does not happen but we are surprised to see in the zeal of helping their clients or the parties in whose favour they were appearing, these witnesses went ahead than what was not even the case of the party concerned and wrote totally a new story. Evidence in support of a fact which has never been pleaded and was not the case of the party concerned is impermissible in law. Suffice it to mention at this stage that even this stand of these experts makes it clear that the disputed structure stood over a piece of land which had a structure earlier and that was of religious nature."

The learned Judge failed to appreciate that the Experts were not to be guided in their statements by what suitors, as lay men, expect them to say. In this respect the Report of Historians submitted to the Government in 1991 by eminent Historians like Prof. R.S. Sharma, Prof. Athar Ali, Prof. D.N. Jha and Prof. Suraj Bhan was also not taken into account who had given their views as under (P.23):-

> "There are no grounds for supposing that a Rama temple or any temple, existed at the site where Baburi Masjid was built in 1528-29. This conclusion rests on an examination of the archaeological evidence as well as the contemporary inscriptions on the mosque."

Thus Justice Agarwal has wrongly observed that a "new story" was being told now after the 2003 excavations by the ASI, by any of the academic witnesses. Their conclusion still remained that no temple was demolished in order to build the Babri Masjid, and this was the essence of the issue in the law-suit. Moreover, if any conclusion which is derived strictly from historical or archaeological evidence is said to be "impermissible in law", this does not mean that it is thereby wrong. The learned Judge failed

to appreciate that the "Historian's Report to the Nation" submitted by Professors R.S. Sharma, M. Athar Ali, D.N. Jha and Suraj Bhan, all eminent Historians, published in 1991 (Ext.O.O.S.5 in Suit-5) and also as Ext. 62 (Suit-4) had given detailed reasons for the aforesaid view. It is therefore, incorrect to say that a new story was set up by any Expert witness of the Muslim side after 2003 excavations.

6.219 Because the learned Judge has failed to appreciate that mere assertion that the structural remains beneath the Babri Masjid are "religious" as stated in **Para 3986** is not sufficient in itself, because such a religious structure could theoretically be also Islamic, Jain, Buddhist or Shaivite and so not be a Ramajanmabhumi temple at all.

6.220 Because the learned Judge has failed to appreciate that that by the archaeological finds it must be an Eidgah or qanati mosque (with much open land), constructed during the of the Sultanate period (1206-1526) – given its western wall, mihrab and taqs, glazed ware, lime mortar and surkhi. If we are looking for a Rama or Vaishnavite temple what would we have been expecting? We would first be expecting images or idols and sculptured scenes as are seen in the façades and interior of the temples of Khajuraho, Bhubaneshwar and Konarak of the same period. If we begin by the presumption that the temple was demolished by Muslims to build the mosque, we would also expect as a necessary element, such signs of vandalism, as mutilated images or mutilated sculptured figures. They should have been found in levels or fills beneath the Masjid floor or in the debris of the Masjid, because one would expect all kinds of stones images or stones with sculptured divinities, to have been employed in the mosque with or without mutilation. But not a single image or sculptured divinity, mutilated or otherwise, has been found even after such a comprehensive excavation where doubtless these were the things everyone in the ASI team was looking for.

6.221 Because the learned Judge has failed to consider what the ASI offers as the main indicators of a temple at the site, besides those controversial pillar-bases we have already discussed: It refers to "yield of stone and decorated bricks, as well as mutilated sculpture of divine couple and carved architectural members including foliage patterns, amalaka, kapotapali doorjamb with semi-circular pilaster, broken octagonal shaft of black schist pillar, circular shrine having parnala (water chute) in the north". This list is at least descriptive, by simply calling all such features "Hindu motifs" is not sufficient. Let us then consider the list furnished by the ASI in support of the temple-beneath–the--mosque theory.

6.222 Because the learned Judge has failed to appreciate that in the curious phrase "stone and decorated bricks" perhaps, "stone" is a misprint for "stones" for there can be no stone bricks. But mere stones also have no significance either for period or for type of structure. As for 'decorated bricks', the sentence in Chapter IV is most revealing: "A band of decorative bricks was perhaps provided in the first phase of construction or in the preceding wall (wall 17) of which scattered decorated bricks with floral pattern were found re-used in the wall 16" (p.68). All this is just fanciful conjecture: no decorated bricks at all are mentioned when the supposed remaining courses of Wall 17, four courses in one and six in another area, are described (on the same page 68). No bands of decorated bricks but only some scattered re-used bricks of this kind were found in Wall 16. Such re-use shows that for builders of Wall 16 these bricks had no significance except as use of constructional material (and the decorations would in any case be covered by lime plaster). They could have been brought from anywhere nearby and not taken from Wall 17 or from any pre-Mosque remains on the site.

6.223 Because the learned Judge has failed to appreciate that the A.S.I. had wrongly observed that the alleged temple-associated items: "the fragment of broken jamb with semi-circular pilaster (pl.85), fragment of an octagonal shaft of Pillar (pl.84), a square slab with srivatsa motif, fragment of lotus motif (Pls.89-90) emphatically

speak about their association with the temple architecture". In the same breath the Report also notes "that there are a few architectural members (Pls.92-94) which can clearly be associated with the Islamic architecture" (p.122). The two sets of finds are assigned their different dates (10th-12th centuries and sixteenth century or later) but such dates are assigned not by the positions of the artefacts in situ in archaeological layers, but purely on perceived stylistic grounds. The two tables listing the archaeological members found in the excavations show that none of the finds actually came from layers bearing remains of the so-called structure beneath the Babri Masjid, but rather from surface, or upper layers or the Masjid debris, or dumps or pits (see tables of the Report on pp.122-133). How, then, even if stylistic the 'temple' associations of a few of them are acknowledged, can it be argued that they belonged to the structure beneath the mosque, the one containing mihrab and taqs, whose 'religious character' is under discussion? They could have been brought for use in the Babri Masjid from remains of temples and other buildings at nearby sites, just as were the 'Islamic' architectural fragments brought from ruins of older mosques in what was in the sixteenth century the headquarters of a large province, with a mixed Hindu-Muslim population.

6.224 Because the learned Judge has failed to appreciate that as for "the divine couple" which occupies a primary place in the ASI's list of supposed temple relics, the following points are noteworthy: it comes from the debris (see Sl. No.148 (Reg. No.1184) in table on p.130 of the ASI's Report) and is thus archaeologically undatable. The description 'divine couple' is an invention of ASI, because here we have only a fragment of part sculpted rough stone, where only "the waist" of one figure and the "thigh and foot" of another are visible (See Plate 235 in ASI's volume of illustrations). How from this bare fragment the ASI ascribed divinity to the postulated couple and deduced the alingana mudra as the posture is evidence not of any expertise but simple lack of integrity and professionalism.

6.225 Because the learned Judge has failed to appreciate that the black schist stone pillar here presented as evidence for a temple at the site was recovered from the debris above floor 1, i.e. the admitted last floor of the Babri Masjid (ASI's Report, page 140), Sl. No.4, Reg. AYD/1, No.4). It is merely a fragment of one of the 14 such non-load bearing pillars installed in the Babri Masjid with no connection to the imagined pillared edifice underneath the Masjid.

6.226 Because the learned Judge has failed to appreciate that the fact that the various articles cited in support of the existence of an earlier temple at the site have their association with different sects rules out their having come from a single temple. An octagonal block with a floral motif has been compared by the ASI with a stone block at Dharmachakrajina Vihara, a twelfth-century Buddhist establishment at Sarnath (Report, p.56). If correct, this would be a piece taken from a Buddhist vihara not a Brahmanical temple. The 'divine couple', if it is such, would be of Shaivite affiliation; and amalaka has its associations with Brahma. The "circular shrine" has been Judged to be a Shaivite shrine and if so it still does not bring us anywhere near to a Rama temple. None of these elements could ever be part of a single "Hindu" temple – for such a composite place of worship was unknown in Northern India in ancient and medieval times. There could have been no non-denominational non-Islamic religious structure, which Justice Agarwal postulates but which no "Hindu" party to the suit has ever suggested nor is sustainable by any historical example. To conclude: The sundry portable elements found in the Masjid debris, surface or late layers must have come from different sites for re-use as architectural items in Masjid construction, and thus cannot be invoked in support of a temple underneath the Babri Masjid.

6.227 Because the learned Judge has failed to appreciate that It may, by some, be regarded as a lamentable failure of the ASI's Report that it "does not answer the question framed by the Court, inasmuch as, neither it clearly says whether there was any demolition of the

earlier structure, if existed and whether that structure was a temple or not." (**Para 3988**). In this respect the learned Judge wrongly observed in **Para 3990:**

> "ASI, in our view, has rightly refrain from recording a categorical finding whether there was any demolition or not for the reason when a building is constructed over another and that too hundreds of years back, it may sometimes difficult to ascertain as to in what circumstances building was raised and whether the earlier building collapsed on its own or due to natural forces or for the reason attributable to some persons interested for its damage."

6.228 Because the learned Judge has failed to appreciate that there was no evidence to establish that Babar or Mir Baqi had ever destroyed any temples at Ayodhya. He seems to forget that the real issue is not whether some Hindu temples were destroyed by Muslim rulers, but whether Babur or his officials had destroyed any temple at the site of Babri Masjid. For this not the conduct of all Muslims, but only the conduct of Babur or his immediate successors in India, Humayun and Akbar was of relevance to the matter, as indeed, was correctly pointed out by Muslim site counsel. (**Para 3995**). For that matter, the fact that a Panchala ruler in the 11th-12th century, ruling from Badaun (UP), honoured a Brahman priest for having destroyed a Buddha idol in the south (Epigraphia Indica, I, pp.61-66, esp. p.63) does not mean that every Hindu ruler who built a Hindu temple or patronized Brahman priests, could be suspected of having connived at the destruction of a Buddhist image. However, learned Judge proceeds on the assumption that the case of Muslims in such circumstances is one apart from all others, for—

> "whatever we had to do suffice it to conclude that the incidence of temple demolition are not only confined to past but is going in continuously. The religion which is supposed to connect all individuals with

brotherly feeling has become a tool of hearted and enmity." (**Para 4048**).

The learned Judge further wrongly observed that:-

> "The claim of Hindus that the disputed structure was constructed after demolishing a Hindu structure is pre-litem not post-litem, hence credible, reliable and trustworthy" (**Para 4056**).

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The learned Judge further wrongly observed that:-

> "The claim of Hindus that the disputed structure was constructed after demolishing a Hindu structure is pre-litem not post-litem, hence credible, reliable and trustworthy" (**Para 4056**).

6.229 Because learned Judge has failed to appreciate that as for the ASI's expertise, it is of interest to note that since mid-1990's it has been headed continuously as Director General by a non-expert

civil servant shifted from time to time at the whim of the Central Government, until this year (2010), when finally a professional archaeologist has been appointed to head it. When the excavations were ordered by the Allahabad High Court to be undertaken by the ASI, the latter was entirely controlled by the BJP-led Government at the Centre under the Ministry of Culture (**Para 3789**), then headed by the BJP, the author of the demolition of Babri Masjid in 1992. The BJP itself had made the slogan of Ram temple at the Babri Masjid site one of its main election slogans. On the eve of the excavations, the BJP Government changed the Director-General to install yet another non-professional civil servant, apparently in order to have a still more pliant instrument to control the ASI.

All these matters were placed before the High Court, but the learned Judges seem to attach no importance to these circumstances.

6.230 Because learned Judge has failed to appreciate that from the very beginning the ASI made clear its loyalties to its political masters' beliefs and commitments. The High Court in its order dated 5.3.2003 **(Para 216)** directed the ASI to intimate its programme to "the Officer-on-Special Duty, Ram Janma Bhumi-Babri Masjid." The ASI, however, insisted on addressing the designated officer as "OSD, Ram Janma Bhoomi" in its letters dated 8.3.2003 and 10.3.2003, thus significantly omitting the name 'Babri Masjid' (**Para 223;** also statements in ASI's own Report, pp.5-6). The new Director-General, ASI, while constituting the team of officers for the excavation appointed 14 members, placed under Dr B.R. Mani as Team Leader. Only one Muslim, an Asst. Archaeologist, was included in the team, as may be seen from the list in **Para 217.**

These arrangements were in total contrast to what the High Court itself had visualized in its orders of 1.8.2002 –

> "If it is ultimately decided to excavate the disputed land, in that event the excavation will be done by the

Archaeological Survey of India under the supervision of five eminent archaeologists (Excavators), even though retired, including two Muslims..."

An eminent archaeologist surely means a person of the stature of DG or Additional DG of ASI, working or retired, or archaeologist of equal stature from outside the ASI. Not one of the 14 members of the team, including the Team Leader, who was not even a Director at ASI, fitted this requirement. The team was so formed as to be led and guided by a pliant subordinate, not an eminent archaeologist. To make the team free from the dominance of one community, the Court had desired that at least two out of five archaeologists supervising the excavations should be Muslims. The ASI formed a team of officials from which, until the Court directed otherwise, Muslims were almost wholly excluded.

6.231 Because learned Judges failed to appreciate that the "one-community" policy was also enforced by Dr Mani and his team on the labour force. When over fifty labourers were engaged for the work which began on 12.3.2003, not a single Muslim was found fit for employment. It seemed as if the ASI had decided that since it was 'Ramjanmabhumi' ground, no Muslim should be allowed to enter it. A complaint about this was made to Dr Mani, 'Team Leader', ASI, on 18.3.2003. Mani's reply that he had left the recruitment to District Administration **(Para 227)** is hardly credible and amounts to no more than the proverbial "passing of the buck" by those who are caught in any questionable act. On 26.3.2003 the High Court, noticing Dr Mani's attitude in the matter, expressly ordered that "labourers belonging to the Muslim community be engaged", and also that at least two more Muslim archaeologists be added to the ASI team **(Para 228).** This had little substantive effect. As of 4.4.2003, eight days after the High Court's orders, there were only 9 Muslims engaged out of a total of 89 labourers **(Para 229).**

6.232 Because learned Judges failed to appreciate that the communally biased attitude on the part of the ASI's Director General and the

local team-leader was thus clearly manifest in the formation of the 14-member team and the recruitment of labourers, in both of which scant regard was paid to the letter and spirit of the High Court's orders. There was thus every reason for the suspicion that the ASI team's conduct was not likely to be impartial and above board. This began to be noticed in the way any materials likely to impede a temple-beneath-the-mosque theory began to be treated after the digging began.

6.233 Because the learned Judge has wrongly observed in this respect that no complaint about the non preservation of bones etc. was made to the A.S.I. Team (**Para 227**). He forgets that in the beginning the crucial levels were not at all involved. As late as 23.3.2003, Dr B.R. Mani reported to the High Court, through DG, ASI, that excavation began on 12.3.2003 and then, there were three non-working days (14, 17 and 18 March), so before 20.3.2003, when the first complaint was made, excavation work had taken place only on five days. Moreover, until then no digging had proceeded below the floor of the Babri Masjid. So the crucial layers were just now being laid bare. It was, therefore, totally unjustified and unwarranted on the part of the learned Judge that he should charge the complainants with delay in reporting the ASI's treatment of artefacts. This was evident from the order of the Bench also dated 26.3.2003 **(Para 228)** which had endeavoured to ensure that the ASI should take the minimum steps required for the proper recovery, registration and preservation of artefacts, and also measures to improve access to the counsels' nominees to observe the excavation work. If the complaint had been baseless then why should the Bench have issued such orders?

6.234 Because the learned Judges failed to appreciate that on 7.4.2003, a complaint was filed to the effect that the ASI was not carrying out the Court's orders (**Para 229**), and again the Bench on 10.4.2003 passed detailed orders on the various lapses. The Bench was so much concerned with the ASI team's casual approach to its orders that the observers were "directed to ensure that" the

"Court's instructions directions" were "carried out in letter and spirit" **(Para 230).** Finally, the Bench was so exasperated with Dr B.R. Mani's way of by-passing its orders, that on 22.5.2003 it passed the following extraordinary order:

> "It is not necessary to comment much upon the work of the Team Leader of ASI for the last more than two months. We think it proper that another Team Leader should be appointed by the Director General, Archaeological Survey of India. However, Dr B.R. Mani shall also continue to work in the team". **(Para 235).**

The Bench at that time found nothing to commend in the way Dr Mani had carried out the work on behalf of the ASI, and desired that he be immediately replaced. Not desiring to show that he was being disgraced, his membership of the ASI team was, however, continued.

6.235 Because the learned Judge has failed to take into account the ASI's motivated lapses and made no comment on this series of episodes, and its implications. On the other hand, his entire ire is directed towards the critics of ASI's conduct. In this respect the learned Judge takes up some of the complaints made to the Observers between 14.4.2003 and 26.7.2003. The response of Dr Mani to the complaint of 14.4.2003 was an admission that neither animal bones were being carefully recorded nor were pieces of glazed ware being sealed, but he promised that now this would be done (**Para 3677**). A similar response to the complaint of 15.4.2003 elicited a promise that the required videography and photography would be undertaken and a proper record would be kept (**Para 3678**). It was thus clear that the complaints were well taken. Yet learned Judge made improper and unwarranted comment on the complaint dated 16.5.2003 (**Para 3682**) which was against the nomenclature regarding the recording of artefacts, brick-bat remains, etc., where the ASI instead of proper descriptions, labelled them to serve its own objects. On this the learned Judge

attributes to "ASI experts" power well above those of the common run of Archaeologists. The complaint, he says, was "mischievous and worthless." Why? Because "The ASI experts identify such item/ artefacts which ordinary people cannot. If only clear items were to be no expert would have needed." **(Para 3682)**

The learned Judge looks at "ASI experts" as "ordinary people" would. As a matter of fact it is not quite as easy in cases of broken artefacts or fragmented 'architectural pieces' for any 'expert' to imagine them what they were when they were complete pieces; and archaeologists have held different views about them.When Dr BB Lal, former Director-General, ASI, dug at what he called the Janma Bhumi mound, in 1976-77, he was not able to identify any "pillar-base" there, as may be seen from his report published in Indian Archaeology 1976-77 — A Review (ASI, Delhi, 1980), pp.52-53. Very properly he did not attempt any identification of the material evidence while undertaking field work and recording the finds. About fourteen years later did he suggest such identification in the RSS journal Manthan, October 1999; and his interpretation of the structural pieces was still open to doubt. In the excavations at Babri Masjid, however, the "ASI experts" immediately began identifying and marking the pillar-less pillar-bases. A similar act on their part was to give suggestive names like 'divine couple', 'circular shrine', etc. where the terms 'divine' and 'shrine' were both subjective and motivated descriptions, not arising from any supposed professional expertise at all. At the same time they neglected other very significant objects in total violation of professional requirements, e.g. having identified the bones to species and to part of the skeleton, the bone assemblage should have been quantified. The "ASI experts", however, refused to record animal bones properly and failed even to tabulate them by species, trenches and layers in quantified form, as required by the standard manual of field archaeology. It is charitable to assume that the conduct of ASI "experts" in this matter arose not from gross ignorance, but from the fear that the presence of animal bones (cattle and caprine) could undermine their entire

temple theory. It was this conduct of the A.S.I. which can be termed as "mischievous."

6.236 Because the learned Judge has failed to appreciate that with reference to the complaint dated 21.5.2003, made about an alleged pillar base in G-2 **(Para 3683)**, it was noteworthy that Sri A.R. Siddiqui does not at all deny the allegation that the digging was so carried out that a squarish base was being created. He just said that the digging was not completed and so the objection was "premature", although this was a wrong piece of information as shown by the fact that on 18.5.2003, the day register for this trench distinctly records: "A pillar base on plan." **(Para 3685)**; and another report of the same day (18.5.2003) gave a more a detailed description of "a structure of brickbats and rectagonal in shape", which was encountered "during digging"; and which forthwith was declared a "pillar-base". **(Para 3688)**. So Sri A.R. Siddiqui's reply (vide **Para 3683**) was, to say the least, evasive and misleading: A squarish or rectangular pillar base was in fact already recorded, and he had to explain whether it really existed or had been created by removing surrounding brickbats — and this he entirely avoided doing.

6.237 Because the learned Judge has failed to appreciate that on 7.6.2003, a detailed complaint was submitted pointing out the severe breaches of prescribed archaeological methods and procedures so far pursued by the ASI: it is reproduced in **Para 3699**. Though the High Court had ordered Dr Mani's removal as head of the ASI team on 22.5.2003, we find him still in that position on 8.6.2003 — another example of how casually ASI treated the High Court's orders. Dr Mani thereupon delivered the following tirade against the complainants:-

> "There seems to be a calculated effort to defame the ASI and demoralize it's team member by making statements through media and also through applications like the present one submitted by one of the parties in the case. ASI being the premier

institution of archeology in the country has always been famous for accuracy and scientific approach in exploration and excavation work." **(Para 3700)**

He goes on to claim that his team's "recording of artifacts is perfect" — a claim ill-suited to the mouth of anyone not divine. Indeed, Dr Mani's tone is one which would have smacked of supreme arrogance and self-congratulation even if the words had come from the head of the ASI, rather than a mere Superintending Archaeologist; and, of course, one can retort that repute acquired in times long past cannot become a cover for lapses so clearly detected by the complainants.

6.238 Because the learned Judge did not even take note of dissatisfaction expressed by the Bench with the manner in which Dr Mani and his team had carried out the excavations until 22.5.2003. He also overlooks how, despite the Court's orders for his replacement, he continued to be in-charge on 8.6.2003. In other words, the bulk of the excavations were conducted under a person who had lost the confidence of the High Court itself.

6.239 Because the learned Judge, while discussing the texts of the complaints prepared by PW29 (Dr Jaya Menon) and PW 32 (Dr Supriya Verma) made improper and unwarranted comments against them while no such comments were made against the ASI Team leader for covering in his report the excavations conducted during days he was not present at the site? In **Para 3712** the learned Judge attributes a serious lapse what is perhaps merely due to a misreading of the figure 220 cm as 270 cm, and such a slip hardly means that "either they [Dr. Menon and Dr. Verma?] have deliberately tried to misguide the authorities or the complaint lacks bona fide."

6.240 Because the learned Judge did not appreciate the statements of the said two archaeologists in a correct perspective. PW 32 (Dr Verma) claimed that she was present when trenches G-2 and F-3 were being excavated **(Para 371).** But the learned Judge has

observed that her statement was not correct as the digging of F-3 had started on 30th May, while she was present only until 31st May. The learned Judge, therefore, failed to appreciate that the very dates he gives mean that Dr Verma had been able to watch the digging of the trench for two full days. As such her statement could not be said to be incorrect.

6.241 Because the learned Judge has wrongly observed in Para 3717 and wrongly made the following conclusion:-

> "From the texture and the over all facts and circumstances, some of which we have already discussed it appears to us that as soon as underneath structures started appearing, the complainants in consultation with their alleged experts, engaged in preparing a kind of anticipatory ground to assail the ASI people, their proceedings and report." Then follows a sentence which we are unable to understand: "What was submitted on spot do not show that it was a simultaneous preparation of something which was actually observed and found objectionable by the persons present thereat."

This kind of finding is totally conjectural and based on no evidence / material on record.

6.242 Because Para 3729 brings in the GPR Survey Report. No significance could possibly attach to it once the ground was actually excavated, and there was no point in Dr Verma (PW 32) reading it and comparing it with the excavations. Justice Agarwal apparently thinks that much of the "anomalies" were predicted in the report by the little known firm Tojo–Vikas International (Pvt.) Ltd. Such 'anomalies', the company's report had told us, "could be associated with ancient and contemporary structures such as pillars, foundation walls, slab-flooring extending over a large portion of the site." (Text reproduced in ASI's Report, p.5). No pillars were, however, found, except for one broken fragment in

the Masjid debris; and the presence of bricks and brickbats was not at all predicted. The observation of the learned Judge about the said "alleged experts" (Para 3717) as "virtually hired experts" (Para 3879), was totally unjust and based on no evidence as there was no suggestion much less proof that they lacked qualifications, or that they received any remuneration from the Muslim parties to the suit either for working as Nominence or for appearing as witness and no kind of any other advantage was also said to have been derived by them from the Muslim parties of the suit. It was also wrongly observed that the said witnesses had admitted that they were partisan and interested. This serious allegation is also not based on proper appreciation of the record. Neither of them made any admission of this sort. Being "interested" means "having a private interest", especially "pecuniary stake" (see Oxford Concise Dictionary, s.v. "interest (n.)" and "interest (vt)"), and the learned Judge was thus insinuating that as if they had something remunerative to gain for themselves by their work as archaeologists at Ayodhya?

6.243 Because the learned Judges failed to appreciate that Dr. Mani's hand can be seen as the dominant one in the Final Report. While Sri Manjhi's name appears as the co-author of the Report, the Introduction is by Dr Mani alone. He is a co-author in three major chapters (II, Cuttings; IV, Structure; V, Pottery) while Sri Manjhi the Team Leader, is a contributor to none of these ten Chapters. The author of the last chapter, 'Summary of Results' is left unnamed — a curious way of evading responsibility. In sum, the result is that the very person with whose conduct of the excavations the High Court was not satisfied, was yet given full rein to 'direct' the excavations and write the Report. Dr Mani, as we have seen, had made his commitments fairly clear by his initial actions in Ayodhya, and it is not surprising that the same commitment informs the final ASI Report.

Such are the plain facts, most of which have been simply ignored by the learned Judge, though almost all of them are brought out by the documents reproduced, in whole or in part, in the

Judgment itself. It was, therefore, neither just and nor proper to hold that "all objections against ASI are, therefore, rejected."

6.244 Because in the face of the stream of motivated acts of impropriety and irregularity committed by the ASI officials that we have traced, it was neither legal nor proper to have placed any reliance upon the A.S.I. Report. The ASI officials arrived at Ayodhya with clear indications of commitment to one side of the dispute — shown by the very composition of their staff and labour-force — and they stuck to the task of manipulating, selectively recording and perverting evidence as much as they could, increasingly constrained as they came to be by the vigilance exercised by archaeologists from the academic world. The ASI's Final Report could not but be a partisan document and the same was liable to be rejected or at least discarded.

6.245 Because the written arguments filed on behalf of the Plaintiffs of Suit No.4, reproduced in Paragraph 2297 (Vol.X), have not been appreciated in proper perspective and have even been wrongly interpreted.

6.246 Because the learned Judge not only misconstrued and misread several documents but also drew wrong inference from some of them. In this respect special mention may be made to Exts. 19, 20 and A-69 (of Suit-1)

6.247 Because the learned Judge has failed to appreciate that great grand father of Mir Rajjab Ali may not be the same Mir Baqi who had constructed the Mosque and it was not appreciated that it was not unusual that the name of one person may be adopted by several persons of the same decent and in this respect the observations made by the learned Judge in paragraph 2336 were totally unwarranted and uncalled for.

6.248 Because the learned Judge has failed to appreciate the distinction between a Book of History written by a Historian and a Historical Book written by a religious scholar and proceeding under the

same misconception and wrong notion referred to the Book of Maulana Hakeem Syed Abdul Hai in detail.

6.249 Because the learned Judge has failed to appreciate the spirit of waqf by user and inference of implied dedication by long user and as such wrongly observed that the claim of Muslim parties that they came in possession as a result of dedication by Babur was "baseless and falls on the ground." Under this very misconception the learned Judge observed that there was no evidence that Babar or any of his agents made any waqf or dedicated any property for public use or that the Muslims in general or in particular were placed in possession of any part of the land comprising the disputed site. In this respect the law laid down by this Hon'ble court about implied dedication was totally ignored while observing that no direct evidence was available for the possession of Muslims on any part of the disputed site. It was also wrongly observed that in a issue relating to the title no presumption can help and it was also wrongly observed that it would also not be a matter of public history for which the court may resort to books and documents u/s 57 of the Indian Evidence Act, 1872. The pleadings of the Muslim parties were also wrongly held to be much short of the requirement of such a claim of title and possession. It may also be noticed that such observations were made even though it was admitted on page 3376 that the building in suit was being termed, called and known as a Mosque at least for the last more than 2 and half centureis.

6.250 Because the learned Judge while dealing with Issue No. 3(Suit-3) wrongly observed that it was admitted by the parties that the land in dispute was mentioned as Nazul since 1861 and there was no change in its status. In this respect the learned Judge failed to appreciate that the entire land in dispute was covered by the building / boundary of the Mosque and the same could never be treated as the property of any Nawab or Taluqedar for being vested in Nazul and moreover none of the parties had either pleaded or lead any evidence and no issue was always framed to the effect that the property in question was Nazul property.

6.251 Because the learned Judge has wrongly observed that the building in dispute was not constructed in 1528 A.D. and as such the question of creation of a waqf by dedication to Almighty would not arise and such wrongly decided Issues Nos. 1, 1-B(b), 1-B(c), 19 (d) 19(e) and 19(f) of Suit 4 against the plaintiffs and Issue No. 9 (Suit-5) was also wrongly answered against the Pro-Mosque parties while in the later part of the Judgment the learned Judge has held in paras 3348 and 3361 that building in dispute was always termed and called a "mosque", "Babri Mosque" or Masjid Janamasthan."

6.252 Because the learned Judge has misinterpreted the Hadith regarding "two Qibalahs" and wrongly observed that "the holy Prophet" has commanded that there must not be 2 sacred buildings of worship of 2 different religions in one land. In other words there can not be a Masjid and an idol temple in one land.

6.253 Because the learned Judge has misinterpreted another Hadith regarding the Mosque not to be used "as a home" and in this respect has wrongly drawn adverse inference against the building in dispute that the same can not be inferred to be a Masjid simply because the ASI had found a Chulha (oven) on the suit premises and merely from the existence of the said Chulha the learned Judge has wrongly drawn inference that as if the said structure was being used as home of Hindu deity and Chulha was being used for preparing food for the deity. As a matter of fact there was no prohibition for the stay of Imam and Moazzin in a portion of the Mosque building and for preparing their food also in the same building and as such it could not be said that simply by the presence of Chulha the building in dispute could not be treated as a Mosque.

6.254 Because the learned Judge has misinterpreted even Hadith 229 of Jami At-Tirmidhi (Vol. I) and wrongly observed that the building in dispute was not fit for offering prayer as there were columns in

the said building and offering of prayers between two column was unavoidable.

6.255 Because the learned Judge has wrongly observed that since the pillars of the building in dispute had some images / alleged idols in the design, such a building decorated with the pictures of images can not be termed as a "Masjid."

6.256 Because the learned Judge has wrongly observed that there can not be a Mosque in a place surrounded by graves In his respect also the learned Judge misinterpreted the Hadith and failed to appreciate that facing towards the graves does not mean that graves can not be there even after the western wall and in this respect the learned Judge did not appreciate that the building in dispute was surrounded by the walls on all the 4 sides and there were no graves inside the said walls and there was no question Namaz being offered facing any grave. The graves referred in the commissioner's report of 1950 were also not situated inside the building in dispute but rather the said graves existed outside the boundary walls of the building in dispute.

6.257 Because the learned Judge has failed to appreciate that when the Mosque in question was constructed there did not exist any place in the vicinity where bells were being rung or conch shells were being blown and all the references of Hadith and Quran given in this respect were either not applicable at all or the same were misappreciated. Moreover, it was also not appreciated that a Mosque does not cease to be a Mosque merely because a temple was erected in the adjacent area or any place had come up in the vicinity of the Mosque where bells are rung.

6.258 Because the learned Judge has wrongly observed that there was any injunction in Quran or Hadith requiring for Wazu being performed in the Mosque. All the references of Quran and Hadith made by the learned Judge in this respect were either irrelevant to the matter in issue or were misconstrued.

6.259 Because the learned Judge has failed to appreciate that the references of Holi Quran and Hadith given on pages 3032 to 3097 as well as extracts of the Book of Syed Ameer Ali were either not relevant at all to the matter in issue or the same were in respect of the matters already covered by the earlier citations of Holi Quran and Hadith and none of them could give any strength to the contention of the other side about the alleged requirement of place of Wazu etc. in every Mosque. However, it was also not noticed and properly appreciated by the learned Judge that there was ample evidence to prove that the Mosque in dispute had sufficient arrangement of water and a place was also earmarked for the performance of Wazu.

6.260 Because the learned Judge has failed to appreciate that there was no dispute to the proposition of law that a waqf could be validly created only by the owner of the property and it was specifically argued from the Muslims side that King used to be the owner of all the vacant land and as such the Mosque in dispute constructed on a vacant site could not be said not to have become a waqf by user simply because there was no document to prove any express dedication as this Hon'ble court has already approved the law that "if land has been used from time immemorial for the religious purpose..... then the land is by user waqf although there is no evidence of an express dedication (Mulla's Mohammedan Law, Edition 14, page 173)." This observation of Mullah was quoted with approval in para 16 of the case reported in A.I.R. 1956 Supreme Court 713 (Mohammad Shah Versus Fasihuddin Ansari). It was also wrongly observed by the learned Judge that there was no pleading "that it was a vacant site and the mosque was built thereat for the benefit of Muslims." It was also not appreciated that the previous ruler of Ayodhya was no Hindu King but it was Ibrahim Lodi or his forces and the words "for the use of the Muslims in general" were mentioned in the very first para of the plaint. Similar was the statement of the plaintiff's counsel (Mr. Mohd. Ayyub) dated 8-8-1962 (See P. 274). In the statement of Mr. Mohd. Ayyub, Advocate dated 20-1-1964 it was also

mentioned that no construction existed at the site where Babri Mosque was built.

6.261 Because the learned Judge has wrongly observed in para 3295 about some of the features treating them to be permissible or impermissible for believer of Islam while offering Namaz in the Mosque or for the construction of a Mosque and in this respect special mention may be made to the so called features mentioned at serial No. v, vii, ix, x, xiii, xiv, xvii, xviii and xix etc. Similarly in para 3296 it was wrongly observed that for a public waqf, the delivery to Mutawalli or any one else on his behalf was one of the essential requirements of a valid waqf whereas the Muslim law permits that after dedication the owner himself may be the first Mutawalli and in that event delivery of possession will be only notional. Similarly it was also wrongly observed in para 3297 that the religious experts produced by the Muslims have made statement which are not in conformity to what has been said in the texts referred in the Judgment and at times is contrary thereto.

6.262 Because the learned Judge has wrongly observed that the dispute raised in the pleadings of the parties covered by the issues given on page 3498 of his Judgment could not be dealt without any effect being caused upon the religious sentiments of one or the other community. It was also wrongly observed that some of the questions involved in these issues may not come within the scope of judicial review in a court of law. The doubt expressed by the learned Judge about the availability of the relevant material or evidence on the basis whereof a court of law can record a finding of fact either way was also not the concern of the court. As a matter of fact the learned Judge ought to have proceeded to decide each and every issue without being in any way influenced by any other factor except the truth and justice. (Kindly see pages 3498-3500 of the Judgment of Hon'ble Sudhir Agarwal J.),

6.263 Because the learned Judge has wrongly castigated and made uncharitable and unwarranted remarks against the Historian and

Archaeologist witnesses produced by the Muslims. In this respect it was wrongly observed in paras 3607 and 3620 that the expertise and authority of PW-15 (Professor Sushil Srivastava) and PW-18 (Prof. Suvira Jaiswal) was challenged by Professor Shirin Moosvi (PW-20). It was also wrongly observed that any part of the statement of PW-16, Professor Suraj Bhan, was in contradiction with the statement of PW-13 (Dr. Suresh Chandra Mishra). The learned Judge appears to have been intluenced by irrelevant consideration, also while dealing with the statements of witnesses of Muslim side and his observation made is para 3616 about the testimony of PW-16 (Professor Suraj Bhan) is indicative of the same. Similar is the observation made by the learned Judge in para 3619. In this respect the observations made regarding the reason of support said to have been given by PW-18 to PW-16, PW-20 and PW-24 was also wrongly doubted. The observations made in paras 3622, 3623, 3624 and 3626 were also totally unjustified, improper, unwarranted and not sustainable. So also the observations made about PW-24, Professor D. Mandal in para 3628 and in para 3629 were also totally unjustified, improper and unwarranted.

7. That the Preliminary Decree/Judgment passed by Hon'ble Mr Justice D V Sharma is challenged on the following, among other, grounds which are independent from each other.

7.1 Because the finding of Learned Judge (D.V.Sharma, J) on the issue as to *"whether the building had been constructed on the site of an alleged Hindu temple after demolishing the same as alleged by defendant No.13? If so, its effect?"* **[1(b)]** has been concluded mainly on the basis of excavation report of Archeological Survey of India without properly appreciating the scientific and technical objections going to the root of the findings of the ASI report. The Learned Judge has only dealt with the issue of "bias" and "malafide" and that too not properly. The finding of Learned Judge is perverse and incorrect and without taking into consideration the real issue as argued by the Plaintiffs of Suit No.4. The objections of the Plaintiffs of Suit No. 4, with respect to

ASI report running into hundreds of pages showing as to how the findings of the ASI report are contrary to the ma erial found during excavations, which have not been dealt with in a proper manner and hence the entire findings of the Learned Judge on this issue become flawed, erroneous, improper and biased.

7.2. Because the Learned Judge wrongly observed stating that *"from all angle on flimsy grounds not based on any scientific report to contradict the report of A.S.I and this Court has to rely over this scientific report. There is nothing on record to contradict the report of A.S.I. There is no request from the side of plaintiff to call any other team to substantiate the objections against A.S.I report except by producing certain witnesses to contradict the same. It has never been pointed out before this Court that the report of ASI should further be rechecked by any other agency. No request further been made to issue another commission to re-examine the whole issue and furnish the report against the report of A.S.I"*. The report itself has no legal sanctity in view of the defects as stated in the objections of the Plaintiffs in Suit No.4. The grounds of objections taken in the plaintiff's objections are not repeated herein in the interest of brevity and the same may be treated as the grounds to assail the A.S.I report and therefore, the finding of Learned Judge is not proper in the eyes of law and is liable to be set aside.

7.3. Because the finding of Learned Judge on the issue whether the building stood dedicated to the almighty God **[1-B(b)]** is misconceived and wrong. The Learned Judge has cited various Islamic commandments to show that how Waqf can be created in consonance with the spirit of Islam and thereafter without giving any reason and finding as to how the claim of Hindus that the land in question allegedly belonged to Hindus was justified, has proceeded to give his finding that the said land could not have been dedicated to Mosque. The said observation of the Learned Judge is without any basis and reason. Placing the onus upon the Plaintiffs of suit No.4 to prove that the proof of acquisition of land by Babur was to be placed on record to prove the title of Mosque

and Waqf is erroneous and misconceived. The Learned Judge's observation about the alleged "title of the temple" itself is incorrect since there is nothing on record to show that the said land ever belonged to the alleged temple. This shows that the Learned Judge has misdirected himself by improper application of law and misappreciation of facts.

7.4. Because the Learned Judge while deciding issue No.1-B(c) has ignored the relevant material and documents on record which show that the Muslims have been praying in the said Mosque. The said documents, inter-alia are as under:-

1. Ext. 19 (Vol. 5, Page 61-63) complaint of Sheetal Dubey, Station Officer dated 28-11-1858 about installation of Nishan by Nihang Faqir in Masjid Janam Asthan.

2. Ext. 20 (Vol. 5, P. 65-68B) - Application of Mohd. Khateeb, Moazzin of Babri Masjid dated 30-11-1858 against Mahant Nihang for installing Nishan in Masjid Janam Asthan.

3. Ext. OOS 5-17 (Vol. 20, P. 187-197) - Petition of Mohd. Asghar, Mutawalli, dated 30-11-1858 regarding Nishan by Nihang Faqir

4. Ext. 21 (Vol. 5 P. 69-72A) - Report of Sheetal Dubey,18 Station Officer dated 1-12-1858 against Nihang Sikh for installing Nishan.

5. Ext. A-70 (Vol. 8 P. 573-575) - order dated 5-12-1858 about arrest of Faqir.

6. Ext. 22 (Vol. 5 P. 73-75) - Report of Sheetal Dubey dated 6-12-1858 (filed by Plaintiff of OOS No. 1 of 1989)

7. Ext. A-69 (Vol. 8 P. 569-571) - order dated 15-12-1858 about removal of flag (Jhanda) from the mosque.

8. Ext. 54 (Vol. 12 P. 359-361) - Application of Mohd. Asghar etc. dated 12-3-1861 for removal of Chabutra as Kutiya.

9. Ext. 55 (Vol. 12 P. 363-365) Report of Subedar dated 16-3-1861 about removal of Kothri.

10. Ext A-13 (Vol. 6 P. 173-177) Application of Syed Mohd. Afzal, Mutawalli dated 25-9-1866, for removal of Kothri, against Ambika Singh and others.

11. Ext. A-20 (Vol. 7 P. 231) copy of order dated 22-8-1871 passed in the case of Mohd. Asghar Vs. State.

12. Ext. 30 (Vol. 5 P. 107-116-A,B.C) Memo of Appeal No. 56 filed by Mohd. Asghar against order dated 3-4-1877 regarding opening of northern side gate (now being called by Hindus as Singh Dwar).

13. Ext. 15 (Vol. 5 P. 43-45) Report of Deputy Commissioner in the aforesaid Appeal No. 56.

14. Ext. 16 (Vol. 5 P. 45) Order of Commissioner dated 13-12-1877 passed in the aforesaid Appeal No. 56.

15. Ext. 24 (Vol. 5 P. 83-85) Plaint of the case No. 1374 / 943 dated 22-10-82 / 6-11-82 (Mohd. Asghar Vs. Raghubar Das)

16. Ext. 18 (Vol. 5 P. 55-57) Application of Mohd. Asghar Vs. Raghubar Das dated 2-11-1883 about 'safedi' of walls etc.

17. Exhibit 23 (Vol. 10, Page 135-136) Copy of application moved by Mohd. Zaki and others for compensation of the losses caused in the riot held on 27-3-1934.

18. Exhibit A-49 (Vol. 8, P. 477) Copy of order of Mr. Milner white dated 12-5-1934 for cleaning of Babri Masjid from 14-5-1934 and for use of the same for religious services.

19. Exhibit A-43 (Vol. 8, P. 459) Copy of D.C.'s order (Mr. Nicholson) dated 6-10-1934 for approval of payment of compensation.

20. Exhibit A-51 (Vol. 8, P. 483-487) Application of Tahawwar Khan (Thekedar) dated 25-2-1935 for payment of his bill regarding repair of Mosque.

21. Exhibit A-45 (Vol. 8 P. 467) Copy of order of D.C. dated 26-2-1935 for payment of Rs. 7000/- on the application of Tahawwar Khan.

22. Exhibit A-44 (Vol. 8 P. 461-465) Copy of Estimate of Tahawwar Khan dated 15-4-1935 regarding Babri Masjid.

23. Exhibit A-50 (Vol. 8, P. 479-481) Application of Tahawwar Khan (Thekedar) dated 16-4-1935 explaining delay for submission of bill.

24. Exhibit A-48 (Vol. 8, P. 473-476) Copy of Inspection Note dated 21-11-1935 by Mr. Zorawar Sharma, Assistant Engineer PWD, regarding Bills of repair of Babri Masjid.

25. Exhibit A-53 (Vol. 8, P. 493-495) Application of Tahawwar Khan Thekedar dated 27-1-36 regarding Bills of repair of Babri Masjid and houses.

26. Exhibit A-46 (Vol. 8, P. 469) Copy of report of Bill clerk dated 27-1-36 regarding the repair of the Mosque.

27. Exhibit A-47 (Vol. 8, P. 471) Copy of order of Mr. A.D.Dixon dated 29-1-36 regarding payment of Rs. 6825/12/- for repair of Babri Mosque.

28. Exhibit A-52 (Vol. 8, P. 489-491) Application of Tahawwar Khan Thekedar dated 30-4-1936 regarding less payment of his bills for repair of houses and Mosque

29. Ext. OOS 5-27 (Vol. 23, Page 665) Sanction letter dated 6-12-1912 for suit u/s 92 CPC issued by Legal Remembrancer, U.P.

30. Ext. A-8 (Vol. 6, P. 75-149) Copy of Accounts of the income and expenditure of Waqf from 1306 F. regarding Babri Masjid etc.

31. Ext. A-72 (Vol. 7, P. 337-355) Accounts submitted by S. Mohd. Zaki before Hakim Tahsil dated 9-7-1925 regarding Babri Masjid etc.

32. Ext. A-31 (Vol. 7, P. 357-377) Accounts submitted by Mohd. Zaki on 31-3-1926 before Tahsildar regarding Babri Masjid etc.

33. Ext. A-32 (Vol. 7, P. 379-399) Accounts submitted by Mohd. Zaki on 23-8-1927 before Tahsildar regarding Babri Masjid etc.

34. Ext. OOS 5-28 (Vol. 23, P. 667) Letter of E.L. Norton, Legal Remembrancer dated 18-12-1929 for sanction to file suit u/s 92 CPC. regarding Babri Masjid etc

35. Ext. A-19 (Vol. 10, P. 97-98) Certified copy of letter of E.L. Norton dated 18-12-1929 for permission to file suit u/s 92 regarding Babri Masjid etc.

36. Ext. A-7 (Vol. 6, P. 63-69) Agreement executed by Syed Mohd. Zaki dated 25-7-1936 in favour of Moulvi Abdul Ghaffar, Imam of Babri Masjid, regarding payment of salary of Imam. (Also filed as Ext. 24 in OOS 4 /89 – Vol. 10, P. 139)

37. Ext. A-61 (Vol. 8, P. 515-517) Application of Abdul Ghaffar, Pesh Imam of Babri Masjid, dated 20-8-1938 for payment of arrears of his salary.

38. Ext. A-4 (Vol. 6, P. 35-43) Report of Distt Waqf Commissioner, Faizabad dated 16-9-1938 submitted to Chief Commissioner of Waqf. (copy filed as Ext 21 also in OOS 4 / 89 – Vol. 10, P. 117 - 123)

39. Ext. A-5 (Vol. 6, P. 45-48) Order of Distt Waqf Commissioner, Faizabad dated 8-2-1941 regarding Babri Masjid (copy filed as Ext. 22 in OOS 4 / 89 – Vol. 10, P. 127 - 131)

40. Ext. A-33 (Vol. 7, P. 401-407) Copy of Accounts dated 25-9-1941 filed by Kalbe Husain before Tahsildar.

41. Ext. A-60 (Vol. 8, P. 514-513) Certified Copy of Application for registration of waqf bearing endorsement dated 27-9-1943 filed before the Sunni Waqf Board.

42. Ext. A-66 (Vol. 8 P. 539-545) Application / reply of Syed Kalbe Hussain to Secretary, Sunni Waqf Board. dated 20-11-1943 regarding management of mosque.

43. Ext. A-55 (Vol. 8, P. 503-504) Copy of statement of Income and Expenditure of Waqf Babri Masjid for 1947-48 (Account from 1-10-1947) (Also filed as Ext. A-35 – Vol. 7, P. 413-414)

44. Ext. A-54 (Vol. 8 P. 501-502) Copy of Report of Auditor for 1947-48 dated 27-7-1948 (Also filed as Ext. A-36 – Vol. 7, P. 415-416)

45. Ext. A-62 (Vol. 8, P. 519-521) Copy of letter of Secretary SWB dated 25-11-1948 to Sri Jawwad Hussain regarding Tauliat.

46, Ext. A-63 (Vol. 8, P. 523-527) Copy of Report of Mohd. Ibrahim, Waqf Inspector dated 10-12-1949.

47. Ext. A-64 (Vol. 8, P. 529-535) Copy of Report of Mohd. Ibrahim, Waqf Inspector WB dated 23-12-1949.

48. Ext. A-57 (Vol. 8, P. 507-508) Copy of the Statement of Income and Expenditure of 1948 – 49 filed before the SWB.

49. Ext. A-56 (Vol. 8, P. 505-506) Copy of the Report of Auditor of the Board dated 23-02-1950 for 1948 - 49.

50. Ext. A-59 (Vol. 8, P. 511-512) Copy of the Statement of Income and Expenditure for 1949-50 by Jawwad Husain filed before the SWB

51. Ext. A-58 (Vol. 8, P. 509-510) Copy of the Report of Auditor of the Board dated 23-12-1950 for 1949 - 50.

52. Ext. OOS 5-103 (Vol. 23, P. 703-708) Copy of Plaint of R.S. No. 29 of 1945 dated 4-7-1945 filed by Shia Waqf Board against Sunni Waqf Board (filed by plaintiff of OOS 5 / 89)

53. Ext. A-42 (Vol. 8, P. 431-452) Copy of Judgment of R.S. No. 29 of 1945 dated 30-3-1946 between Shia Waqf Board and Sunni Waqf Board (also filed as Ext.-20-Vol. 10, P. 101-115)

7.5. Because the Learned Judge has acted illegally in brushing aside the evidence placed by the Plaintiffs in suit No.4 merely by saying that the said documents were not reliable evidence. The Learned Judge has failed to give any reasoning of whatsoever nature while reaching to this conclusion. It was also incorrect to say that averments in the Plaint were contrary to the documents. The finding of Learned Judge on this issue is misconceived, based on misappreciation of evidence and not in terms of the judicial principles and is liable to be set aside.

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7.6 Because the issue of limitation has been wrongly decided by the Learned Judge in Suit No.4 holding that the said Suit is barred by limitation. However in the finding on the issue of limitation with respect to Suit No 5 it has been held to be not barred by limitation. Appellant is aggrieved by the finding of the Learned Judge given on **Issue No.3 in Suit No.4 and Issue no 13 in Suit 5** and accordingly the appellant is challenging the said findings which are perverse and illegal.

7.7 Because the finding of Learned Judge stating that *"it is the clear contention of the defendants that the plaintiffs' suit is barred by limitation being a suit for right to worship and not a suit for immoveable property as is being made out by the plaintiff and therefore is governed by Article 120 of the Limitation Act, 1908 and not Article 144 or 142 of the Limitation Act, 1908 therefore suit can only be filed within 6 year"*, is misconceived and based on mis-appreciation and misconstruction of facts and law and hence liable to be set aside.

7.8 Because the Learned Judge has wrongly made the observation stating that: *"Accordingly, Article 142 and 144 of the Limitation Act have no application in this case. Moreover, Article 142 applies only where the plaintiff while in possession has been dispossessed or discontinued possession. In this case since the property was attached, the question of dispossession does not arise. The reference of dispossession by the plaintiffs after the attachment and to file thereafter a suit for declaration of the right to property is not a suit for possession in case of custodia legis. Article 142 and 144 do not apply where the relief of possession is not the primary relief claimed. Here in this case the primary relief is of declaration. Consequently, Article 120 of the Limitation Act would apply"*. This finding is flawed as the Learned Judge has applied irrelevant facts to reach the said finding by misinterpretation of law. The said findings are without taking into consideration the fact that the attachment of property was made on 29.12.1949 while the discontinuance of possession of

the Plaintiffs of Suit No.4 from the said property had started on 23.12.1949. The above quoted findings are illegal and improper and are liable to be set aside. (*see pages 148-149 Vol 1*)

7.9 Because it is evident from record that Suit No.4 was instituted on 18.12.1961, as admitted by all the parties. It is also finding of all the Learned Judges that the idols were placed in the night between 22nd/23rd December, 1949. According to the Plaintiffs of Suit No.4, Muslims used to offer Namaz till that date when the idols were placed under the Central Dome. Accordingly, the cause of action accrued on 23rd December, 1949 and continued thereafter as the Muslims were stopped from offering Namaz inside the Mosque. It is also clear from the records that an order was passed by the Learned Magistrate on 29.12.1949 whereby an order of attachment was passed and receiver was appointed in terms thereof. On 05.01.1950, the Receiver had assumed the charge of the inner courtyard including the portion of Mosque with idols placed inside. In view of the said order having been passed attaching the inner courtyard and giving its possession to the Receiver, the cause of action of the Plaintiff in Suit No.4 after having started on 23rd December, 1949 had remained continuing thereafter. The cause of action never stopped and remained continued.

7.10 Because placing of idols on 23rd of December, 1949 will not make possession of the Hindu side adverse to the Plaintiffs in Suit No.4. The possession being handed over to the Receiver in terms of the order of attachment will not amount to possession of the Hindus in the said inner courtyard including the built-up structure of Mosque. The possession of Hindus would have become adverse to the Plaintiffs in Suit No.4 only after 12 years of their dispossession provided the Hindus would have continued possession but the same had ceased on attachment.

7.11 Because the provisions of Limitation Act, 1908 as set out in Article 144 or Article 142 both gave limitation for a period of 12 years. In the present case, Article 142 would apply where date of

dispossession/ discontinuance of possession will be the starting point of limitation, and as such Suit No.4 would not be barred by limitation in view of the fact that the idols were placed on 23rd of December, 1949 and the Suit No.4 was instituted on 18th December, 1961 which is within the period of 12 years from 23.12.1949.

7.12 Because the Suit for declaration is filed after final order under Section 145 Cr.P.C. The present Suit No.4 was filed after attachment and during the pendency of final decision by the Learned Magistrate, the proceedings under Section 145 Cr.P.C. had not finalized and in view thereof terming the Suit No.4 being barred by limitation is arbitrary and without any legal basis.

7.13 Because if the proceedings under Section 145 Cr.P.C between the parties are pending, it is not at all necessary that the parties must file Suit for declaration even before passing of final order U/s 145 of Cr.P.C.

7.14 Because the Learned Judge has failed to take into consideration the subsequent addition of Relief (bb) in pursuance to the constitution bench judgment of the Supreme Court in Dr. Ismail Farooqui's case whereby the parties were given right to amend the pleadings in the light of subsequent events of 06.12.1992.

7.15 Because the judgments relied upon by Mr. Justice D.V.Sharma and Mr. Justice Sudhir Aggarwal on this issue from various High Courts, Privy Council and this Hon'ble Court, do not at all lay down the law on the basis of which Suit 4 can be said to be barred by limitation and Suit 5 can be said to be within limitation.

7.16 Because the findings on **Issue No.3 Suit No.4 and issue No.13, Suit No.5** are almost common and based on almost similar grounds in the judgments of two Learned Judges namely Sudhir Aggarwal,J and D.V.Sharma, J hence the grounds taken by the Appellant to challenge the findings of Sudhir Aggarwal, J on these issues may also be taken to be the grounds of challenge of

findings of D.V. Sharma, J on the issue of limitation in Suit Nos.4 and 5.

7.17. Because the Learned Judge while deciding issue **No.5(b)** in Suit No 4 stating that Muslim side has not advanced any argument against the submissions of non-application of the provisions of U.P.Act No.13 of 1936 is incorrect. It is submitted that the Muslim parties argued the issue of Waqf and the said Waqf has to be determined not on the basis of submission of other side but the said issue of "Waqf" is to be determined as per the Law of waqf as applied by the courts in India. The interpretation given to the Law of Waqfs by Mr. Justice Agarwal and Mr. Justice Sharma may amount to infringement of fundamental rights of Muslims. The Learned Sharma J. stating that *"It does not affect the right of worship of Hindus. It does not deal with the right of Hindus about their worship. Consequently, U.P.Act No.13 of 1936 has no application to the right of Hindus about their worship. Issue No.5(b) is decided against the Plaintiff and in favour of the Defendants"*, is contrary to the constitutional guarantee of Muslims in relation to their Personal Laws. The very foundation of this finding is misconceived and extraneous in view of the fact that no legislative enactment of this nature requires any consideration of other religion and its implications. The said finding is also devoid of reasons and liable to be set aside.

7.18 Because the Learned Judge while deciding **issue No.5(e) & (f)** in Suit No 4 has given a wrong finding that *"I have given my anxious thought to the facts of the case, I am of the view that since there is no valid notification under Section 5(1) of the Muslim Waqf Act, 1936 in respect of the property in dispute. The registration though is not disputed and pleadings can be looked into by this Court. It further transpires that the registration was done by adhering to the provisions of the Act and accordingly it cannot be deemed to be a valid registration. The registration does not confer any right to the Waqf Board to maintain the present suit without complying with the valid required notification. The registration can be done in accordance with law*

after adhering the provisions of the Waqf Act, 1936. Thus the registration was not made in accordance with he provisions of Section 5(1) of the Muslim Waqf Act, 1936. It cannot be deemed to be a valid entry, the Board has no right to maintain the suit and the same is barred by time ". This Finding is given on the basis of erroneous considerations and on the basis of irrelevant facts inadmissible in the eyes of law. The registration of Waqf can be sought by any member of Muslim community and registration of the said Waqf does not require a notification. A Waqf can be registered by the Board suo-moto also. In the present case, the Defendants in suit No. 4 have not denied that the property in question was registered under the provisions of law and in view of such pleadings of the parties, it was not open for the Learned Judge to proceed with the issue to give a finding in a perverse and misconceived manner to non-suit the plaintiff in Suit No.4 and hence the above findings are liable to be set aside.

7.19 Because the issue of Waqf and any property dedicated to Waqf by any one can only be considered as per the Islamic law unless the title of the property is proved to be otherwise than that of the person who made the Waqf. In the present case, the alleged title of the temple having not been proved at all the Learned Judge has erroneously placed onus upon the Plaintiffs in Suit No.4 to prove their title on the land. The very basis of placing the onus on the plaintiff in Suit No. 4 is incorrect and improper in view of the fact that the Mosque existed on the said land for more than 400 years and Muslims had continuously offered their Namaz in the said Mosque premises. In that view of the matter the onus of proving the title must have gone to the persons claiming it to be place of Lord Ram's birth. In that view of the matter, the above findings cannot be sustained in the eyes of law.

7.20 Because the Learned Judge while deciding **issue No.7(a) and (d)** in Suit No 4 stating that " Whether Mahant Raghubar Dass, plaintiff of Suit No.61/280 of 1885 had sued on behalf of Janma-sthan and whole body of persons interested in Janma-Sthan?", has misdirected himself and recorded erroneous findings. In Civil

Suit filed in the year 1885, admittedly provisions of CPC, 1908 did not apply. The Learned Judge has failed to point out that in terms of the then applicable CPC of 1883 it was mandatory requirement for the persons to file a representative suit. It is clear from mere reading of the plaint of the Civil Suit bearing O.S.No.61/280 of 1885 that the said Civil Suit was filed to build Janamsthan Temple of Lord Ram and the said relief could not have been sought in his personal capacity but on behalf of the Hindu community at large in representative capacity. The Learned Judge has erroneously recorded that the judgment in the suit of 1885 and the Appeals arising there from would be considered "in personam" and not "in rem". The Learned Judge has misconstrued the pleadings of Civil Suit of 1885 by giving misconceived and improper interpretation and bypassed the plain reading of the said suit which reflects that the said Civil Suit of 1885 was to be considered in representative capacity. The finding of Learned Judge that Mahant Raghubar Dass filed the suit in his personal capacity is incorrect and improper and based on misconstruction and misreading of the pleadings of the said suit and accordingly the said finding is liable to be set aside. The finding of Learned Judge stating that neither the suit was cognizable by the civil court nor Civil Court entertained the Suit nor the decision has any effect like estoppel or resjudicata, is contrary to the pleadings and orders passed thereon. The Learned Judge has made these observations without any basis by ignoring the contents of the Plaint, Written Statements and orders passed in the suit and appeals. The Learned Judge further wrongly observed that the admissions of Plaintiff Mahant Raghubar Dass would not estop Hindu community to raise the same issues before the High Court. *(See Page 214-215)*. The Learned Judge while stating that the suit was not of representative character and would not operate as resjudicata against Hindu community and thus deciding Issue No. 7(d) against Muslims is contrary to the law and facts and is a misconceived and erroneous finding which is liable to be set aside.

7.21 Because the finding of Learned Judge while deciding **issue No.7(b)** in Suit No 4 stating that Mohd. Asgar was not contesting

the said Civil Suit of 1885 in the capacity of Mutawalli, is erroneous and contrary to the pleadings of the parties in the said Civil Suit. The pleading and Order of the said Suit of 1885 conclusively established that the said Mohd. Asgar was contesting the said Civil Suit in the capacity of being Mutawalli. The finding of Learned Judge on this issue is devoid of reasons and without discussion of the pleadings and Orders of the said Civil Suit.

7.22 Because **Issue No.8 in Suit No 4** that, *"Does the judgment of case No.61/280 of 1885, Mahant Raghubar Dass Vs. Secretary of State and others, operates as res judicata against the defendants in suit?"*, has been wrongly decided by reaching unsustainable findings on the basis of improper application of law and **misconstruction of the pleadings and judgments.** The learned Judge while interpreting Section 11 of CPC, 1908 and Explanations thereof, has misdirected himself on the basis of extraneous and erroneous considerations. The Learned Judge has erroneously held that *"It crystal clear that the matter in issue in 1885 case was with respect to Chabutra and not the matter with respect to other dispute as shown in the plaint. There is no final decision on any particular issue in the earlier suit which bind the parties and there is nothing on record to suggest that the matter might or ought to have been raised earlier".* The issue in the suit of 1885 was with respect to the belief and faith of Hindu for building a temple within the premises of Mosque and due to the existence of Mosque, the said Suit of 1885 was dismissed. The **plaintiff in the said Suit of 1885 pleaded similar facts with respect** to the Chabutra and the said relief was rejected which was upheld in the first and second appeal arising therefrom. The finding of Learned Judge that the said suit of 1885 will not operate as resjudicata is perverse, illegal, arbitrary and erroneous and is liable to be set aside.

7.23 Because while deciding the said **issue No. 8**, the Learned Judge has proceeded on the basis of irrelevant considerations and without appreciation of pleadings in the previous suit in its true intent and purport and by giving erroneous interpretation to the

pleadings of Civil Suit No.61/280 of 1885. The said pleadings have not been perused in terms of the sound judicial principles. The Learned Judge has failed to consider the pleadings and proceeded on wrong premise to give improper and incorrect finding whereby holding that the principles of resjudicata will not apply in the present case. The Learned Judge has further failed to appreciate that in the facts and circumstances, parties being different in the previous suit and the present suit would not make much difference since one set of the parties in both the suits had claimed the premises to be birth place of Lord Ram and the other set of parties in both the suits had claimed the property in suit to be the Mosque and hence holding that the parties were different, is erroneous and misconceived and accordingly the said finding is liable to be set aside. The finding of all the Judges of the High Court on this issue, though S.U.Khan, J reached on the same finding on the basis of different reasoning, are almost similar in nature hence the grounds/objections with respect to the finding against resjudicata may be read in conjunction to challenge the findings of all the three Learned Judges on the issue of resjudicata.

7.24 Because the Learned Judge while deciding **issue No.19(b) in Suit No 4:** " Whether the building was land-locked and cannot be reached except by passing through places of Hindu worship? If so, its effect?" has reached to a wrong conclusion by citing irrelevant legal propositions. The learned Judge has ignored the fact that the Mosque existed with its outer courtyard in which certain Chabutra, later on named as Ram Chabutra, was made around 1857 only. Instead of giving a finding that whether the Ram Chabutra was unauthorised or not, the Learned Judge has perversely proceeded to dislodge the claim of Mosque on the basis of bells to be rung on and around the Chabutra. The legal proposition cited from the Islamic law is not in dispute but the Learned Judge has proceeded to cite the said legal proposition by misconstruing and misappreciating the same and without appreciating that the same had no application in the present facts and circumstances. The Mosque existed and later on if the bells

are rung, due to such subsequent ringing of bell, the Mosque itself cannot be directed to be replaced even if ringing of bells could not be relocated which had come up subsequently. The finding of Learned Judge that the building was land locked and it was possible to reach inside the disputed place only through the places of Hindu worship is also incorrect and against the evidence on record. Even when the said Chabutra had come into existence somewhere in the middle of 19th Century, it could not be said that the premises was land locked merely on account of the existence of the said Ram Chabutra of 17' x 21' in the east and another Chabutra of about 10 x 12 feet known as Sita rasoi in the south.

7.25 Because the Learned Judge's finding on **Issue No.19(b)** in Suit No 4 stating that *"Since the structure has already been demolished but the report of Commissioner is available on record. Accordingly, the disputed structure cannot be deemed to be a Mosque according to the tenets of Islam. Thus, issue No. 19 (b) is decided in favour of the defendants and against the Plaintiffs"*, is also erroneous and illegal and without discussing the reasons as to why the said finding has been arrived at except quoting the Islamic laws , out of context which is irrelevant in the facts and circumstances of the present case.

7.26 Because the Learned Judge's finding on **Issue No. 19(d)** in Suit No 4 that *"According to the tenets, minarets are required to give Azan. There cannot be a public place of worship in mosque in which Provision of Azan is not available, hence the disputed structure cannot be deemed to be a mosque"*, is also wrong and erroneous. It is not necessary that minarets must be there for Azan and there is no such mandate of Islam. It is also not mandatory that provision of Azan with a separate specification is a must for any structure to be called 'Mosque'. The Learned Judge's finding that the place of Wazoo is a must, is also similarly misconceived and incorrect. The Learned Judge has wrongly held that such provisions are necessary for a mosque as per the tenets of Islam.

the Hindus get any right to trespass inside the Mosque and start worshipping the said images. The finding of Learned Judge is erroneous and out of context and is liable to be set aside. In this respect the oral evidence of Religious Experts of Islam as well as the documentary evidence and the contradictory statements of Hindu side witnesses have been totally ignored.

7.29 Because the Learned Judge's finding on **Issue Nos. 20(a) & (b)** in Suit No 4 is improper and incorrect. The Learned Judge has misdirected himself and proceeded to challenge the maintainability of the Suit on incorrect and irrelevant considerations. The learned Judge's observation that as per order dated 21.04.1966 the suit cannot be maintained by Sunni Waqf Board, is incorrect and improper and is liable to be set aside. The Learned Judge has not taken into consideration the fact that apart from the Sunni Waqf Board, there were many Muslims as co-plaintiffs in the Plaint. Neither Sunni Waqf Board ceased to have locus to maintain the suit, on account of the Order dated 21.04.1966 and nor other co-plaintiffs were in any way not competent to institute and prosecute the said Suit. The Learned Judge's findings on these issues are erroneous and misconceived and without taking into consideration the entire facts of the case specially the judgment of R.S. No. 29 of 1945 and the scope of powers and functions of the Waqf Board given under Section 19 of the Waqf Act, 1960.

7.30 Because **Issue No. 21** in Suit No 4 that "whether the suit is bad for non-joinder of alleged deities?", has been decided on the wrong premises and law. The Learned Judge has ignored the material facts and the pleadings in Suit No.4 and decree prayed for in the said suit. The learned Judge failed to appreciate that the plaintiffs (Suit No. 4) had prayed for removal of the idols placed inside the Mosque in the intervening night of 22nd and 23rd December, 1949 in a forcible and stealthy manner without any "Pran Pratishtha". In the present set of facts and circumstances, the said idols cannot be treated as Deity/ juristic person. The Learned Judge has recorded his finding without considering the

material facts which support the contention of Plaintiffs in Suit No.4. The finding on this issue is also perverse and without any legal basis. It was also not appreciated that the so called deity was already before the Court in OOS No. 5 of 1989 and all the suits were consolidated and hence there could not be said to be any effect of the alleged non-joinder.

7.31 Because **Issue Nos. 23** and **24** in Suit No 4 relate to competence of the Board to file the suit which has been accepted by the court. However, the Learned Judge has still reached the additional finding that the suit is not maintainable for want of valid notification under Section 5(1) of the Waqf Act, 1936 and on that illegal basis has decided Issue No's 23 and 24 against the plaintiffs, against his own observation made in the earlier part of the same paragraph.

7.32 Because while deciding **Issue Nos. 25** and **26** in Suit No 4, the Learned Judge has ignored the Plaintiffs' pleadings, oral evidences and documents. The learned Judge has ignored the evidence of Plaintiffs to show that the outer courtyard and inner courtyard was a Mosque and was in the possession of Plaintiffs/Muslim side. The Learned Judge has wrongly observed that the Muslims were dispossessed from the property in suit and Hindus had adversely possessed the sameeven prior to 1949. The said observation is contrary to evidence and without any basis. The reliance of Learned Judge on AIR 1940 PC 116 and 1994 (6) SCC 36 was also out of context and not proper in the facts and circumstances of the case. The Plaintiffs/ Muslims had possession of the premises till December, 1949 and there was no occasion to apply the proposition of law as settled in Masjid Shahid Ganj Case. The facts of that case were certainly of different nature. The Learned Judge has not at all taken into consideration the Islamic proposition of law which states that even open land could be a Mosque. It is material to state that the Learned Judge has quoted Islamic laws on various other issues, though out of context, but the Learned Judge has not taken into consideration the nature of place which

could be considered as Mosque. Thus the findings on these issues are also perverse and liable to be set aside.

7.33 Because while deciding **Issue No. 27** in Suit No 4, the Learned Judge has relied upon the site plan etc. of Suit No. 61/280 of 1885 to establish that Ram Chabutra and Rasoi Bhandar were existing at that time when the suit was filed. On the other hand, the Learned Judge has stated that the said Suit of 1885 cannot operate as resjudicata or estoppel. The Learned Judge's findings are even against the documents on record including the Commissioners Map of 1885 suit and hence perverse, misconceived and incorrect and the same are liable to be set aside.

7.34 Because the Learned Judge has wrongly decided **Issue Nos.2,4,10,15 and 28** in Suit No.4 in an illegal and perverse manner. The said issues relating to possession of the Plaintiffs and claim of the Plaintiffs over the property in suit by way of adverse possession have been decided by applying wrong facts and ignoring material documents and evidence. The Learned Judge has simply referred to and taken into account certain documents and has failed to acknowledge the arguments/submissions of Plaintiffs on these issues. However, on the other hand, the Learned Judge has started by saying *"following documents show that the Hindus/defendants had absolute control over the disputed property"*. The Learned Judge has recorded detailed submissions on these issues submitted on behalf of the Defendants and without taking into consideration the oral and documentary evidence of the Plaintiffs the Learned Judge has reached the finding stating *"Needless to say that Ayodhya and Ramkot belong to emperor Dashrath who was a sovereign King. Thereafter the property passed in the hands of charitable trust and remained under the control of the temple, the same was destroyed and without any formal sanction under the law by way of possession by dispossessing Hindu the plaintiff claim adverse possession. Thus to my mind the Plaintiffs have failed to prove adverse possession"*. The above finding is perverse and without considering the material evidence placed on record. The

learned Judge has decided the said issues in a perverse manner. The Learned Judge has applied the judgments of Supreme Court out of context and without considering the facts as pleaded by the Plaintiffs in the present case. While recording the finding of alleged ownership of Raja Dashrath the learned Judge failed to appreciate that there was no evidence to substantiate the same and specially so when the period of Raja Dashrath was said to be of 9 lakh or more than one Crore years ago.

7.35 Because the learned Judge failed to appreciate that the possession of the Plaintiffs is against everyone who claims that place to be a Temple or associated with Lord Ram. Since none other than Plaintiffs are the owner in possession of the property in suit the claims made by followers of Lord Ram after hundreds of years that the said place, according to their belief is the place of birth of Lord Ram is untenable. Hence, the possession of the Plaintiffs is hostile against everyone who makes any claim in relation to Lord Ram with respect to the said land.

7.36 Because the Learned Judge's finding at stating that "the Plaintiffs have neither proved the existence of animus possidendi at commencement of their possession nor they have proved continuance of their possession in such capacity" is perverse and untenable. It is clear from the facts that the day the Mosque was constructed in year 1528 A.D the existence of animus possidendi commenced and the same continued till the time the idols were placed inside the Mosque in December, 1949. The above stand of the Plaintiffs is in alternative to the stand of the Plaintiffs that when the Mosque was constructed, the entire land in question vested in the emperor/ruler of that time and the Mosque was built on the vacant land and hence there was no question to prove dispossession of the so called real owner of that time as the Mosque had then belonged to the King. The observations of the Learned Judge on this issue are also repetitive in nature at various places and do not require a separate ground to challenge the same.

7.37 Because the Learned Judge's observation that the *"adverse possession against the deity cannot be claimed"*, since it is not a living person would lead to an erroneous proposition of law. The Learned Judge's observation that the shebait has not been impleaded in the present proceeding is also misconceived.

7.38 Because the Learned Judge's observation that the revenue record shows that disputed land is Nazool land as per the revenue records and thereafter his observation that there should have been a lease deed in favour of the Plaintiffs, is erroneous and misconceived. It was not the case of any party that the land was in the ownership of Nazool and neither there was any pleading, nor any issue to that effect and the title of the land was not claimed by the State of Uttar Pradesh. The Mosque could not even be vested in the Nazool as per the Law of Nazool. The finding of the learned Judge in this respect was therefore totally unfounded, illegal, erroneous and baseless.

7.39 Because the Learned Judge has ignored the documents specially Exts. 62,45, 89 in Suit No.5 of 1989 and Exts.D-17, D-18, D-19 and Exts. 19 etc. while dealing with the issue of possession and adverse possession. The Learned Judge has further ignored the statements of witnesses of the Plaintiff being PW-1 to PW-9, PW-14, PW-21, PW-23 and PW-25. The finding of the Learned Judge (D.V.Sharma, J) on the issue of possession/adverse possession is almost similar as the finding of the other Judges on the Bench deciding the Civil Suit. The Appellant has made detailed submissions as to how the findings of the other Judges (Sudhir Aggarwal, J and S.U.Khan, J) are not proper and legal on this issue and the same is reflected in the portion of grounds of appeal challenging the judgment of Sudhir Aggarwal, J. The said grounds and objections to the findings on adverse possession/possession may also be treated as part of the present segment since the reasons for reaching conclusion on the said issues are almost similar.

In *relation to the construction of Mosque and its description, the following two issues were framed:-*

Issue No.1:-

Whether the building in question described as Mosque in the sketch map attached to the plaint (hereinafter referred to as the building) was a Mosque as claimed by the plaintiffs? If the answer is in affirmative then:-

Issue No.1(a):-

When was it built and by whom-whether by Babar as alleged by the plaintiffs or by Meer Baqui as alleged by defendant No.13?

7.40 Because while dealing with the above stated issues, the Learned Judge has reached the finding as recorded at Page 653 Vol. III of his judgment stating " *that on the basis of revenue records also and other documents, it can conclusively be said that Janmsthan was taken into consideration. Thus, on the basis of the opinion of the experts, evidence on record, circumstantial evidence and historical account from all or any angle, it transpires that the temple was demolished and the mosque was constructed at the site of the old Hindu temple by Mir Baqi at the command of Babur. Issue Nos. 1 and 1(a) are decided in favour of the defendants and against the plaintiffs*". The said finding of Learned Judge is incorrect and misconceived by misappreciating and misconstruing the material documents filed by the Parties as reflected from pages 294 to 319 (Vol.II of D.V.Sharma, J). The Learned Judge has even ignored some material evidence produced by the Parties. The Learned Judge has noted various legal principles of religious laws out of context and has also sought to rely upon certain selective part of historical books. The Learned Judge while dealing with the Issue has misdirected himself and proceeded to rely upon irrelevant materials. The Learned Judge has not even taken into account the detailed submission made by the counsels for the Plaintiffs Mr. Zafaryab Jilani and Mr. Mushtaq Ahmed Siddiqui and the findings of the Learned Judge is liable to be set aside.

7.41 Because while dealing with the above issues, the Learned Judge has failed to take into consideration the facts that during the period between 1653-1708 A.D , as reflected in the book "Moghal India" by Nicolao Manucci, there was no belief with respect to the said place being the birth place of Lord Ram and hence there is no question that prior thereto, the followers of Lord Ram would have believed that place to be the birth place of Lord Ram and accordingly there cannot be any presumption that the land could have been earlier used to be worshipped as the place of birth of Lord Ram. The basic foundation of the Learned Judge is that since the said place was believed to be the place of birth of Lord Ram and hence prior to the construction of Mosque, a temple existed and the said Mosque was built after removing the structure which was a non-Islamic structure. It is reiterated that it was the case of the Plaintiff that before 19th Century there was no belief that Babri Masjid was constructed after demolition of any temple or Hindu structure and there was no association of the alleged birth place of Lord Ram with the land in question and without dealing this issue in proper perspective the Learned Judge has erroneously proceeded on the basis of presumption that the place of birth of Lord Ram is the land in question on the basis of faith and belief. Giving any relief of this nature is one issue which the Plaintiffs have challenged separately also the reliance of the Learned Judge on the said belief and appreciate the evidence in that background becomes erroneous and misconceived. The Plaintiff had shown from the record that during the period 1770-1870 A.D the tradition and belief/faith was in respect of Janamsthan temple situated in the northern side of Babri Masjid to be the place of birth of Lord Ram. The said belief as introduced in the Gazetteer in 1870 A.D is about the alleged temple said to have been demolished. It was however not noted by the learned Judge that the Hindu side witnesses and theologists produced in court stated in their examinations that the era of Lord Ram would have been about 9 lacs to 1 crore years before. On the basis of the Gazetteer of 1870 A.D, the belief could not have developed overnight about such ancient happening and tracing the place to be that very place where the Mosque existed.

7.42 Because the belief of Lord Ram having been born at the place of Mosque was not mentioned in the Gazetteer of Walter Hamilton 1815/1828 A.D. Neither the said Gazetteer had mentioned about destruction of temple and erection of Mosque in place thereof after demolishing the Temple.

7.43 Because the finding as recorded by the Learned Judge stating that *"it transpires that even after the conquest, the Ramjanamsthan Temple could not be demolished, even if demolished, the erection of Babri Mosque is illegal and against the tenets of Islam. Accordingly, the disputed site cannot be deemed to be a mosque. He has further submitted that there is no reliable evidence that it was constructed by Babur or Mir Baqi. According, Ramjanamsthan Temple even under the Islamic law shall retain its existence, which is not vanished by any illegal action of Aurangzeb, Babur or any ruler. No valid waqf can also be created. It is further submitted that since there was no Islamic Mosque, accordingly question of offering prayers does not arise and even if the prayer was offered, it is immaterial"* is without any basis and evidence and is simply based upon the argument of one side. The Learned Judge has converted the submission of the counsel for the Defendants into the finding of its own. The said observation/finding of Learned Judge is quite illegal and perverse. The said observation is not based upon the evidence. The Islamic laws that have been stated before the said observation are out of context and have no application to the facts and circumstances of the present case. The Learned Judge has even failed to consider the evidence in its right perspective and has misconstrued the report of Archeological Survey of India in this respect.

8. That the appellant has not filed any other appeal before any other forum including this Hon'ble Court with respect to O.O.S No 4/1989 challenging the judgments impugned in the present appeal.

9. That only this Hon'ble Court has appellate jurisdiction with respect to the judgment/decree impugned herein in view of the fact that a full bench (comprising of three Hon'ble Judges) of the Hon'ble High Court of Allahabad has exercised Original Civil Jurisdiction and passed a final order/preliminary decree. The impugned judgment/preliminary decree cannot be challenged in any other court except this Hon'ble Court. Even the Hon'ble High Court has observed in a separate order passed on 30.09.2010 that appeal is maintainable in this Hon'ble court under section 96, CPC.

PRAYER

10. It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

i) CALL for the records of the case relating to O.O.S No.4 of 1989; *Sunni Central Board of Waqfs U.P, Lucknow and others Vs. Mahant Suresh Das and others*, decided by the Court of the Special Bench of three Judges of the High Court of Allahabad (Lucknow Bench) and allow the present Appeal by setting aside the preliminary decree and judgment dated 30.09.2010 passed in terms of separate judgments;

ii) DECREE the Civil Suit of the Appellant bearing O.O.S. No. 4 of 1989; *Titled as Sunni Central Board of Waqfs U.P. Lucknow and others Vs. Mahant Suresh Das and others*, and pass appropriate consequential orders in terms of the decree prayed thereof;

iii) PASS Decree of Mandatory Injunction directing restitution of Mosque in its original shape at the same place where it existed before its demolition;

iv) Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;

8700

v) award costs to the appellant as against the contesting respondents;

AND FOR THIS ACT OF KINDNESS THE APPLICANT/APPELLANT AS IN DUTY BOUND SHALL EVER PRAY

Drawn & Filed by:-

[M R SHAMSHAD]
Advocate for the Appellant

SETTLED BY :
Mr. M.A.Siddiqi, Advocate

RE-SETTLED BY :
Mr. Zafaryab Jilani,Advocate

ASSISTED BY :
Mr. Zaki A. Khan, Advocate
Mr Shahid Anwar, Advocate
Mr Ahmad S. Azhar, Advocate

Drawn on 09.02.2011

Filed on: 14.02.2011

New Delhi

8701

IN THE SUPREME COURT OF INDIA
[ORDER XVI RULE 4(1) (a)]

CIVIL APPELLANT JURISDICTION

CIVIL APPEAL No. OF 2011

IN THE MATTER OF:

Mohammad Hashim .....Appellant

Versus

Mahant Suresh Dass and Ors. .....Respondents

CERTIFICATE

Certified that the Appeal is confined only to the pleadings before the Hon'ble High Court whose order is challenged and the other documents relied upon in those proceedings. No additional documents or grounds have been taken therein or relied upon in the Special Leave Petition. This certificate is given on the basis of the instructions given by the petitioner whose affidavit is filed in support of the Special Leave Petition.

[M R SHAMSHAD]
Advocate for the Appellant

Drawn on 09.02.2011

Filed on: 14.02.2011

New Delhi

8702

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. OF 2011

IN THE MATTER OF:

Mohammad Hashim..... Appellant

Versus

Mahant Suresh Dass and Ors. Respondents

AFFIDAVIT

I, Mohammad Hashim, Aged about 89 years, S/o Late Karim Bux, resident of Mohalla Kutiya, Panji Tola, Ajodhiya city, District Faizabad, State of U.P., do hereby solemnly affirm and declare as under:-

1 That I am the appellant in the accompanying appeal and one of the Plaintiffs in OOS No 4 of 1989 and as such I am competent to swear the present affidavit. I am conversant with the facts and circumstances of the case. I have attended hundreds of hearings between the year 1950 to 2010 in the court proceedings relating to the present case in District Court, Faizabad and in the Hon'ble High Court of Allahabad, Lucknow Bench.

2 That I have been explained the contents of the appeal and have understood the said contents of the accompanying Civil Appeal and applications being filed therewith and state that the statement of facts and grounds of appeal, except the facts as to what transpired during the course of arguments in the court, stated from pages B to Z -Vol I and pages 8537 to 8550 in paragraphs 1 to 4 and 8 to 9 and at pages 8698 to 8699 and grounds of appeal from pages 8551 to 8698 in paragraphs 5.1 to7.43 and the contents of the applications for stay &substitution and application seeking

exemption from filing official translation of the vernaculars in the impugned judgment are true to my personal knowledge as well as on my knowledge based on documents, records and historical books.

3 That the statements of facts in relation to the arguments made by the learned counsels in the court on behalf of the appellant/other co-plaintiffs of the appellant are true and correct on the basis of what has been communicated to me by the counsel(s) for the appellant/plaintiffs and the same are believed to be true and correct.

DEPONENT

Verification:

I, the above named deponent, do hereby verify that the contents of Paras 1 to 3 of the above affidavit are true to my knowledge, as stated above and no part of it is false and nothing material has been concealed therefrom.

Verified at Lucknow on this 10th day of February, 2011.

DEPONENT

IN THE SUPREME COURT OF INDIA 8704

CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2011

IN

CIVIL APPEAL No. OF 2010

IN THE MATTER OF:

Mohammad Hashim .....Appellant

Versus

Mahant Suresh Dass and Ors. .....Respondents

AND IN THE MATTER OF:

AN APPLICATION FOR SUBSTITUTION OF LEGAL HEIRS OF RESPONDENT NO.24 AND FOR STRIKING OFF THE NAME OF RESPONDENT NO.8.

To

The Hon'ble Chief Justice of India
And His Companion Judges of the
Hon'ble Supreme Court of India.

The humble application of the Appellant named above.

MOST RESPECTFULLY SHOWETH:

1. That the present Appellant along with late Mahmud Ahmad were co-plaintiffs in O.O.S. No.4 of 1989. Shri Mahmud Ahmad, Respondent No.24 in the present Appeal died in the year 2007, during the pendency of the proceedings before the Hon'ble High Court.

2. It is submitted that the said deceased-Plaintiff No.9 in the Suit has a son namely Mr. Anwar Ahmad. It is material to submit that the said deceased Mr. Mahmud Ahmad being co-plaintiff in the Civil Suit had desired and wished and stated to the Appellant on many

occasions during the pendency of the proceedings that if he dies during the proceedings at any stage, in that eventuality Maulana Mufti Hasbullah alias Badshah Saheb, son of late Maulana Faizullah, R/o 101, Madani Manzil, Mughalpura, Faizabad (U.P.) be substituted at his place as appropriate party to the said proceedings. After the death of Janab Mahmud Ahmad, the Appellant had conveyed the wishes of late Mahmud Ahmad to his only son Mr.Anwar Ahmad. Keeping in view the wishes of the deceased-Plaintiff late Mahmud Ahmad about substitution of Maulana Mufti Hasbullah in his place as his legal representative and further keeping in view the fact that the only son of the deceased-plaintiff Mr. Anwar Ahmad is available, it is submitted that both these parties may be substituted as the legal representatives of the deceased-plaintiff No.9 in O.O.S No. 4 of 1989 as Respondent Nos. 24 A and 24 B in the present Appeal.

3. It is further submitted that the suit was filed by the plaintiffs in their representative capacity and the proposed legal representatives are well within their capacity to act in their representative capacity.

4. That the Respondent No.8 Babu Priya Dutt died more than 10 years ago who was made party to the said proceedings in his capacity as Receiver of the building in suit. After his death, other persons were appointed as Receiver at his place but they were not impleaded in the suit. In any case, this Hon'ble Court vide its judgment pronounced in the year 1994 had given that responsibility to the Central Govt. and hence no legal representative of late Shri B.Priya Dutt is required to be brought on record as his legal representative in the present proceedings.

8706

5. This application is bonafide and in the interest of justice.

PRAYER

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

a) DIRECT substitution of the following names as legal representatives of Respondent No.24:-

24 A. Mr. Maulana Mufti Hasbullah
alias Badshah Saheb, aged about 50 years,
son of late Maulana Faizullah,
R/o 101, Madani Manzil, Mughalpura,
Faizabad (U.P.)

24 B. Mr. Anwar Ahmad,
Aged about 60 years,
Son of late Mahmud Ahmad,
R/o Rakab Ganj,
Faizabad (U.P.)

b) DIRECT the name of Respondent No.8 to be struck off;

c) PASS such other order or further order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Drawn & Filed by:-

[M R SHAMSHAD]
Advocate for the Appellant

Drawn on 09.02.2011

Filed on: 14.02.2011

New Delhi

8707

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2011

IN

CIVIL APPEAL No. OF 2010

IN THE MATTER OF:

Mohammad Hashim ..... Appellant

Versus

Mahant Suresh Dass and Ors. .....Respondents

AND IN THE MATTER OF:

AN APPLICATION SEEKING EXEMPTION FROM FILING OFFICIAL TRANSLATIONS OF THE EXTRACTS RE-PRODUCED IN THE IMPUGNED JUDGMENT.

To

The Hon'ble Chief Justice of India
And His Companion Judges of the
Hon'ble Supreme Court of India.

The humble application of the Appellant named above.

MOST RESPECTFULLY SHOWETH:

1. That the Appellant is filing the present Appeal against the impugned judgment dated 30.09.2010 passed by the Hon'ble High Court of Judicature at Allahabad, Bench at Lucknow in O.O.S. NO. 4 of 1989. The facts in brief have been set out in the accompanying Appeal and the same are not being repeated for the sake of brevity and the same may be treated as part of this Application.

2. It is submitted that the impugned judgment contains extracted portions of different vernaculars like Sanskrit, Persian, Urdu,

Hindi and Gurmukhi etc. There are certain portion of Persian language of which different meanings and its interpretation have been relied upon by the Appellant. However, the Hon'ble Court has given different interpretation to the said vernaculars. Certain vernaculars are used which are not prevalent as on today. The Arabic, Sanskrit, Persian and certain parts of Urdu have been extracted from different places in which the context is set out in the larger document from where the said vernaculars have been extracted.

3. Keeping in view the entire facts and circumstances, the exact translation of the said vernaculars giving proper contexts and the meaning of the same in the exact context, for which it has been used in the original texts, is not feasible. However, the Counsel for the Appellant has tried his level best to give maximum accuracy to the said translation. Since the Appeal is being filed under urgent circumstances, it will not be possible to obtain official translation of such voluminous documents. The Appellant undertakes to bear the expenses towards the official translation as and when this Hon'ble Court directs such translation to be filed.

4. This application is bonafide and in the interest of justice.

PRAYER

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

8709

a) EXEMPT the Appellant from filing Official Translation of the vernaculars used in (Vol. I to Vol. XXXIII) the impugned judgment;

b) PASS such other order or further order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Drawn & Filed by:-

[M R SHAMSHAD]
Advocate for the Appellant

Drawn on 09.02.2011

Filed on: 14.02.2011

New Delhi

8710

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2011

IN

CIVIL APPEAL No. OF 2010

IN THE MATTER OF:

Mohammad Hashim ..... Appellant

Versus

Mahant Suresh Dass and Ors. .....Respondents

APPLICATION FOR STAY

To

The Hon'ble Chief Justice of India
And His Companion Justice of the
Hon'ble Supreme Court of India.
The humble Application of the Appellant named above.

MOST RESPECTFULLY SHEWETH

1. That the Appellant is filing the accompanying Appeal against the Judgment/Preliminary decree dated 30.09.2010 passed by the Special Full Bench of High Court of Allahabad (Lucknow Bench) in O.O.S No. 4 of 1989.

2. That the Appellant has set out the detailed facts and circumstances in the accompanying Appeal in the Statement of Facts and the grounds. The said facts and the grounds of Appeal are not being repeated for the sake of brevity and entire grounds of appeal may be treated to be part of the present Application for interim relief prayed in terms of the present Application.

8711

3. The Appellant submits that the entire judgment in Appeal is based upon unsustainable and erroneous findings arrived at by the Court below and accordingly the effect of the said judgment is liable to be stayed during the pendency of the present Appeal.

4. That status quo mentioned by this Hon'ble Court in terms of Judgment and order dated 24-10-1994;(1994)6 SCC 360 and further clarified by the Judgment and order dated 31-3-2003 is liable to be maintained during the pendency of appeal.

5. That the balance of convenience is in favour of the Appellant and against the contesting respondents in view of the fact that the mosque was in use of the Muslims upto 22-12-1949 and Muslims were forcibly ousted from the said Mosque w.e.f. 23-12-1949 and since 29-12-1949 the property in suit is continuing in the custody of the court.

6. That irreparable loss will be caused to the appellant if status quo is not maintained.

7. That prima facie case is in favour of the Appellant and against the contesting Respondents. This Hon'ble Court had directed to maintain status quo in terms of the judgment and order dated 24.10.1994 and 31.01.2003 and same order is prayed before this Hon'ble Court till the pendency of the present proceedings.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

i) pass ad-interim ex-parte stay, staying the operation of the preliminary decree and judgment dated 30.09.2010 passed in O.O.S No. 4 of 1989 by the Special Full Bench of the High Court of Allahabad (Lucknow Bench) till the final disposal of this Appeal and pass direction to maintain status quo.

8712

ii) pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Drawn & Filed by

[M R SHAMSHAD]
Advocate for the Appellant

Drawn on 09.02.2011
Filed on: 14.02.2011
New Delhi

8713

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2011

IN

CIVIL APPEAL No. OF 2010

IN THE MATTER OF:

Mohammad Hashim .....Appellant

Versus

Mahant Suresh Dass and Ors. .....Respondents

AND IN THE MATTER OF:

APPLICATION FOR CONDONATION OF DELAY IN BRINGING ON RECORD THE LEGAL HEIR OF RESPONDENT NO.24

To

The Hon'ble Chief Justice of India
And His Companion Judges of the
Hon'ble Supreme Court of India.

The humble application of the Appellant named above.

MOST RESPECTFULLY SHOWETH:

1. That the present Appellant along with late Mahmud Ahmad were co-plaintiffs in O.O.S. No.4 of 1989. Shri Mahmud Ahmad, Respondent No.24 in the present Appeal died in the year 2007, during the pendency of the proceedings before the Hon'ble High Court on 25.08.2007. However, the L.Rs of said deceased plaintiff was not brought on record by any of

the parties and accordingly the name of the said deceased plaintiff no.9 remained on record of the High Court.

2. It is submitted that at the time of the filing of the present appeal the appellant has sought to bring on record the Legal representative and the nominee of the deceased plaintiff no.9. however, thereis considerable amount of delay in bringing the said LRs on record. Since no efforts were made by any of the parties before the High Court to bring the said LRs/ nominee of the deceased plaintiff, the name of the deceased plaintiff still remain on the array of parties of the High Court.

3. That the present suit is a representative suit and the said deceased plaintiff would be required to be represented before this Hon'ble Court through the person to whom he nominated to prosecute on his behalf and the legal representative of the deceased plaintiff may also be impleaded to represent him in this Hon'ble Court.

4. That there is no intentional delay on the part of the appellant to bring the said legal representatives on record and in the interest of justice the appellant submits that the delay in bringing the said LRs on record be condoned by this Hon'ble Court in the interest of justice.

5. This application is bonafide and in the interest of justice.

8715

PRAYER

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

a) condone the delay of 813 days in filing application for substitution of legal heirs

b) PASS such other order or further order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Drawn & Filed by:-

[M R SHAMSHAD]
Advocate for the Appellant

Drawn on 09.02.2011

Filed on: 14.02.2011

New Delhi

OTM K Shamshad
ADVOCATE
(D/1349/2000)

18.03.2011

To,

The Registrar
Supreme Court of India
New Delhi

Sub: CIVIL APPEAL No. OF 2010

Mohammad Hashim Versus Mahant Suresh Dass and Ors.

Sir,

The impugned judgment in the above appeal runs into more than 8500 pages (Approximately) and in the said judgment there are vernaculars of Urdu, Hindi, Persian, Sanskrit, Awadhi, Gurmukhi, Arabic etc. The appellant through its counsels have got translated the said vernaculars into English and the same have been incorporated in the Paper Book of Judgment. However, if any of the vernaculars is found not to be translated in English, by oversight or any other reason, the same may be exempted.

Thanking you

Yours sincerely

(M.R.SHAMSHAD)
Advocate for the appellant

B-4 (LGF), JANGPURA EXTENSION, NEW DELHI-110014
PHONES: +91-11-24375842, MOBILE : +91-98111-25843. EMAIL : SHAMSHADMR@GMAIL.COM