(Judgment reserved on 26.07.2010)
(Judgment delivered on 30.09.2010)

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

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

AND

Other Original Suit No.3 of 1989
(Regular Suit No.26 of 1959)
Nirmohi Akhara and others Vs. Baboo Priya Datt Ram and others

AND

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

AND

Other Original Suit No.5 of 1989
(Regular Suit No.236 of 1989)
Bhagwan Sri Ram Lala Virajman and others Vs. Rajendra Singh and others

Hon'ble S.U. Khan, J.

INDEX

Prelude

Here is a small piece of land (1500 square yards) where angels fear to tread. It is full of innumerable land mines. We are required to clear it. Some very sane elements advised us not to attempt that. We do not propose to rush in like fools lest we are blown. However we have to take risk. It is said that the greatest risk in life is not daring to take risk when occasion for the same arises.

Once angels were made to bow before Man. Sometimes he has to justify the said honour. This is one of those occasions. We have succeeded or failed? No one can be a judge in his own cause.

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

Foreword

Pleadings, issues, evidence oral as well as documentary, the arguments of learned counsel of all

the parties and cited books gazettes and rulings of Privy Council, Supreme Court and High Courts have been mentioned in great detail in the judgment of my esteemed brother Sudhir Agarwal, J. I am therefore skipping the details and giving only a bird's eye view thereof.

Introduction:-

(Mainly the position till the institution of the first suit on 16.01.1950)

The principle enunciated in Sections 6, 7 and 9 of Evidence Act is the reason for this introduction.

In Ayodhya, District Faizabad, there is a premises consisted of constructed portion and adjoining land surrounded by a boundary wall (total area about 1500 square yard) used for worshipping purpose(s), which was undisputedly constructed before 18th Century. Muslims claimed that the entire premises was a mosque known by the name of Babari Mosque. However, it is admitted to the Muslims that since middle of 19th

Century outer part of the adjoining land was having a chabootara towards South-East admeasuring 17’ x 21’ (39.6 square yard) on which Hindus were worshipping. Hindus claim it to be much older. Rival claims of both the parties over the premises in dispute have been judicially noticed in 1885. The dispute had earlier also been noticed in the records of different government officers since 1855 when a riot took place between Hindus and Muslims. It is mentioned that on a nearby temple known by the name of Hanuman Garhi, Muslims had some claim asserting that to be previously a mosque. The riot started at Hanuman Garhi and Muslims were repelled by the Hindus. The retreat and the fight is stated to have continued till the premises in dispute whereat several Muslims were killed. They are said to have been buried around the disputed premises. After the said riot, a bifurcation was made of the adjoining land by placing a brick and grill (vertical iron bars) wall (railing) of 7 or 8 feet height dividing the

adjoining land into two parts, inner courtyard adjacent to the constructed portion and outer courtyard adjacent to the boundary wall towards East. The outer Courtyard also included a flank in between northern side of the constructed portion and inner courtyard on the one hand and northern boundary wall on the other hand. The railing divided the entire premises in two almost equal parts. The railing/ grill was placed either in 1956 when Awadh was annexed by the Britishers or immediately after 1957 war of independence (called mutiny by Britishers.) This was done with the intention that Muslims must use the inner portion and Hindus the outer portion so that chances of quarrel between them were minimised. Initially there was only one door in the boundary wall towards East, however in or about 1877 another door was opened towards North by the government authorities, which was given under the control and management of Hindus in spite of severe objection by Muslims. The occasion for opening the

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

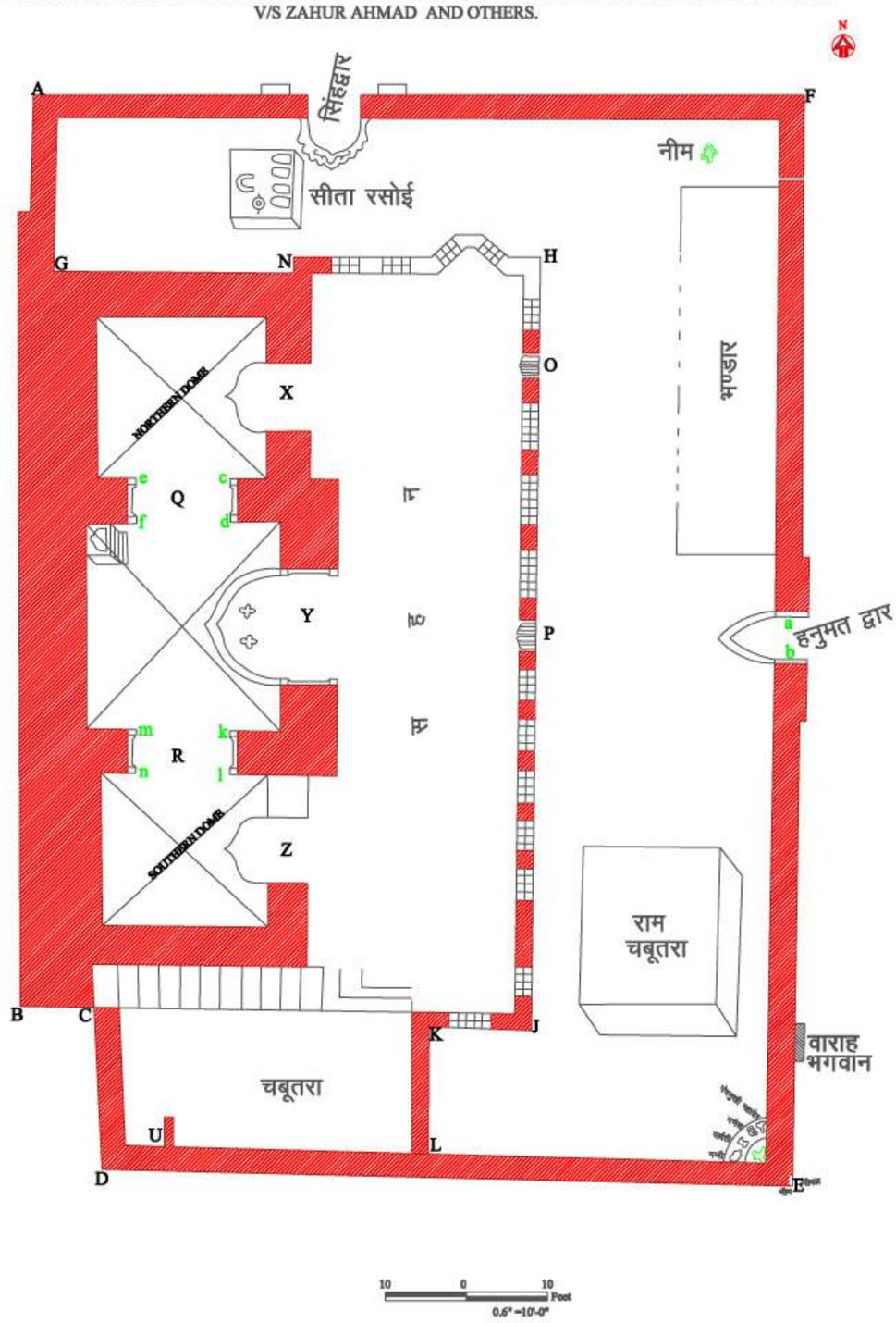
The spot position is clear from the two maps prepared by Sri Shiv Shanker Lal, Vakil under order of Civil Judge dated 01.04.1950 passed in the first suit. Muslim parties did not object to the dimensions shown in the maps, they only objected to the nomenclature given to different portions by the Commissioner in his report and the maps e.g. Sita Rasoi, Bhandar, Hanuman Dwar etc. The objections have been noted in the order dated 20.11.1950 passed in the first suit. The Commissioner

prepared two maps and termed them as Plan-I and Plan-II. The first was of the premises in dispute and the other of the premises in dispute and the adjoining locality. The Plan-I map is on a big page and on the scale of one inch equal to 10 feet. The map redrawn on the scale of 0.6 inch equal to 10 feet is reproduced on page No.10. Plan-II map is given on page No.11. Total area shown is about 1480 square yards. The portions inside and outside the railing are about 740 square yards each.

Suit of 1885:-

Suit No.61/280 of 1885 was filed by Mahanth Raghubar Das, Mahanth Janam Asthan situate at Ayodhya against Secretary of State for India in Council. The suit was instituted on 29.01.1885. Certified copy of the plaint is Ex. A-22 in the first suit. Mohd. Ashgar claiming to be Mutawalli of Babari Mosque filed

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



Reduced Scale 0.6"= 10' or 1" = 16.66'

A.F. =97' E.F. = 140'

B.C.= 9' C.D.= 21'

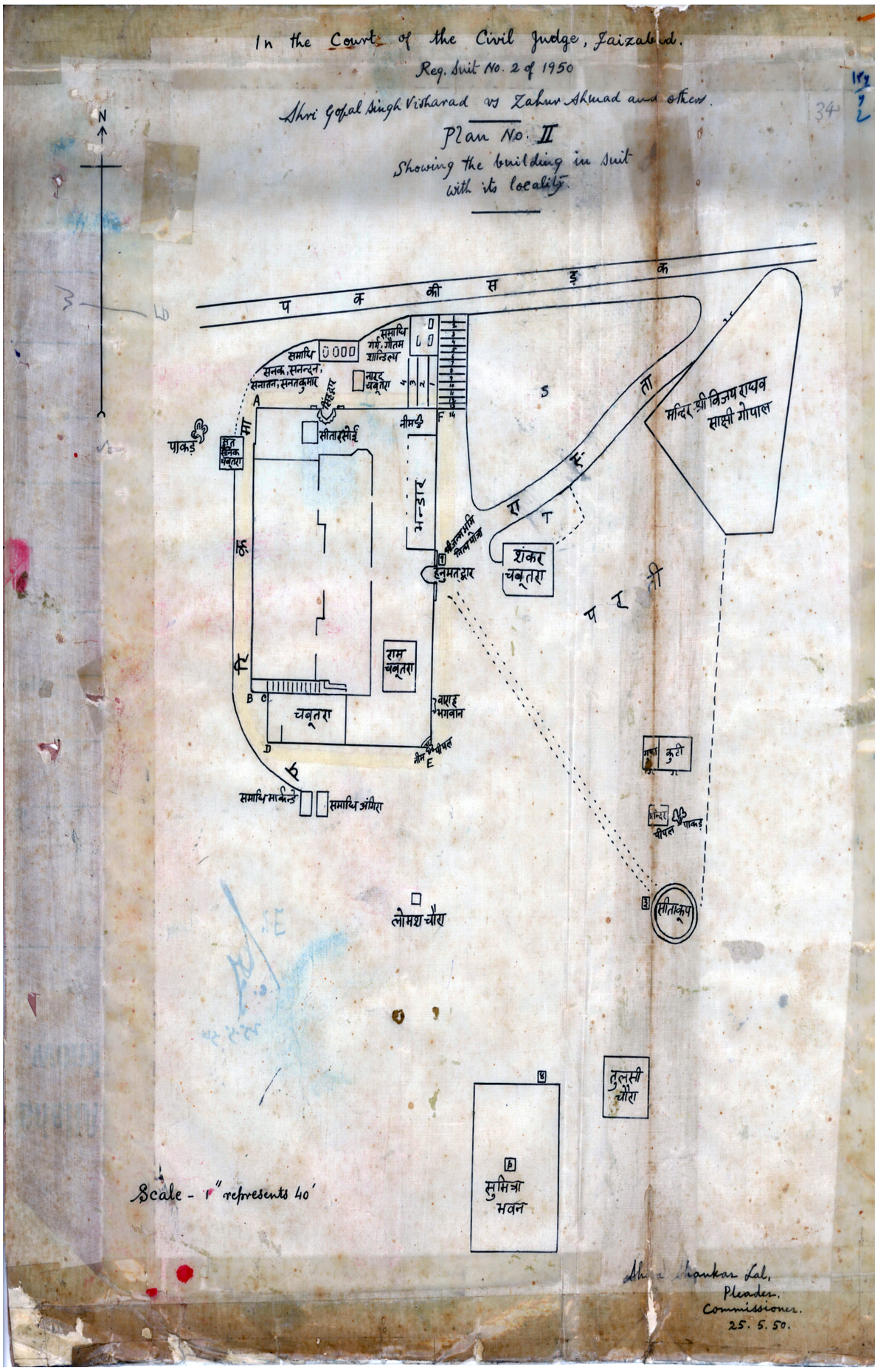
(A.F. X E.F.) - (B.C. X C.D.) = 1482.5 Sq. Yd.

G.H. = 66' H.J. = 89'

K.L.=21' L.D.= 40'

(G.H. X H.J.) + (K.L. X L.D.) = 746 Sq. Yd.

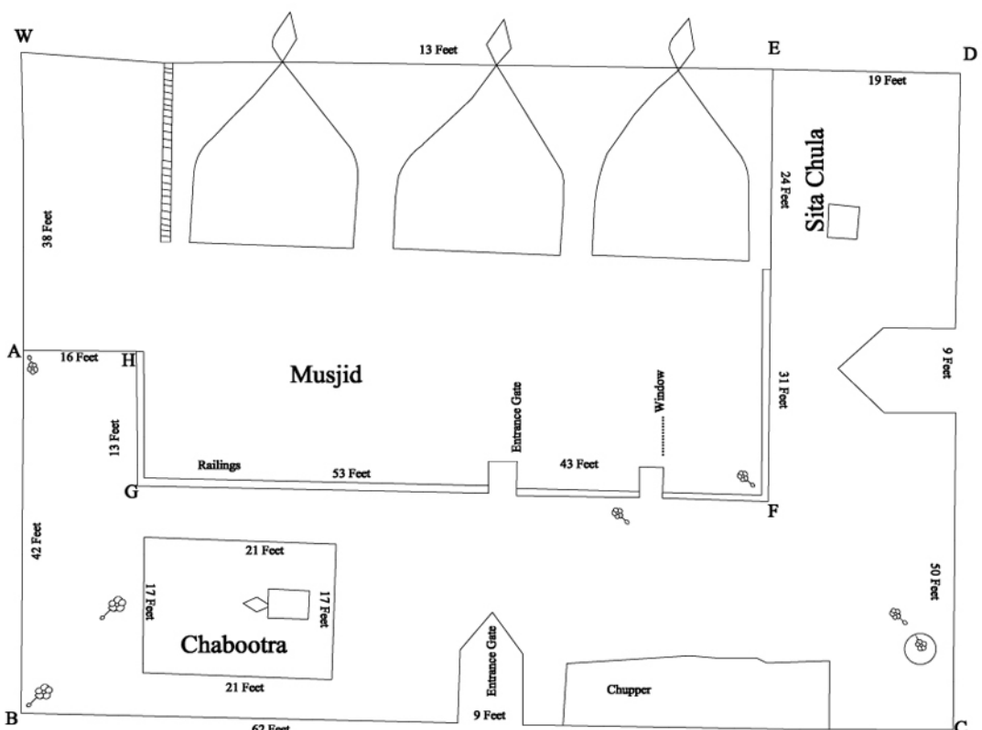
Exact Dimensions and area has been calculated from the original map with the help of scale. They are not given in the original map which is on the scale of 1"=10'


In the Court of the Civil Judge, Faizabad.
Reg. Suit No. 2 of 1950
Shri Gopal Singh Visharad vs Zahur Ahmad and others.
Plan No. II
Showing the building in suit with its locality.
N
पक्की सड़क
समाधि सनक, सनन्दन, सनातन, सनतकुमार
समाधि गर्ग, गौतम शान्डिल्य
नारद चबूतरा
सीतारसोई
नीमडी
भन्डार
पाकड़
मन्दिर श्री निर्मोही राघव साक्षी गोपाल
शंकर चबूतरा
हनुमत द्वार
राम चबूतरा
चबूतरा
वराह भगवान
समाधि मार्कन्डे
समाधि आंगिरा
लोमश चौरा
कुटी
सीताकूप
तुलसी चौरा
सुमित्रा भवन
Scale - 1" represents 40'
Shiva Shankar Lal,
Pleader.
Commissioner.
25. 5. 50.

impleadment application in the said suit, which was allowed. Mohd. Ashgar alone mainly contested the suit. Along with the plaint sketch map was also annexed. The suit was for permission to construct temple over the Chabutra Janam Asthan situate in Ayodhya having dimensions of 17' x 21' and for restraining the defendant from interfering in the said exercise of the plaintiff. It was stated in the plaint that Janam Asthan situate at Ayodhya in the city of Faizabad was a very old and sacred place of worship and plaintiff was Mahanth thereof, that on the Chabutra Charan Paduka was affixed (or lied) and a small temple was kept, which was worshipped, that chabutra was in possession of the plaintiff and plaintiff and other (fuqra itinerant monks; c.f. Persian English Dictionary by F. Steingass) felt great difficulty in extremely hot, cold and rainy seasons as there was no building thereupon and if temple was constructed on the chabutra (platform) no one would suffer any injury, that in March, 1883, due to certain objections of Muslims, Deputy Commissioner prohibited the construction of the temple. Thereafter, in Para-5 of the plaint, it was stated that a well

wisher public man is entitled to construct any type of building on the land owned and possessed by him and that a just government was duty bound to protect the said right of the public and help in obtaining the same and to maintain the law and order. The map which was annexed along with the plaint is given on page No.14. (The map was almost same as the map prepared by Sri Shiv Shanker Lal, Vakil/ Commissioner in the first suit.) In the map it was clearly shown that the portion of inner courtyard and the constructed portion was masjid and in possession of Mohammedans and outer courtyard including chabutra in question was shown in possession of Hindus. In the outer courtyard near the northern gate Sita Rasoi was shown and towards north of the eastern gate, chhappar (thatch) was shown. In the said suit, amin was directed to prepare map, which was accordingly prepared. Certified copy of the same is Annexure A-25. The said map which substantially tallies with plaint map of suit of 1885 is also given on page No.15. In this map *hauz ghusal* (water tank for bath) is shown in the inner courtyard.

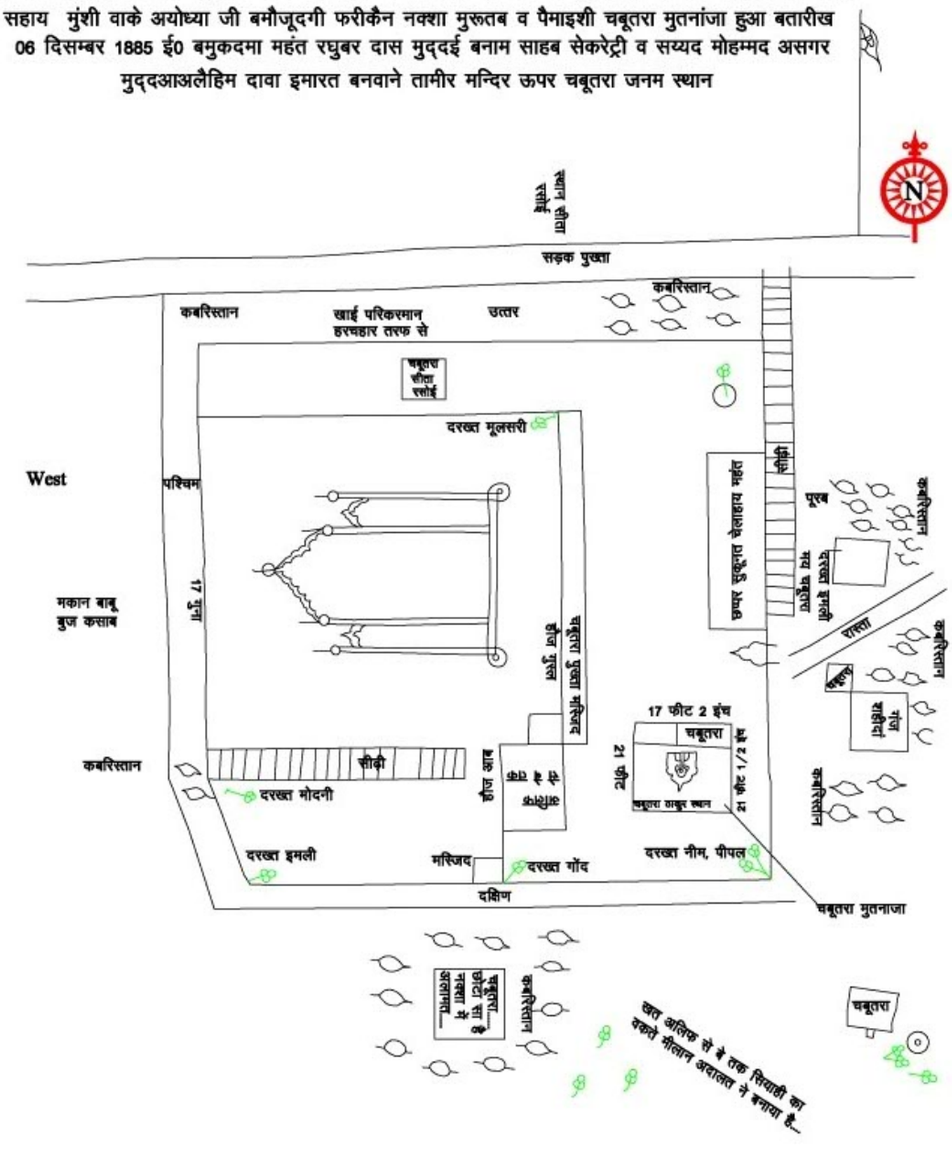
एक्जीविट–ए 22, ओ0ओ0एस0 1/89



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

एक्जीविट–ए 25, ओ0ओ0एस0 1/89

नक्शा मौका मुतनाजा यानी चबूतरा जनम स्थान कि अन्दर हाता मस्जिद व चबूतरा हर दो वाके हैं मुरत्तिबा गोपाल सहाय मुंशी वाके अयोध्या जी बमौजूदगी फरीकैन नक्शा मुरूतब व पैमाइशी चबूतरा मुतनांजा हुआ बतारीख 06 दिसम्बर 1885 ई0 बमुकदमा महंत रघुबर दास मुददई बनाम साहब सेकरेट्री व सय्यद मोहम्मद असगर मुद्दआअलैहिम दावा इमारत बनवाने तामीर मन्दिर ऊपर चबूतरा जनम स्थान



अलअब्द गोपाल सहाय कमिशनर

अलअब्द मोहम्द असगर चाह मास्जद है व चबूतरा किसी का नाम नहीं है बक़लम खुद 6 दिसम्बर 1885 ई0

दःमहंतरघुवरदास

Certified copy of written statement filed by Mohd. Ashgar is Ex. A-23. In the written statement, it was mentioned that Babar constructed mosque and on the outer door (eastern one), the word 'Allah' was inscribed and thereafter the ownership of any other person did not remain/ survive hence plaintiff was not owner of the chabutra or the land beneath that unless the King who got constructed the mosque or any other King granted permission for the same and for that no document had been filed by the plaintiff hence plaintiff was not entitled to construct the temple. It was further stated in Para-2 that by merely going inside part of the mosque plaintiff or the Hindus could not have any right for the reason that often non Muslims visited Imambaras, mosques and graves for making offerings and Muslims did not prohibit the same. In Para-3 of the written statement, it was stated that since the time of construction of the mosque till 1856, there was no chabutra and it was constructed in 1857. In Para-4, it was stated that plaintiff and other Hindus were permitted to visit the chabutra with certain conditions one of which

was that no new construction should be made thereupon, hence plaintiff did not become owner. It was further stated that whenever the plaintiff or some other Hindus intended to do something new inside the compound of the mosque the government stopped them therefrom, and that a monk had placed a thatch, which was removed. It was further stated that plaintiff had no right to construct the temple. However, Mohd. Ashgar, the subsequently impleaded defendant did not deny the correctness of the map filed along with the plaint.

The trial court/ Sub-Judge, Faizabad decided the suit on 24.12.1885, certified copy of which is Ex. A-26 (the Judgment is in Urdu). The Sub-Judge held that regarding measurement, after Amin's report Mohd. Ashgar had no objection

except for view inches. The Sub-Judge further found that charans (feet) were engrossed on the chabutra and an idol of Thakurjee was also installed and these things were being worshipped. It was also held that from the perusal of the corrected map of Amin it was clear that in between mosque and *chabutra* there was a *pucca* wall having grill/ railing which meant that dividing line between the two was established/ made. It was also observed that the said fact was amply substantiated from the gazette which was prepared before the dispute, which was sub-judice in the said suit and in the Gazette it was mentioned that previously both Hindus and Muslims used to offer prayer and worship at that place, however in 1855 after the fight between Hindus and Muslims, the grill/ railing wall was constructed to resolve the

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

dismissed.

Against the said judgment and decree, Civil Appeal No.27 of 1886 was filed, which was disposed of by Mr. F.E.A. Chamier, District Judge, Faizabad on 18.03.1886. Certified copy of the said judgment is Ex. A-27. On 13.03.1886, the learned District Judge had passed the order proposing to visit the spot on 17.03.1886. In the judgment dated 18.03.1886, it is mentioned that the learned District Judge visited the land in dispute a day before in the presence of all the parties and he found that the Masjid built by the Emperor Babar stood on the border of the town of Ayodhya. Thereafter, it was observed that:

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

It was further held that:

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

The learned District Judge struck out the words holding the ownership of Hindus over chabutra from the judgment of the Sub-Judge as being redundant. In the said judgment, it was also observed that:

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

Ultimately, appeal was dismissed. Against the said judgment and decree, Second Civil Appeal No.122 of 1886 was filed, which was dismissed by the Court of Judicial Commissioner, Oudh on 01.11.1886. Copy of the said judgment has been annexed along with W.P. No.746

of 1986, which is directed against order dated 01.02.1986 passed in a misc. appeal by D.J. Faizabad directed against an interim order passed in first suit when it was pending before Munsif, Faizabad. The said writ petition is being decided along with these suits. The penultimate sentence of the judgment in second appeal dated 01.11.1886 is as follows:

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

In the earlier part of the said judgment by Justice, W. Young, Judicial Commissioner, Oudh, it was observed as follows:

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

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

(1) Sita ki Rasoi

(b) Ram Chandar ki Janam Bhumi.

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

Incident of 23.12.1949:-

The position continued until 22/23.12.1949. In the evening (7 p.m.) of 23rd December, 1949, Pandit Sri Ram Deo Dubey, Sub-Inspector Incharge Thana Ayodhya lodged FIR mentioning therein that on information received through Mata

Prasad, constable No.7, he (Mr. Dubey) reached the disputed site at about 7 o'clock in the morning and learnt that a crowd of 50 or 60 persons had broken the locks, which were put on the compound of the Babri Mosque and by climbing the walls by ladders illegally interfered in the mosque and had placed the idol of Sri Bhagwan and had written on the walls inside and outside Sita Ram Ji etc. in red and yellow. It was also mentioned that constable No.2, Hansraj, who was on the duty, prohibited them but they did not pay any heed thereupon, he called the P.A.C. guard for help, which was there, however by the time, the guard could reach, the persons had entered the mosque. It has also been mentioned that thereafter high officers of the District came to the spot and engaged themselves in management. It is further mentioned that afterwards a crowd of 5000 people collected and raised religious slogans and performed *Kirten.* It is further

mentioned that Abhay Ram Dass, Ram Shukul Dass, Sheo Darshan Dass and 50 or 60 other persons had committed riot, trespassed into the mosque and installed an idol in the mosque and had desecrated the mosque.

For some time before the incident of 23.12.1949 tension between the two communities had increased and Muslims were apprehending the incident. It is evident from the letter of S.P. dated 29.11.1949, letter of D.M. dated 16.12.1949, diary/ report of the D.M., Faizabad of 23.12.1949 and of few subsequent dates. The report also shows that the idol was placed inside the mosque at about 4 a.m. on 23.12.1949 and thereafter under the arrangement made by the D.M. Bhog and Puja of the idol by two or three *pandits* was started and continued.

Under the directions of this Bench, The D.M. Faizabad brought the original file containing *inter alia* the reports regarding the incident of 23.12.1949 of different officers particularly of Sri K.K.K. Nayar, Deputy

Commissioner/ District Magistrate of Ayodhya. It also contains some reports regarding riot of 1934 and report of Special Intelligence Officer, Faizabad of 1961 pertaining to the dispute of two Mahants regarding Puja etc. in the premises in dispute. By order dated 29.05.2009 passed by this Bench the said file was taken on record and was directed to be sealed. The relevant details of the contents of the documents in the file are given below.

One of the documents in the said file is letter dated 29.11.1949 written by S.P. Faizabad, Sri Kripal Singh addressed to Sri Nayar, Deputy Commissioner/ D.M., Faizabad which is reproduced below:

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

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

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

Thereafter, there is the report of Sri K.K.K. Nayar,

D.M. running in scores of pages. The report, which is in the form of diary mentioning the dates and time starts from 23.12.1949, 7 a.m. The first entry is that an ammunition dealer of Faizabad came to the D.M. and informed him that at about 4 a.m. in the morning an idol had been installed inside Babari Masjid and some 800 Bairagis were in the Masjid chanting and worshipping. It is further mentioned that:

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

The surprise does not appear to be genuine as there was a clear mention of such a plan in the above letter of S.P. dated 29.11.1949. Moreover, in the same records there is a letter by Sri Nayar to Sri Govind Narayan, Home Secretary, Government of U.P., Lucknow dated 16.12.1949 in reply to his wireless message dated 08.12.1949, annexing therewith site plan showing the position of Babari Masjid and Sri Ram

Chandra Ji Mandir at Janm Bhoomi. In the said letter, Sri Nayar stated that a magnificent temple at the site was constructed by Vikramaditya and in 16th Century, it was demolished by Babar and the mosque known as Babari Masjid was constructed and in the said process, building material of the temple was used, and that a long time before Hindus were again restored to possession of a site thereinin, i.e. at the corner of two walls. It is further mentioned that "Muslims who go to the mosque pass in front of the temple and there has frequently been trouble over the occasional failure of Muslims to take off their shoes." Paras 4, 5 & 6 and part of para-7 of the report are reproduced below:

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

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

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

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

Thereafter, it is mentioned that some other Muslims were inciting general Muslims. Thereafter, it is mentioned that on 09.12.1949 when Muslims were leaving Babari Masjid after friday prayers under police help, they shouted their famous war cry *"Allah-O-Akbar"* which created considerable resentment in the minds of Hindus. Thereafter, it is mentioned that repeated complaints by Muslims were grossly exaggerated as the situation was entirely in control and police picket was functioning efficiently. Thereafter, it was mentioned that Muslim agitation and truculence could bring the situation out of control. The last paragraph stated as follows:

> *"Lastly I would request that no credence be given to the false reports carried to Lucknow and other places from time to time*

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

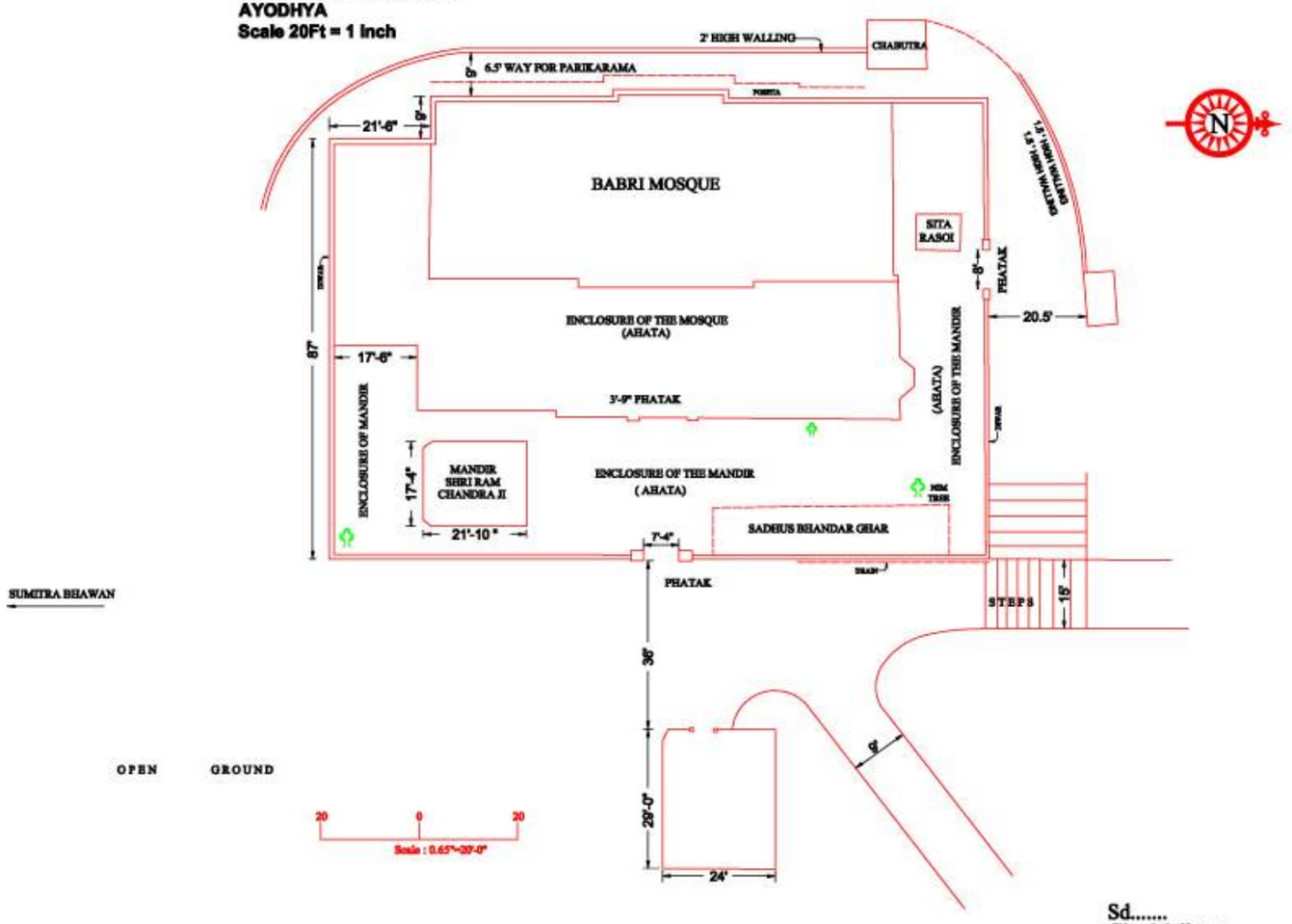
On the one hand in his letter dated 16.12.1949, he requested the State Government not to give credence to the apprehensions of the Muslims regarding safety of the mosque and on the other hand in his diary/ report dated 23.12.1949, he mentioned that the incident came as a great surprise to him.

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

However, it may be mentioned that the S.P. Sri Kripal Singh, who had expressed grave apprehension regarding entry of Hindus in the mosque for installing a

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

SITE PLAN OF
MANDIR SHRI RAM CHANDRA JI
& THE BABRI MOSQUE AT
AYODHYA
Scale 20Ft = 1 inch



Sd.....
City Majistrate
Faizabad

deity (on full moon which was to fall on 30.11.1949) in his earlier letter dated 29.11.1949, retracted his steps and in tune with the D.M. wrote in his letter to the D.I.G. dated 02.02.1950 that the incident of 23.12.1949 could not be predicted. Probably he wanted to avoid any controversy and save his position after realising that placing of idol inside the mosque was a *fait accompli* and almost irreversible.

In the report/ diary of the D.M. it is mentioned that on 23.12.1949 the crowd was controlled by permitting two or three persons to offer *bhog*, i.e. Abhiram Dass, Ram Shukal Dass and Sudarshan Dass. It was also mentioned that removal of idol as desired/ directed by the State Government was not possible and it would lead to slaughter and would be most inadvisable. In the entry of 25.12.1949, it is mentioned that Pooja and Bhog was offered as usual. The noting in the diary/ report of 9.30 a.m. dated 27.12.1949 is that the D.M. outrightly refused to abide by the direction of the Government to

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

The D.M./ Deputy Commissioner, Faizabad wrote two letters dated 26th & 27th December, 1949 to Sri Bhagwan Sahai, Chief Secretary Government of U.P. Copies of the said letters have been filed by the State Government in pursuance of orders passed by this Court on the application of the plaintiffs of the leading case (Suit No.4) for summoning certain documents from the State Government and have been marked as Annexures 66 & 67. In these letters also he insisted that the incident of 23.12.1949 was unpredictable and irreversible. He rather castigated the Government for showing so much interest.

In the report/ diary dated 30.12.1949 it is mentioned that Chief Secretary visited the spot, he was surrounded by the crowd which uttered the loud cries of '*Bhagwan ka Phatak Khol do*.' It is also mentioned that Chief

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

There is a report of 26th July, 1961 in the said records by Special Intelligence Officer in which it is mentioned as follows:

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

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

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

On 29th December, 1949, preliminary order under

Section 145, Cr.P.C. was issued by Additional City Magistrate, Faizabad-cum-Ayodhya and simultaneously attachment order was also passed treating the situation to be of emergency. The disputed site was directed to be given in the receivership of Sri Priya Datt Ram, Chairman, Municipal Board. The complete order is quoted below:-

> *"Whereas I, Markendeya Singh, Magistrate First Class and Additional City Magistrate, Faizabad-cum-Ayodhya, am fully satisfied from information received from Police sources and from other credible sources that a dispute between Hindus and Muslims in Ayodhya over the question of rights of proprietorship and worship in the building claimed variously as Babari Masjid and Janam Bhoomi Mandir, situtate at Mohalla Ram Kot within the local limits of my jurisdiction, is only to lead to a breach of the peace.*
>
> *I hereby direct the parties described below namely:-*
>
> *1) Muslims who are bonafide residents of Ayodhya or who claim rights of proprietorship or*

worship in the property in dispute;

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

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

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

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

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

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

parties to dispute to be served by publication in:-

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

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

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

At the end of the para beginning with 'The attachment' there was a line which was admittedly scored off by the Magistrate himself. The Magistrate admitted it in his reply/ response to the Transfer Application filed in this Court for transfer of the case under Section 145, Cr.P.C. The Magistrate stated that he scored off the sentence before signing the order as it was redundant. The original records of proceedings under Section 145, Cr.P.C. have been summoned in these suits. The cutting does not bear initials. The sentence is readable with great difficulty. It is to the

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

Sri Priya Datt Ram took charge on 05.01.1950 and made inventory of the attached properties. Items No.1 to 14 and 16 to 20 relate to movable properties including idols. Item No.15 relates to building which states the same to be three-domed building along with courtyard and boundary wall and eastern boundary is shown as Chabootara Mandir of Ram Ji under the ownership of Nirmohi Akhara and courtyard of the same mandir. Towards north the boundary mentioned is hata chhatti courtyard and Nirmohi Akhara. The receiver Sri Priya Datt Ram submitted the scheme of management to the D.M. (in accordance with preliminary order) stating that "the most important item of management is the maintenance of Bhog and puja in the condition in which it was carried on when I took over charge".

Muslims admit that since 23.12.1949, they have not been able to offer the prayers in the mosque

(23.12.1949 was Friday).

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

It appears that since 23.12.1949 firstly under the directions of the executive authorities and thereafter under the order of the Magistrate passed in proceedings under Section 145, Cr.P.C. only two or three *Pandits* were permitted to go inside the place where idol was kept to perform religious ceremonies like bhog and puja etc. and general public was permitted to have *darshan* only from beyond the grill-brick wall.

These suits, popularly known as title suits, were

instituted before Civil Judge, Faizabad on 16.01.1950, 17.12.1959, 18.12.961 and 01.07.1989 respectively.

The constructed portion, boundary wall and Ram Chabootara are no more in existence as they were demolished by a large crowd of Hindus on 06.12.1992. After demolition, makeshift structure was constructed by the same people at the place where till then idol had been kept and the idol was kept in the said makeshift structure/ temple.

Pleadings of the Suit:-

Suit No.1:-

The first suit, Other Original Suit (O.O.S.) No.1 of 1989, Regular Suit No.2 of 1950, hereinafter referred to as Suit No.1 was instituted on 16.01.1950. Sri G.S. Visharad the plaintiff claimed in the plaint that he was worshipping the *Janam Bhumi*, details of which were given at the end of the plaint, idol of Bhagwan Sri Ram

Chandra Ji and *Charan Paduka* (foot impression). The boundaries indicated that in the East there was *bhandar* and *Chabootara,* in the north *Sita Rasoi* and *parti* towards West and South. It presumably related to the constructed portion and the inner courtyard. It was further pleaded that for several days due to illness plaintiff was not going to the disputed place, building/ site for worship and on 14.01.1950 when he went there for worship and *darshan*, defendant No.6, i.e. State of U.P., Lucknow and its employees prevented the petitioner from going inside where idols of Sri Ram Chandra and others were placed and that it was done on the undue insistence of defendants 1 to 5 (all Muslims residents of *Ayodhya*, who all have now died and have not been substituted.) It was also mentioned in the plaint that the State and its employees, i.e. respondents No.7 to 9, K.K.K. Naiyar, Deputy Commissioner, Faizabad, Markandey Singh, Additional City Magistrate, Faizabad and Ram Kripal Singh, S.P.

Faizabad, (whose names have now been deleted and only the designations remain) were unduly pressurising the Hindu public for removal of the idols from the existing place. The relief claimed was that it be declared that the plaintiff according to his religion and custom is entitled to do worship and *darshan* of Sri Bhagwan Ram Chandra and others at the place of *Janam Bhumi* by going near the idols without any let or hindrance and defendants No.6 & 9 have no right to interfere in the said rights. Prohibitory injunction was also sought against defendants No.6 to 10 (defendant No.10 is Sunni Central Waqf Board of U.P. added in 1989). Defendant No.11 is Nirmohi Akhara added in 1990. The injunction sought was that defendants No.6 to 10 should not remove the idols of Bhagwan Ram Chandra and others from the place where the idols were and they should also not close the way leading to that and should not interfere in worship and *darshan* in any manner. The original plaintiff Sri G.S. Visharad died and was

substituted by his son Rajendra Singh through order dated 22.02.1986 who also claimed that like his father he was entitled to worship and *darshan*.

Suit No.2 already dismissed as withdrawn:-

It is necessary at this stage to mention that one more suit being Regular Suit No.25 of 1950 (O.O.S. No.2 of 1989) had been filed by Paramhans Ramchandra Das against Zahoor Ahmad and seven others. First five defendants were Muslims, residents of Ayodhya and those five defendants were defendants No.1 to 5 in Suit No.1 also. Defendant No.6 was State of U.P. and defendant No.7 was Deputy Commissioner, Faizabad. Sunni Central Board of Waqfs was added as defendant No.8 in 1989. The plaint was almost in verbatim reproduction of the plaint of Suit No.1. However, in Suit No.2, it was mentioned that notice under Section 80, C.P.C. had been given to defendants No.6 & 7 on 07.02.1950. Valuation was also same and reliefs claimed were also same. Boundaries of the

property in dispute at the bottom of the plaint were also same. The suit was filed on 05.12.1950. However, an application to get the said suit dismissed as withdrawn was filed by the plaintiff on 23.08.1990 which was allowed on 18.09.1990. It appears that Suit No.2 was filed only for the reason that before filing Suit No.1, notice under Section 80, C.P.C. had not been given.

Suit No.3:-

O.O.S. No.3 of 1989, Regular Suit No.26 of 1959, hereinafter referred to as Suit No.3 was filed by *Nirmohi Akhara* through its *Mahant*. After the death of original *mahant*, his *chela* was substituted. Defendant No.1 in the suit was initially Babu Priya Datt Ram, who was appointed as receiver in proceedings under Section 145, Cr.P.C. Thereafter, the new receiver Sri Jamuna Prasad was substituted at his place by order of court of October 1989. Defendants No.2 to 5 were State of U.P., Deputy Commissioner Faizabad, City Magistrate and S.P. Faizabad. Defendant No.6 was Phekku but after

his death he has been substituted by his sons. Defendant No.7 was Mohd. Faiq. Defendant No.8 was Mohd. Achhan Mian. Defendant No.11 Mohd. Farook was added vide order of Court dated 03.12.1991. Defendant No.9 was U.P. Sunni Central Board of Waqfs Lucknow added vide order of Court dated 23.08.1989. One Umesh Chandra Pandey was later on impleaded as defendant No.10 on 28.01.1989 on his own application. The case of plaintiff Nirmohi Akhara was that for a very long time in Ayodhya an ancient *math* and *akhara* of Ramanandi Varagis called Nirmohis existed which was a religious establishment of a public character. It was further pleaded that Janma Asthan now commonly known as Janam Bhumi, the birth place of Lord Ram Chandra at the time of filing of the suit belonged and it had always belonged to Nirmohi Akhara who through its Mahant and Sarbrahkar had always been managing and receiving offerings made there at in the form of money etc. It was also claimed in para-3 of the plaint that

Asthan of Janam Bhumi was of ancient antiquity. A map of the property in dispute was also attached along with the plaint and the entire premises was claimed to be temple. The map was photo copy of plan-II prepared by Vakil Commissioner in Suit no.1. However, the suit was confined to inner courtyard and constructed portion. In Para-4 it was stated that Niromohi Akhara possessed the temple and none others but Hindus were allowed to enter and worship therein. After the demolition on 06.12.1992, plaint was amended. It was asserted that the main temple and other temples of Nirmohi Akharha were also demolished by some miscreants, who had no religion, caste or creed. It was also claimed in para 4-A that Nirmohi Akhara was the panchyati Math of Ramanandi Sect. of Vairagies and as such was a religious denomination and the customs had been reduced in writing on 19.03.1949 by registered deed. It was stated that no *Mohamadan* (Muslim) could or ever did enter in the temple building, i.e. entire disputed

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

charge of the temple along with the articles (which were taken into the custody at the time of attachment) and entrusted the same to the receiver defendant No.1. It was further stated that permission of the court to file the suit against defendants No.6 to 8 in the representative capacity had been obtained under Order 1 Rule 8, C.P.C. The prayer in the suit is that a decree be passed for removal of the defendant No.1 (receiver) from the management and charge of the said temple of Janma Bhoomi and delivering the same to the plaintiff through its *mahant*. The suit was instituted on 17.12.1959.

Suit No.4:-

O.O.S. No.4 of 1989, Regular Suit No.12 of 1961, hereinafter referred to as Suit No.4 was filed by The Sunni Central Board of Waqfs, U.P. and 9 Muslims of Ayodhya, most of whom have died. Some of them have been substituted and some not. First defendant in the suit was Sri G.S. Visharad, plaintiff of Suit No.1, who has been deleted after his death, second Param Hans

Ram Chander Das, third Nirmohi Akhara, fourth Mahant of Nirmohi Akhara, fifth State of U.P., sixth Collector, Faizabad, seventh City Magistrate, Faizabad, eighth S.P. of Faizabad, ninth Priya Dutt (deceased), tenth President, All India Hindu Maha Sabha, eleventh President, Arya Maha Pradeshik Sabha, twelfth President, All India Sanatan, Dharm Sabha, Delhi and some others. Defendant No.21 was Prince Anjum Qadar, President All India Shia Conference, Registered, Qaumi Ghar, Nadan Mohal Road, P.S. Chowk, Lucknow. Defendants 11 to 22 were impleaded after filing of the suit on their own applications.

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

shown by letters A, B, C, D. in the said sketch map. The map is almost a square. Neither it is on scale nor it gives any dimensions. It is divided by dotted lines in two parts. Eastern part is about one third of western part. Towards south-east of eastern part a portion is demarcated dimensions of which are given as 17' X 21' and it is denoted by the words Chabutra Masjid. On all the four sides of A B C D graveyard is shown. It was further mentioned in the said para that land adjoining the mosque on all the four sides was ancient graveyard of the Muslims consisting of the graves of the Muslims who lost lives in the battle between Emperor Babar and the previous Ruler of Ayodhya; that the mosque and the graveyard vested in Almighty; the Mosque had since the time of its construction been used by the Muslims for offering prayers. The Mosque and the graveyard were stated to be situate in Mohalla Kot Rama Chander also known as Ram Kot Town, Ayodhya. Khasara numbers of Mosque and graveyard were given in the Schedule

attached with the plaint showing several numbers. It was also stated that a grant was also given for upkeep and maintenance of the mosque and in the year 1864 Britishers converted the cash Nankar grant into grant of revenue free land situate in village Sholapur and Bahoranpur in the vicinity of Ayodhya. In para-5, it was mentioned that "*In the mosque but outside the main building of the mosque, there was Chabootara 17' x 21' on which there was a small wooden structure in the form of a tent, which is still there.*" In Para-6, it was stated that in 1885, one Mahant Raghubar Dass alleging to be Mahant of Janam Asthan instituted a suit (O.S. No.61/280 of 1885) against the Secretary of State for India in Council and Mohammad Asghar, Mutwalli of Babri Mosque, for permission to build a temple on the Chabootara 17' x 21' mentioned in preceding paragraph of the plaint which suit was dismissed and appeal was also dismissed by the District Judge. In para-6 of the plaint, it is also stated that in the sketch map filed along

with the plaint of suit of 1885, the entire building with the exception of Chabutara 17’ x 21’ was admitted to be mosque and was shown as such.

Thereafter, through amendment, paras No.6-A to 6-F were added in the plaint. The amendment application was allowed on 22.12.1962. In the said paras details of suit of 1885 and the interpretation of the judgment of the said suit according to the plaintiff was given. It was further stated that the suit of 1885 was filed on behalf of the plaintiff Mahant, on behalf of Janam Asthan and on behalf of whole body of persons interested in Janam Sthan. Thereafter, in para-8 of the plaint it was stated that in 1934 during a communal riot in Ayodhya, portions of Babri Mosque were damaged, however, the damaged portions were rebuilt and reconditioned at the cost of the government through a Muslim thekedar. In Para-9, it was stated that under U.P. Muslim Waqfs Act, 1936, Commissioner of Waqfs made a detailed enquiry and held that Babri Masjid was built by Emperor Babar and

hence was a public waqf; copy of the said report was forwarded to the Sunni Central Board of Waqfs which published the said report in the official gazette dated 26.02.1944. It was also stated that no suit challenging the said report was filed by the Hindus. It was further stated that Muslims used to recite prayers in the mosque till 23.12.1949 when a large crowd of Hindus entered the mosque and desecrated that by placing idols inside the mosque. Para-11 (a), which was added through amendment allowed on 29.11.1963, is quoted below:

> "*11(a) That assuming, though not admitting, that at one time there existed a Hindu temple as alleged by the defendants representatives of the Hindus on the site of which of which emperor Babar built the mosque, some 433 years ago, the Muslims, by virtue of their long exclusive and continuous possession beginning from the time the mosque was built and continuing right upto the time some mischievous persons entered the mosque and desecrated the mosque as alleged in the*

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

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

In Para-13 of the plaint, it was stated that as Sri Priya Datt Ram was acting as receiver of the property in dispute, hence Muslims were deprived of their right of offering prayers in the mosque; action of the City Magistrate was described as illegal. Thereafter, in Para-18 of the plaint, it was mentioned that in Suit No.1 temporary injunction order had been passed restraining the defendants of the said suit from removing the idols from the mosque in dispute and from interfering in *puja* etc. of the Hindus as a result of which Hindus were permitted to perform *puja* of the idols placed by them in

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

After demolition of the disputed building on 6.12.1992 various paragraphs were added in the plaint through amendment applications which had been allowed on 25th May, 1st August and 7th August, all of 1995. It was stated through amendment that in violation of order of the Supreme Court dated 15.11.1991 and of this Court of various dates, Babri Masjid was

demolished on 06.12.1992 and thereafter an illegal structure was created on 07.12.1992. Thereafter it was stated that under Muslim Law, a mosque is a place where prayers are offered publicly and it does not require any structure and even an open space could be a mosque, hence even after demolition the land continued to be mosque. Cause of action was stated to have accrued on 23.12.1949. It was also stated in para 23 that “Hindus unlawfully and illegally entered the mosque and desecrated the mosque by placing idols in the mosque, thus causing obstruction and interference with the rights of the Muslims in general of saying prayers.” It was further stated that the injuries caused were continuing injuries and cause of action was renewed de-die-diem. The relief claimed in the suit is for a declaration to the effect that the property indicated by letters A, B, C, D in the sketch map attached to the plaint is public mosque commonly known as Babri Masjid. The next prayer is that in case in the opinion of

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

Written statements in Suit No.4:-

Various defendants filed written statements. Two joint written statements were filed by defendants No.1 & 2, Gopal Singh Visharad and Ram Chandra Das. They pleaded that plaintiffs had no right to make the defendant contest the suit in a representative capacity (Para-19). In Para-23 it was stated that suit was hopelessly barred by time and the Muslims had not been in possession of the property in dispute since 1934 and earlier. Under additional pleas, it was stated that

Muslims were never in possession of the temple called Ram Janam Bhoomi and if ever they were in possession of the so called Babari Mosque, their possession ceased thereon in 1934 and since then Hindus were holding that temple in their possession. In Para-26, it was stated that the temple was a public charitable institution and did not belong to any sect, group, math or individual or Mahanth or any Akhara. Bar of limitation was again pleaded in Paras No.27 & 28. In the second joint written statement filed by defendants No. 1 & 2, which appears to have been filed after amendment of the plaint, most of the pleas related to the Waqf Act and action of Waqf Commissioner recording the property in dispute as Waqf property was termed as illegal. It was also denied that the judgment in the suit of 1885 operated as *res-judicata*. Additional written statement was also filed which also related to Waqf Act and Government of India Act, 1935. The replication was filed by the plaintiffs.

Another joint written statement was filed on behalf

of Nirmohi Akhara and its Mahanth Ragunath Das, defendants No. 3 & 4. They took the same pleas which they had taken in their suit (Suit No.3). They denied that Babar had made any conquest or occupation of any territory in India at the time alleged in the plaint or had constructed a mosque at the disputed place. Existence of graveyard was also denied. After acquisition of property in dispute including some adjoining property, total area 2.7744 acres by State government in the year 1991, assertions in that regard were also made in the written statement through amendment. In Para 13-C, it was stated that temples of Nirmohi Akhara etc. were demolished by some miscreants on 06.12.1992, who had no religion, cast or creed; and that Ram Chabootara whose existence was judicialy recognised in 1885 was in possession of Nirmohi Akhara. Along with the written statement a sketch map of the property in dispute was attached wherein the constructed portion was shown as main temple. It was stated that no

Mohmmadan ever entered the disputed premises at least since 1934. Additional written statement was also filed on behalf of defendants No.3 & 4 and replication was filed to that. In one of the written statements filed on 21.08.1995 details of the suits in between different persons claiming to be Mahanths of Nirmohi Akhara were given.

Defendants No. 5 to 8 (State and its authorities) did not propose to contest the suit and they requested that they might be exempted from the cost. Receiver Priya Datt Ram, defendant no.9 also filed written statement only admitting that small temple with idols, which was referred to as tent shape structure in the plaint belonged to Nirmohi Akhara.

Hindu Mahasabha, defendant No.10 also filed written statement denying everything and stating that passing of U.P. Waqf Act of 1935 (Sic. U.P. Muslim Act 1936) was an atrocity committed by the British Rulers and further stating in para 14 that on regaining

independence original Hindu Law had revived and Constitution itself having been imposed by misrepresentation was voidable *ab-initio (sic.)*. It has also been stated that the property in dispute had always been in possession of Hindus. Thereafter details of acquisition by the Government of India had been mentioned. Various other pleas were also taken and replication to that was also filed by the plaintiffs. Additional written statement was also filed by defendant No.10. In para-2 thereof it was stated that Muslim Law is also subject to the provisions of the Constitution and it is the Constitution, which is supreme.

Defendants No. 13 & 14, Baba Abhiram Das and Pundrik Misra also filed written statement. Baba Abhiram Das thereafter died and was substituted by his chela Dharam Das under order of Court dated 26.04.1968. In the said written statement also it was pleaded that if ever Muslims were in interrupted possession of the falsely called Babri Mosque their

possession ceased thereon in 1934 and since then the temple was in possession of the Hindus and Muslims had not offered any prayer therein. It was also stated that the temple did not belong to any sect, group, math or individual or Mahanth or any Akhara. Plea of bar of limitation had also been taken. It was also pleaded that Britishers reclaimed the entire land in Oudh/Ayodhya and thereafter no fresh grant was made in respect of the property in dispute, hence rights of Muslims, if any, stood lost. Action of Commissioner, Waqf was also challenged.

Dharam Das chela of Baba Abhiram Das after his substitution at the place of deceased Abhiram Das also filed written statement. It was asserted in Para 11-A thereof as follows:

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

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

The date corresponds to 23rd December, 1949. (Baba Abhiram Das in his written statement had not stated that the idol had been installed under the central dome in the early hours of 23.12.1949 by him and some other persons). In Para-13 of the written statement filed by Dharam Das, it was stated that after attachment and appointment of Priya Datt Ram as receiver to manage the worship of the Deity of Bhagwan Sri Ram Lala Virajmaan under the central dome, Muslims were prohibited from entering upon the building premises. Plea of bar of limitation was also taken. In Para-25 it was mentioned that an ancient temple of Maharaja Vikramditya's time existed at Sri Rama Janma Bhumi, and that was demolished by Mir Baqi. In Para-26, it was stated that the premises in dispute is the place where

Bhagwan Sri Ram manifested himself in human form as an incarnation of Bhagwan Vishnu according to the tradition and faith of the Hindus. The written statement of Dharam Das is quite a long one containing several other pleas also to the effect that mosque even if constructed was against the principles of Muslim Law and that attempt to construct mosque did not completely succeed. In Para-27, it was stated that as the story goes, whatever was constructed during the day fell down during the night, and it was only after making certain material concessions in favour of the Hindus for the continued preservation of the place as a place of Hindu worship, that the construction of the three-domed structure was somehow completed by Mir Baqi. Additional written statement was also filed by Dharam Das after demolition of the premises on 06.12.1992 to the effect that what was demolished was not a mosque (Babari Mosque).

Defendant No.17, Ramesh Chandra Tripathi also

filed additional written statement. However, there is no other written statement on record. It was stated in the said additional written statement that idols were not placed in the night of 22nd /23rd December, 1949 but were in existence from times immemorial and what was demolished on 06.12.1992 was not a mosque and the Babar was invader and had no legal authority to construct any Masjid.

Mahanth Ganga Das, defendant No.18 also filed written statement supporting the case of defendant No.3, Nirmohi Akhara.

Written statement on behalf of defendant No.20, Madan Mohan Gupta, convener of Akhil Bhartiya Sri Ram Janam Bhoomi Punarudhar Samiti, Bhopal was also filed. He got himself impleaded by filing application, which was allowed on 23.10.1989. Sri P.N. Mishra, learned counsel, argued the case on his behalf for about 15 days and also filed detailed written arguments.

It was pleaded in the written statement of defendant

No.20 that Babar neither demolished any temple nor constructed any mosque and Britishers wrongly gave currency to the said idea. It was also stated that in case there had been any mosque then Tulsi Das or Beveridge or Laiden should have mentioned it. It was also stated that Ayodhya Mahatim was also silent about any mosque. Further statement was that until 1855 there was no mosque, entire premises in dispute was temple. In the alternative it was pleaded in para-41(6) that even if Babar constructed mosque, it was no mosque in the eye of Muslim Law. In the same para, it was also mentioned that subsequently Aurangzeb also desecrated the shrines of Ayodhya. However, the last reference was not related to the premises in question. Reference to Babar in respect of demolition of temple was also made in paras 42, 47, 49 of the written statement and para-4 of additional written statement.

Suit No.5

This suit was filed by Bhagwan Sri Ram Birajman at Sri Ram Janam Bhoomi Ayodhya, Asthan Sri Ram Janam Bhoomi, Ayodhya and Sri Deoki Nandan Agarwala, senior advocate and retired Judge, High Court, resident of Allahabad. Plaintiffs No.1 & 2 were stated to be represented by next friend Deoki Nandan Agarwala, plaintiff No.3. Sri Deoki Nandan Agarwala died and was substituted by Sri T.P. Verma. Thereafter, he expressed his inability to continue to act as next friend of plaintiffs No.1 & 2 due to his ill health and age hence under orders of Supreme Court Sri Triloki Nath Pandey has been appointed as next friend of plaintiffs No.1 and 2 by this Court through order dated 18.03.2010. Defendants in the said suit are Rajendra Singh son of Gopal Singh Visharad, the original plaintiff of Suit No.1. Defendant No.2 is Param Hans Mahant Ram Chandra plaintiff of Suit No.2 (which has now been got dismissed as withdrawn), defendant No.3 is Nirmohi

Akhara, plaintiff of Suit No.3. Defendant No.4 is Sunni Central Board of Waqfs. Defendants No. 5 & 6 are Mohammad Hashim and Mohammad Ahmad. In total, there are 27 defendants including all the parties of previous suits. The other defendants include State of U.P., Collector, City Magistrate and S.S.P., Faizabad, Presidents of All India Hindu Mahasabha, All India Arya Samaj and All India Sanatan Dharma Sabha, Ram Janam Bhoomi Nyas, Shiya Central Board of Waqfs. Some defendants have been deleted.

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

Janam Bhoomi, prepared by Sri Shiv Shankar Lal as Commissioner in Regular Suit No.2 of 1950 (Suit No.1) and his report are being annexed as Annexures I, II & III. Thereafter, history of earlier suits has been given. Thereafter, it has been stated that through orders dated 04.08.1951 and 06.01.1964 all the four suits were consolidated and Suit No.12 of 1961 (Suit No.4) was made the leading case. Thereafter, it has been stated that interim injunction order was passed in Suit No.1 on 16.01.1950 and 19.01.1950, which was confirmed on 03.03.1951. Thereafter, it has been mentioned that 25 years have passed since framing of the issues but hearing has not commenced. Thereafter, it is mentioned that expectation was that the suits would be decided earlier and *darshan* and *puja* would be permitted from near the Deities and not from behind the barrier. Thereafter, it is mentioned in Para-13 that through order of District Judge, Faizabad dated 01.02.1986, barriers, locks and brick-grill wall were removed. Thereafter, it is

mentioned that Plaintiff Deities and their devotees are extremely unhappy with the prolonged delay of the hearing of the suits and that devotees of the Plaintiff Deities are desirous of having a new temple constructed. Thereafter, it is mentioned that a trust has been created on 08.12.1985, which was registered on the same day through which Jagadaguru Ramanandacharya Swami Shivaramacharya was declared as first trustee for life and other trustees were also appointed including Paramhans Ram Chandra Das. It was stated that plaintiff No.3 was also appointed as trustee. Thereafter in Para-18 of the plaint, it is mentioned that the earlier suits were inadequate as neither presiding Deity nor Asthans, i.e. plaintiffs No.1 & 2 of the suit were impleaded in the earlier suits, hence fresh suit is being filed. It is also stated that events which have occurred during last four decades and many material facts and points of law require to be pleaded from the view point of the Plaintiffs Deities. Thereafter, it

is stated that the place itself being birth place of Lord Ram is object of worship as Deity (para-20.) Illustration of Kedarnath has been given where there is no idol and where an undulating surface of stone is worshipped as Deity. Next example given is of Vishnupad Temple at Gaya, which does not contain any idol and said place is believed to have born the footprints of Bhagwan Vishnu, hence it is worshipped as Deity. Thereafter, it has been stated that the place, Sri Ram Janam Bhoomi is worshipped as Deity, which is a juridical person and the actual performance of *puja* of such an immovable Deity by its devotees is not essential for its existence as a Deity (para-22 of the plaint). In Para-23, it is mentioned that there was an ancient temple of Maharaja Vikramditya's time at Sri Ram Janam Bhoomi, which was destroyed partly by Mir Baqi, a commander of Baber's hordes and an attempt was made to raise a mosque there and for the construction of the mosque almost entire material used was of the temple including

its *kasauti* pillars with figures of Hindu Gods and Goddesses carved on them. Thereafter, it is mentioned that neither there is any minaret nor place for storage of water for *Vazoo* in the alleged mosque in question. It is also stated that many battles were fought by the Hindus, the last one of which occurred in 1855. Thereafter, reference to Nevill's Faizabad Gazetteer, 1928 Edition has been made and the following portion thereof has been quoted in para-23:

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

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

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

Thereafter, further portion of the Gazetteer has been quoted regarding the open fight of 1855 in respect of Hanumaan Garhi, which is at a distance of less than a *kilometer* from the premises in dispute. Thereafter, in Para-24, which consists of several sub-paragraphs, it has been stated that the structure like the disputed one could not be mosque even according to the Muslim Law. In Para-26, it is mentioned that at any rate no prayers have ever been offered in the building in dispute. Thereafter mention has been made about riot of 1934

when substantial parts of the domes of the building were destroyed and thereafter rebuilt by the government. It has further been stated in Para-26 that thereafter, no one dared to offer Namaz therein. Thereafter, it has been stated in Para-27 of the plaint as follows:

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

Thereafter, lodging of FIR on 23.12.1949 and initiation of proceedings under Section 145, Cr.P.C. have been mentioned. Details of different receivers have also been mentioned. In Para-29 of the plaint, it has been mentioned that Plaintiff Deities were not made parties to any earlier proceedings. Thereafter, it has

been mentioned in Paras 35-H to 35-U, added under different orders of Court, on amendment applications, passed in 1995, that a movement was initiated for construction of new temple building and thereafter fact of demolition on 6.12.1992 has been mentioned. Thereafter, reference has been made to the judgment of the Supreme Court reported in **Dr. M. Ismail Farooqi Vs. Union of India, 1994 (6) S.C.C. 360**. In Para-36, it has been stated that cause of action for the suit has been accruing from day to day particularly since recently when plans of Temple reconstruction are being sought to be obstructed by violent action from the side of certain Muslim communalists. The prayer in the suit is for a decree of declaration to the effect that the entire premises of Sri Ram Janama Bhoomi at Ayodhya as described and delineated in Annexures I, II and III belong to the Plaintiff Deities and for a perpetual injunction against the defendants prohibiting them from interfering with, or raising any objection to or placing any

obstruction in the constructin of the new Temple building at Sri Ram Janama Bhoomi Ayodhya, after demolishing and removing the existing buildings and structures etc. Annexures I, II & III to the plaint are two maps and the report of Sri Shiv Shanker Lal, who was appointed as Commissioner in Suit No.1 to inspect and give report in respect of the building in dispute and the adjoining locality. The report is dated 19.05.1950. The first map is of the disputed premises and the second map is of the disputed premises along with the adjoining locality.

Some important stages of the suits and related matters

Consolidation of Suits and their withdrawal to High Court:-

State of U.P. filed an application in 1987 in this High Court under Section 24, C.P.C. seeking withdrawal of the four suits, which were pending at that time before Munsif Sadar Faizabad to this High Court. By order

dated 06.01.1964 passed by Civil Judge, Faizabad, the four suits had already been consolidated and Regular Suit No.12 of 1961 (Suit No.4) had been made the leading case, on the agreement of all the parties. After increase in pecuniary jurisdiction of Munsif the suits were transferred to the Court of Munsif Sadar, Faizabad. The transfer/withdrawal application was registered as Civil Miscellaneous Case No.29 of 1987. Meanwhile, Suit No.5 had been filed before civil judge Faizabad on 01.07.1989 and an application for transfer/withdrawal of the said suit by its plaintiffs had also been filed in this High Court in the form of Civil Miscellaneous Case No.11 of 1989. Both the transfer applications/ miscellaneous cases were disposed of on 10.07.1989. The suits were withdrawn to the High Court and directed to be heard by a Full Bench.

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

In Suit No.3, application under Order 1 Rule 8,

C.P.C. was allowed on 21.12.1959 and plaintiff was permitted to sue Muslim parties in the suit, i.e. defendants No.6, 7 & 8 in their representative capacity on behalf of entire Muslim community. In suit No.4 on 08.08.1962, an order was passed permitting the plaintiffs to sue in their representative capacity on behalf of the Muslims and defendants No. 1 to 4 were also permitted to be sued in the representative capacity on behalf of Hindus.

Suit No.5 was filed on 01.07.1989 with an application by plaintiff No.3 to permit him to sue on behalf of plaintiffs No.1 & 2 as their next friend. On the same date, the application was allowed and it was also directed that until some other person filed any objection, plaintiff No.3 was permitted to conduct the suit as next friend of plaintiffs No.1 & 2. An application to recall the said order was rejected by this Court on 20.04.1992 on the ground that some of the defendants particularly Muslim parties had objected that plaintiff No.3 could not

represent plaintiffs No.1 & 2, hence that point/ issue might be decided either as preliminary issue or along with final judgment in the suit.

However, Suit No.5 is not representative suit. No application for permission to sue any defendant(s) in representative capacity was ever filed. There is no such assertion in the plaint also.

In Suit No.1, defendants No.1 to 5 (Muslim parties) filed an application that plaintiff be directed to sue in representative capacity (on behalf of all Hindus). The plaintiff opposed the application and stated that he was suing in his personal capacity. The Civil Judge through order dated 27.10.1951 expressed the opinion/ gave advice to the plaintiff to sue in representative capacity but rejected the application of the defendants on the ground that plaintiff could not be compelled in that regard.

Temporary Injunction:-

In suit No.1, an ad-interim injunction order was

passed on 16.01.1950 to the effect that “issue interim injunction in the meanwhile as prayed”. It was modified on 19.01.1950. The order of 19.01.1950 is quoted below:

> *“The opposite parties are hereby restrained by means of temporary injunction to refrain from removing the idols in question from the site in dispute and from interfering with puja etc. as at present carried on. The order dated 16.01.1950 stands modified accordingly.”*

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

Appeal under Order 43 Rule 1(r), C.P.C. filed from the said order being F.A.F.O. No.154 of 1951 was dismissed by this Court on 26.04.1955.

Receivers:-

Sri Priya Datt Ram, who had been appointed as receiver in proceedings under Section 145, Cr.P.C.

through order dated 29.12.1949 died on 08.08.1970. He remained receiver until his death. The Magistrate, thereafter, through order dated 20.10.1970 appointed Sri K.K. Ram Varma as receiver. Thereafter, different parties in the suits filed applications for appointment of civil court receiver. Once Sri Sriram Mishra was appointed as receiver by the Civil Court through order dated 17.11.1970, however that order was challenged through miscellaneous appeal, which was allowed and matter was remanded. Thereafter, on 18.03.1975, Civil Judge, Faizabad appointed Sri Madan Mohan Dubey as receiver. That order was also challenged (in F.A.F.O. no.181 of 1975 renumbered as F.A.F.O. 17 of 1977) and matter was again remanded through order dated 23.07.1987. However, due to interim orders passed in the aforesaid appeals, Sri K.K. Ram Verma continued to act as receiver. After decision of last appeal some other receivers were also appointed until 06.12.1992 when constructed portion of the premises in dispute was

demolished. Thereafter under order of the Supreme Court given in the judgment reported in **Dr. M. Ismail Farooqi Vs. Union of India, 1994 (6) SCC 360**, Union of India took over as statutory receiver.

Opening of lock:-

Until 31.01.1986, the position which was brought in existence on 23.12.1949 was continuing and two or three *Pandits* were deputed to perform religious rites like Bhog and Puja etc. and general public was permitted to have *darshan* from beyond the brick-grill wall. It is mentioned in the diary/ report of Mr. K.K.K. Nayar, D.M./ D.C. Faizabad dated 25.12.1949, 5 p.m. & 7.20 p.m. and dated 27.12.1949, 9.30 a.m. at two places that his plan was to get the property in dispute attached under Section 145, Cr.P.C. and he had with great difficulty persuaded the Sadhus and general Hindus and they had agreed that except two or three priests no one will go near the newly placed idol and general Hindus will have *darshan* from beyond the grill/ railing until civil

court decided the matters of right and title.

One Umesh Chand Pandey, advocate (who was neither a party till then nor appearing for any of the parties in any of the suits) filed an application on 25.01.1986 that public must be permitted to have *darshan* from inside and locks placed on brick-grill wall should be removed. At that time, miscellaneous appeal against order of the Civil Judge, Faizabad appointing Sri Madan Mohan Dubey as receiver (FAFO No.17 of 1977) was pending in this High Court and the file of the leading case, i.e. Suit No.4 had been summoned therein. In the aforesaid FAFO (which had initially been filed at Allahabad in the form of FAFO No.181 of 1975), operation of order dated 18.03.1975 appointing Sri M.M. Dubey as receiver had been stayed. However it appears that at Faizabad every one was under confusion that proceedings of the suit had been stayed. In any case as the file of leading case had been summoned in the aforesaid FAFO, hence proceedings

were practically held up. On the application of Sri Pandey, the learned Munsif where the suits were pending passed an order on 28.01.1986 to the effect that order could be passed on the file of the leading case i.e. R.S. no. 12 of 1961 and as the file of the said suit had been summoned by the High Court in F.A.F.O. no. 17 of 1977 hence the application should be put up on the next date already fixed. Against this order, appeal was filed before the District Judge, on 31.01.1986 (Misc appeal no. 8 of 1986).

In the appeal only surviving defendants no.6 to 9 i.e. State of U.P., Deputy Commissioner, City Magistrate and S.P. Faizabad were made parties. Plaintiff as well as defendants 1 to 5 had already died and no substitution application was pending in the suit. Mohamad Hashim one of the plaintiffs in suit no.4 came to know about filing of the appeal hence on 01.02.1986 he filed an application for being impleaded as party in the appeal. The appellant opposed the said application.

The learned District Judge Sri K.N. Pandey held that Mohamad Hashim was neither a necessary nor a proper party and rejected his application on 01.02.1986 itself. Thereafter, appeal was allowed on the same date i.e. on 01.02.1986. In the judgment it is mentioned that D.M. and S.P. both were present in Court and D.M. had clearly stated that there were two locks on the brick grill wall/railing. It is further mentioned that D.M. and S.P. both clearly admitted that if the locks were opened still there would be no problem to maintain peace. The statement of D.M. and S.P. given in Hindi was quoted in Roman in the judgment dated 01.02.1986 by the learned District Judge. Ultimately, the learned District Judge held that keeping both the doors in the grill/ railing was unnecessary, irritant to the applicant and the other members of the public and it was an artificial barrier in between the idols and the devotees. Ultimately, appeal was allowed and respondents were directed to open the locks on the gates O-P in the brick

and grill/railing. It has been stated in the writ petition challenging the said order (writ petition no. 746 of 1996 which is also being decided along with these suits) that the final judgment in the appeal was passed at 4.15 pm. Within minutes the locks were opened. The opening of the lock catapulted the dispute at the national (rather international) level. Prior to that no one beyond Ayodhya and Faizabad was aware of the dispute. The order dated 01.02.1986 triggered a chain reaction leading to the demolition of the structure on 06.12.1992.

As the suits itself are being finally decided hence there is no need to analyse minutely the correctness or otherwise of the order dated 01.02.1986 which is only an interim order. All interim orders come to an end with the suit. However, the manner in which the order was passed requires to be considered and analysed. Learned counsel for the petitioner in writ petition directed against the said judgment (dated 01.02.1986) has also argued that even though with the decision of

suit writ petition will become infructuous and in any case there did not remain much to be decided in the writ petition after 06.12.1992, however, the argument regarding utter disregard of procedure in passing the said order should be considered by this Court.

There were following glaring defects in the procedure adopted in the appeal and the order passed therein:-

(a) The order of the Munsif dated 28.01.986 was not appealable absolutely nothing had been decided thereby.

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

(c) Plaintiff of suit no.1 in which the impugned order was passed had died and no substitution application had been filed till then. Accordingly the suit was dormant and nothing could be done therein.

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

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

(f) The learned district Judge in his order dated 01.02.1986 did not say that how appeal by an stranger or application by him before the trial Court was maintainable.(It has already been noticed that suit no.1 was not in the representative capacity).

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

1986 and was allowed on the next day i.e. 1st February 1986. At least the reason for this extreme haste is not mentioned in the judgment.

It is a sound principle that not only justice must be done but it must also appear to be done. Before passing the judgment dated 01.02.1986 the learned District Judge first buried the second limb of the principle (appearance of justice) very deep. Probably the learned judge was of the view that he would not be able to pass the order (which obviously, according to him, must have been a just order) in case he bothered about the appearance of justice being done. This obviously shook the faith of the parties affected by the said judgement which was the real tragedy.

Acquisition by State of U.P.:-

State of U.P. acquired the premises in dispute along with some adjoining area (total area 2.77 acres) for 'development of tourism and providing amenities to Pilgrims in Ayodhya' through notifications under

Sections 4 & 6 of Land Acquisition Act dated 07.10.1991 and 10.10.1991 respectively. Said acquisition was challenged through six writ petitions leading one being writ petition no.3540 (MB) of 1991 Mohd. Hashim vs. State of U.P. and others. In the said writ petitions, interim order was passed in October, 1991 staying the operation of the notifications. Ultimately, writ petitions were allowed by a full bench on 11.12.1992 (after five days of the demolition of constructed portion of the premises in dispute) and notifications were quashed accepting the arguments of most of the petitioners that the purpose of notifications was destruction of the mosque and construction of a temple hence they were malafide.

Demolition:-

As stated in the introduction part on 06.12.1992, a very large crowd of Hindus (Kar Sewaks) gathered at the spot and demolished constructed portion, boundary wall and Ram Chabutra etc. situated in the premises in

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

The demolition caused almost unprecedented communal disturbance and divide. In independent India only the frenzy and madness which was unleashed immediately after independence and partition of the country could surpass the magnitude of the situation triggered by the demolition. The demolition was by design, as asserted by some, or it was sudden, spontaneous and unplanned and was a result of out burst of pant up feelings of the mob which had gathered there for *kar seva* (religious service), as asserted by others? This controversy is foreign to these suits and is not covered by any of the issues, hence nothing need be said in this judgment regarding this aspect.

One may not fully agree with Marx in his interpretation of history relating that only and only with

economics. However, it will be perilous to deny even partial truth in the said approach. At the time of the demolition our economy was in shatters. 'The physical mortgaging of India's gold reserves in 1990 epitomized the bankruptcy of an economic system.' (Swapan Dasgupta in The Telegraph dated 17.9.2010). The rupee had drastically been devalued twice in quick succession.

Those who are interested in socio economic interpretation of history may recall that about two years before recommendations of Mandal Commission for reserving 27% government jobs for O.B.C. had been accepted and implemented.

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

equivalent of storming of the Bastille and it remained a turning point in Indian history when history refused to turn. (Again from same editorial page article of S. Dasgupta.) We could again sing with fresh charm Sare jahan Se Achcha Hindustan hamara, particularly its following verses.

''मजहब नही सिखाता आपस मे बैर रखना ।
हिन्दी है हम, वतन है हिन्दोस्तां हमारा ।।
यूनान–ओ–मिò–ओ–रोमा सब मिट गए जहां से ।
अब तक मगर है बाकी नामों–निशां हमारा ।।
कुछ बात है कि हस्ती मिटती नही हमारी ।
सदियो रहा है दुश्मन दौरे–जमा हमारा ।।''

(also quoted by Justice R.S. Dhavan in **A.C. Datt vs. Rajiv Gandhi AIR 1990 Allahabad 38**)

Acquisition by Central Government:-

Thereafter, Central Government acquired a large area of about 68 acres including the premises in dispute through Acquisition of Certain Areas at Ayodhya Act,

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

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

Supreme Court decided the matter through judgment reported in **Dr. M. Ismail Farooqi Vs. Union of India, 1994 (6) SCC 360**. Supreme Court refused to answer the reference. Supreme Court struck down Section 4(3) of the Acquisition Act, 1993 which had directed abatement of all pending suits, as unconstitutional and invalid and upheld the validity of the remaining Act. The result was that these suits, which

had abated in view of the aforesaid provision of the Acquisition Act 1993 stood revived. It was also directed that the vesting of the disputed area described as inner and outer courtyard in the Act (in dispute in these suits) in the Central Government would be as the statutory receiver with the duty for its management and administration requiring maintenance of *status quo*. It was further directed that the duty of the Central Government as the statutory receiver would be to handover the disputed area in accordance with Section 6 of the Act in terms of the adjudication made in the suits for implementation of the final decision therein as it was the purpose for which the disputed area had been so acquired. It was also clarified that disputed area (inner and outer courtyards) alone remained the subject matter of the revived suits. The claim of Muslims regarding adjoining alleged graveyard is therefore not left to be decided.

Impleadment applications rejected:-

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

Sl.No.	Suit No.	Moved on	Moved by	Rejected on
1	O.O.S. No.4 of 1989	04.12.1990	Sri Brahmajeet S/o Nihal	17.01.1991
2	O.O.S. No.4 of 1989	20.01.1995	Maharshi Awadhesh President, Rashtriya Party	25.05.1995
3	O.O.S. No.4 of 1989	13.02.1995	Maharshi Awadhesh	02.08.1995
4	O.O.S. No.4 of 1989	03.01.1995	President, R.N. Nationalist party and Avami Leeg of Nation	28.03.1995
5	O.O.S. No.4 of 1989	09.01.1990	Hindu Mahasabha to implead Union of India as Party	09.01.1990
6	O.O.S. No.4 of 1989	12.08.1991	Maharshi Awadhesh	30.09.1991
7	O.O.S. No.4 of 1989	31.03.1992	Maharshi Awadhesh	20.04.1992
8	O.O.S. No.4 of 1989	02.02.1992	Gopi Nath	15.04.1992
9	O.O.S. No.4 of 1989	31.03.1992	S.C. Pandey Adv.	31.03.1992
10	O.O.S. No.4 of 1989	31.03.1992	Maharshi Awadhesh	07.04.1992
11	O.O.S. No.4 of 1989 O.O.S. No.3 of 1989 O.O.S. No.5 of 1989	05.02.1993 ..... 18.01.1995 15.01.1993 03.01.1995 03.01.1995 25.07.1989 12.12.1994	Moved by Different Parties at various dates for impleadment of Union of India as Parties in Different Suits pending before Hon'ble Court	25.05.1995 In forty pages and minority view in sixteen pages
12	O.O.S. No.5 of 1989	13.12.1990	Buddhist	17.01.1991
13	O.O.S. No.5 of 1989	11.08.1989	Molana Sajjad Ahmad	19.08.1989
14	O.O.S. No.5 of 1989	14.08.1989	Farooque Ahmad	14.08.1989
15	O.O.S. No.5 of 1989	25.08.1989	Sri Prem Chandra Gupta	23.10.1989

16	O.O.S. No.5 of 1989	25.08.1989	Mandir Raksha Committee & Sri Bal Krishna Sharma	23.10.1989
17	O.O.S. No.5 of 1989	06.05.1992	Maharshi Awadhesh founder President of Rashtriya Party	07.05.1992
18	O.O.S. No.5 of 1989	09.10.1995 for transposing Defendants 2, 14, 21 as Plaintiffs No.4, 5 & 6 respectively	Sri Ram Janam Bhumi Nyas through Ashok Singhal	19.03.1996
19	O.O.S. No.5 of 1989	07.10.1996	Sri Ismail Farooqui	27.11.1996
20	O.O.S. No.3 of 1989	25.08.1989	Sri Prem Chandra Gupta	23.10.1989
21	O.O.S. No.3 of 1989	25.08.1989	Sri Sri Mandir Raksha Samiti	23.10.1989
22	O.O.S. No.1 of 1989	21.04.2003	Sri Akhil Bhartiya Chhatriya Mahasabha	29.04.2003
23	O.O.S. No.5 of 1989	18.02.2003	Sri Rajeshwari Sri Sita Ram Waqts through Manager Kunwar Shivendra Pratap Sahi	18.02.2003
24	O.O.S. No.4 of 1989	04.04.2003	Buddha foundation through Udai Raj	07/04/03
25	O.O.S. No.4 of 1989	07.04.1978	Sri Ram Janambhumi Dharmarth Prabandhkari 'Samiti' Sri Ram Janambhumi Ramkot Ayodhya and Sri Raghunandan Saran	09.12.1991
26	O.O.S. No.4 of 1989	16.04.1988	Sarpanch Ramswaroop Das Chela Raghubar Das, panch Bhaskar Das and Rajaram	09.12.1991
27	O.O.S. No.4 of 1989	08.11.1988	Kashiteesh Chandra Mishra	19.11.1988
28	O.O.S. No.4 of 1989	10.05.1989	Sri Ram Janambhumi Sewa Samiti	23.10.1989
29	O.O.S. No.4 of 1989	26.08.1996	Dr. Mohd. Ismail Farooqui (Order in 6 pages)	27.11.1996
30		19.11.1988 24.12.1988	Sri Chhitij Chandra Mishra Ad. Sri Ashok Kumar Pandey Ad. (for impleadment)	09.01.1989 (III-ADJ, Faizabad)
31		27.01.1969	Sri R.N. Verma and Sri Har Prasad	30.04.1969
32		25.10.1968	Mahant Raghubar Prasad	30.04.1969
33		30.01.1971	Sri Prem Singh Sri Uma Dutt Mishra	13.02.1971
34		27.03.1989	Sri Ramjan Armatandavi	09.12.1991
35		20.02.1988	Sri Ram Bhadra Pathak	09.12.1991

Issues:-

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

Suit No.4

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 the

affirmative -

(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?

(b) 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?

Issue No. 1-B(a)

Whether the building existed at Nazul plot no. 583 of the Khasra of the year 1931 of Mohalla Kot Ram Chandra known as Ram Kot, City Ayodhya (Nazul estate?) Ayodhya? If so its effect thereon)"

Issue No. 1-B(b) :-

Whether the building stood dedicated to almighty God as alleged by the plaintiffs?

Issue no. 1-B (c):-

Whether the building had been used by the members of the Muslim community for offering prayers

from times immemorial ? If so, its effect?

Issue No. 2:-

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

Issue No. 3:-

Is the suit within time?

Issue No. 4:-

Whether the Hindus in general and the devotees of 'Bhagwan Sri Ram in particular have perfected right of prayers at the site by adverse and continuous possession as of right for more than the statutory period of time by way of prescription as alleged by the defendants?

Issue No. 5(a):-

Are the defendants estopped from challenging the character of property in suit as a waqf under the administration of plaintiff No.1 in view of the provision of

5(3) of U.P. Act 13 of 1936 ? (This issue has already been decided in the negative vide order dated 21.4.1966 by the learned Civil Judge)

Issue No.5(b):- Has the said Act no application to the right of Hindus in general and defendants in particular, to the right of their worship?

Issue No.5(c):- Were the proceedings under the said Act conclusive? (This issue has already been decided in the negative vide order dated 21.04.1966 by the learned civil Judge.)

Issue No.5(d):- Are the said provision of Act XIII of 1936 ultra-vires as alleged in written statement?

(This issue was not pressed by counsel for the defendants, hence not answered by the learned Civil Judge, vide his order dated 21.04.1966).

Issue No.5(e):- Whether in view of the findings recorded by the learned Civil Judge on 21.04.1966 on issue no.17 to the effect that, “No valid notification under section 5(1) of the Muslim Waqf Act (No. XIII of 1936)

was ever made in respect of the property in dispute", the plaintiff Sunni Central Board of Waqf has no right to maintain the present suit?

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

Issue No. 6:-

Whether the present suit is a representative suit, plaintiffs representing the interest of the Muslims and defendants representing the interest of the Hindus?

Issue No. 7:-

7(a) 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?

Issue No.7(b):- Whether Mohammad Asghar was the Mutwalli of alleged Babri Masjid and did he contest the suit for and on behalf of any such mosque?

Issue No. 7(c):- Whether in view of the judgment in the said suit, the members of the Hindu community, including the contesting defendants, are estopped from denying the title of the Muslim community, including the plaintiffs of the present suit, to the property in dispute? If so, its effect?

Issue No. 7(d):- Whether in the aforesaid suit, title of the Muslims to the property in dispute or any portion thereof was admitted by plaintiff of that suit? If so, its effect?

Issue No. 8:-

Does the judgment of case No.61/280 of 1885, Mahant Raghubar Dass Vs. Secretary of State and others, operate as res judicata against the defendants in suit?

Issue No. 10:-

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

Issue No. 11:-

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

Issue No. 12:-

Whether idols and objects of worship were place inside the building in the night intervening 22nd and 23rd December, 1949 as alleged in paragraph 11 of the plaint or they have been in existence there since before? In either case effect?

Issue No. 13:-

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

Issue No. 14:-

Have the Hindus been worshipping the place in

dispute as Sri Ram Janam Bhumi or Janam Asthan and have been visiting it as a sacred place of pilgrimage as of right since times immemorial? If so, its effect?

Issue No. 15:-

Have the Muslims been in possession of the property in suit from 1528 A.D. Continuously, openly and to the knowledge of the defendants and Hindus in general? If so, its effect?

Issue No. 16:-

To what relief, if any, are the plaintiffs or any of them, entitled?

Issue No. 17:-

Whether a valid notification under section 5(1) of the U.P. Muslim Waqf Act No.XIII of 1936 relating to the property in suit was ever done? If so, its effect?

(This issue has already been decided by the learned Civil Judge by order dated 21.04.1966)

Issue No. 18:-

What is the effect of the judgment of their Lordships

of the Supreme Court in Gulam Abbas and others Vs. State of U.P. and others, A.I.R.. 1981 Supreme Court 2198 on the finding of the learned Civil Judge recorded on 21st April, 1966 on issue no. 17?

Issue No. 19 (a):-

Whether even after construction of the building in suit deities of Bhagwan Sri Ram Virajman and the Asthan Sri Ram Janam Bhumi continued to exist on the property in suit as alleged on behalf of defendant No. 13 and the said places continued to be visited by devotees for purposes of worship? If so, whether the property in dispute continued to vest in the said deities?

Issue No. 19 (b):-

Whether the building was land-locked and cannot be reached except by passing through places of Hindu worship? If so, its effect?

Issue No. 19 (c):-

Whether any portion of the property in suit was used as a place or worship by the Hindus immediately

prior to the construction of the building in question? If the finding is in the affirmative, whether no mosque could come into existence in view of the Islamic tenets at the place in dispute?

Issue No. 19 (d):-

Whether the building in question could not be a mosque under the Islamic Law in view of the admitted position that it did no have minarets?

Issue No. 19 (e):-

Whether the building in question could not legally be a mosque as on plaintiffs own showing it was surrounded by a grave-yard on three sides.

Issue No. 19 (f):-

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

Issue No. 20 (a):-

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

Issue No. 20 (b):-

Whether there was a Mutwalli of the alleged Waqf and whether the alleged Mutwalli not having joined in the suit, the suit is not maintainable so far as it relates to relief for possession?

Issue No. 21:-

Whether the suit is bad for non-joinder of alleged deities?

Issue No. 22:-

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

Issue No. 23:-

If the waqf Board is an instrumentality of state? If

so, whether the said Board can file a suit against the state itself?

Issue No. 24:-

If the waqf Board is state under Article 12 of the constitution ? If so, the said Board being the state can file any suit in representative capacity sponsoring the case of particular community and against the interest of another community.

Issue No. 25:-

“Whether demolition of the dispute structure as claimed by the plaintiff, it can still be called a mosque and if not whether the claim of the plaintiffs is liable to be dismissed as no longer maintainable?”

Issue No. 26:-

“Whether Muslims can use the open site as mosque to offer prayer when structure which stood thereon has been demolished?”

Issue No. 27:-

Whether the outer court yard contained Ram

Chabutra, Bhandar and Sita Rasoi? If so whether they were also demolished on 06.012.1992 along with the main temple?"

Issue No. 28:-

"Whether the defendant No. 3 has ever been in possession of the disputed site and the plaintiffs were never in its possession?"

Suit No.1

Issue No. 1 :-

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

Issue No. 2 :-

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

Issue No. 3 :-

Has the plaintiff any right to worship the 'Charan Paduka' and the idols situated in the place in suit?

Issue No. 4 :-

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

Issue No. 5(a) :-

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

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

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

Issue No. 5(d):- Does the decision in same bar the present suit by principles of Res judicita and in any other way.

Issue No. 6 :-

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

Issue No. 7 :-

Have the Muslims been in possession of the property in suit from 1528 A.D. Continuously, openly and to the knowledge of plaintiffs and Hindus in general? If so its effect?

Issue No. 8 :-

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

Issue No. 9 :-

Is the suit barred by provision of Section (5)(3) of the Muslim Waqfs Act (U.P. Act 13 of 1936)?

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

Issue No. 9 (b):- Were the proceedings under the said act referred to in written statement para 15 collusive? If so, its effect?

Issue No. 9 (c):- Are the said provisions of the U.P. Act 13 of 1936 ultra-vires for reasons given in the statement

of plaintiff's counsel dated 9.3.62 recorded on paper No. 454-A?

Issue No. 10 :-

Is the present suit barred by time?

Issue No. 11(a) :-

Are the provisions of Section 91 C.P.C. applicable to present suit? If so is the suit bad for want of consent in writing by the advocate general?

Issue No. 11(b) :- Are the rights set up by the plaintiff in this suit independent of the provisions of Section 91 C.P.C. ? If not its effect?

Issue No. 12 :-

Is the suit bad for want of steps and notices under order 1 Rule 8 C.P.C. ? If so its effect?

Issue No. 13 :-

Is the suit No.2 of 50 Shri Gopal Singh Visharad Vs. Zahoor Ahmad bad for want of notice under section 80 C.P.C.?

Issue No. 14 :-

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

Issue No. 15 :-

Is the suit bad for non-joinder of defendants?

Issue No. 16 :-

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

Issue No. 17 :-

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

Suit No.3

Issue No. 1 :-

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

Issue No. 2 :-

Does the property in suit belong to the plaintiff No.1?

Issue No. 3 :-

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

Issue No. 4 :-

Are plaintiffs entitled to get management and charge of the said temple?

Issue No. 5 :-

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

Issue No. 6 :-

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

Issue No. 7(a) :-

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

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

Issue No. 8 :-

Have the rights of the plaintiffs extinguished for want of possession for over 12 years prior to the suit?

Issue No. 9 :-

Is the suit within time?

Issue No. 10(a) :- Is the suit bad for want of notice u/s80C.

Issue No. 10(b) :- Is the above plea available to contesting defendants?

Issue No. 11 :-

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

Issue No. 12 :-

Are defendants entitled to special costs u/s 35 C.P.C.?

Issue No. 13 :-

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

Issue No. 14 :-

Is the suit not maintainable as framed?

Issue No. 15 :-

Is the suit property valued and Court-Fee paid sufficient?

Issue No. 16 :-

Is the suit bad for want of notice u/s 83 of U.P. Act 13 of 1936?

Issue No. 17 :-

(added by this Hon'ble Court order dated 23.2.96)

“Whether Nirmohi Akhara, Plaintiff, is Panchayati Math of Rama Nand sect of Bairagis and as such is a religious denomination following its religious faith and per suit according to its own custom.”

Suit No.5

Issue No. 1 :- Whether the plaintiffs 1 and 2 are juridical persons?

Issue No. 2 Whether the suit in the name of deities described in the plaint as plaintiffs 1 and 2 is not

maintainable through plaintiff no.3 as next friend?

Issue No.3(a):- Whether the idol in question was installed under the central dome of the disputed building (since demolished) in the early hours of December 23,1949 as alleged by the plaintiff in paragraph 27 of the plaint as clarified on 30.04.92 in their statement under order 10 Rule 2 C.P.C.?

Issue No.3(b):- Whether the same idol was reinstalled at the same place on a chabutra under the canopy?

Issue No. 3(c):-

"Whether the idols were placed at the disputed site on or after 6.12.92 in violation of the courts order dated 14.8.1989, 7.11.1989 and 15.11.91.

Issue No. 3(d):-

If the aforesaid issue is answered in the affirmative whether the idols so placed still acquire the status of a deity?"

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

been in existence under the “Shikhar” prior to 6.12.92 from time immemorial as alleged in paragraph-44 of the additional written statement of defendant no.3?

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

Issue No. (6):- Is the plaintiff No.3 not entitled to represent the plaintiffs 1 and 2 as their next friend and is the suit not competent on this account?

Issue No. (7):- Whether the defendant no. 3 alone is entitled to represent plaintiffs 1 and 2, and is the suit not competent on that account as alleged in paragraph 49 of the additional written statement of defendant no. 3?

Issue No. (8):- Is the defendant Nirmohi Akhara the “Shebait” of Bhagwan Sri Rama installed in the disputed structure?

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

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

contained in paragraph-24 of the plaint?

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

Issue No. (13):- Whether the suit is barred by limitation?

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

Issue No. 15:-

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

Issue No. 16:-

Whether the title of plaintiff 1 & 2, if any, was extinguished as alleged in paragraph 25 of the written

statement of defendant no.4? If yes, have plaintiffs 1 & 2 re-acquired title by adverse possession as alleged in paragraph 29 of the plaint?

Issue No. 18:-

Whether the suit is barred by section 34 of the Specific Relief Act as alleged in paragraph 42 of the additional written statement of defendant no.3 and also as alleged in paragraph 47 of the written statement of defendant no.4 and paragraph 62 of the written statement of defendant no.5?

Issue No. 19:-

Whether the suit is bad for non-joinder of necessary parties, as pleaded in paragraph 43 of the additional written statement of defendant No.3?

Issue No. 20:-

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

defendant no. 3?

Issue No. 21:-

Whether the idols in question cannot be treated as deities as alleged in paragraphs 1,11,12,21,22,27 and 41 of the written statement of defendant no.4 and in paragraph 1 of the written statement of defendant no.5?

Issue No. 22:-

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 the plaint? If so, its effect?

Issue No. 23:-

Whether the Judgment in suit no.61/280 of 1885 filed by Mahant Raghuber Das in the Court of Special Judge, Faizabad is binding upon the plaintiffs by application of the principles of estoppel and res judicata as alleged by the defendants 4 and 5?

Issue No. 24:-

Whether worship ha been done of the alleged

plaintiff deity on the premises in suit since time immemorial as alleged in paragraph 25 of the plaint?

Issue No. 25:-

Whether the Judgment and decree dated 30th March 1946 passed in suit no.29 of 1945 is not binding upon the plaintiffs as alleged by the plaintiffs?

Issue No. 26:-

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

Issue No. 27:-

Whether the plea of suit being bad for want of notice under section 80 C.P.C. can be raised by defendants 4 and 5?

Issue No. 28:-

Whether the suit is bad for want of notice under section 65 of the U.P. Muslim Waqfs Act, 1960 as alleged by defendants 4 and 5? If so, its effect.

Issue No. 29:-

Whether the plaintiffs are precluded from bringing

the present suit on account of dismissal of suit no.57 of 1976 (Bhagwan Sri Ram Lala Vs. state) of the Court of Munsif Sadar, Faizabad.

Issue No. 30:-

To what relief, if any, are plaintiffs or any of them entitled.

Issues relating to graveyard alleged to exist around the premises in dispute (i.e. issue No.1-A, 1-B(d) of Suit No.4 and Issue No.17 of Suit No.5) were deleted by order of this Court dated 23.02.1996 in view of Supreme Court judgment in **Dr. M. Ismail Farooqi Vs. Union of India, 1994 (6) S.C.C. 360** wherein the Supreme Court confined the dispute only to the premises in dispute. Issue No.12 in Suit No.5 relating to shifting of the mosque (if the structure in question was held to be a mosque) was deleted through the order of the same date, i.e. 23.02.1996.

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

through order of Court dated 22/25.05.1990.

Oral Evidence:-

Oral evidence was recorded after transfer of the suits to this Court from 24.07.1996 to 23.03.2007. After enforcement of 1999 & 2002 Amendments in C.P.C, w.e.f. 01.07.2002, most of the oral evidences were recorded by the Commissioner/ O.S.D. of this Court, who is of the rank of A.D.J./ D.J.

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

The cross examination of Sri Deoki Nandan Agarawal original plaintiff No.3 of Suit No.5, O.P.W.-2 could not be completed due to his death.

All the witnesses may broadly be divided into three categories. The witnesses of first category were

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

Documentary Evidence:-

Thirty four documents filed by plaintiffs of Suit No.1 have been exhibited as Ex.-1 to Ex.-34. Seventy three documents filed by defendants of this suit have been exhibited as Ex. A-1 to Ex. A-72 (one document has been exhibited as Ex. A-3A). Twenty one documents filed by plaintiff of Suit No.3 have been exhibited as Ex.-1 to Ex.-21.

One hundred and twenty eight documents filed by plaintiffs of Suit No.4 have been exhibited as Ex.-1 to Ex.-128. The documents consist of books, gazetteers or their parts, certified copies of pleadings and judgments of Suit of 1885, of other suits and of different applications and executive orders, extracts of revenue

records etc.

A.S.I. Report:-

Through orders dated 01.08.2002 & 23.10.2002, Geo Radiological Survey of the ground beneath the premises in dispute was *suo-motu* ordered to be held. The said order was passed, in spite of opposition of almost all the parties, under Order XVI Rule 14, Order XVIII Rule 18, Order XXVI Rule 10-A and Section 151, C.P.C. G.P.R. Survey was conducted by Tojo-Vikas International Pvt. Ltd. It submitted the report on 17.02.2003. According to the report some anomalies were observed. Accordingly, the court through order dated 05.03.2003 directed excavation by A.S.I. The A.S.I. after excavation submitted the report on 25.08.2003. The last para of Summary of Results of the report is quoted below:

> *" The Hon'ble High Court, in order to get sufficient archaeological evidence on the issue involved "whether there was any temple/structure*

which was demolished and mosque was constructed on the disputed site" as stated on page 1 and further on p. 5 of their order dated 5 march 2003, had given directions to the Archaeological Survey of India to excavate at the disputed site where the GPR Survey has suggested evidence of anomalies which could be structure, pillars, foundation walls, slab flooring etc. which could be confirmed by excavation . Now, viewing in totality and taking into account the archaeological evidence of a massive structure just below the structure and evidence of continuity in structural phases from the tenth century onwards upto the construction of the disputed structure alongwith the 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, lotus motif, circular shrine having pranala (waterchute) in the north, fifty pillar bases in association of the huge structure, are indicative of remains which are distinctive features found associated with the temples of north India."

Hearing:-

One of the members of this full bench Hon'ble S.R. Alam, J. took oath as Chief Justice of M.P. High Court on 20.12.2009. The then Chief Justice of this Court through order dated 21.12.2009 constituted fresh bench by inducting me therein. The newly constituted bench started hearing the arguments afresh w.e.f. 11.01.2010. The arguments were heard almost non-stop till 26.07.2010 covering 90 working days. On 26.07.2010 following order was passed:

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

from 11.01.2010.

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

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

Judgment reserved and will be delivered in the second fortnight of September, 2010. Exact date for

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

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

Put up tomorrow in Chamber of the Senior Judge among us (S.U. Khan, J.) for the above purpose."

Thereafter on 27.07.2010 following order was passed:

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

of the Bench in case some possibility of compromise emerges.

Since 02.08.2010, this Bench would be constituted in Chamber for preparation and dictation of judgment."

Thereafter by order dated 08.09.2010 specific date 24.09.2010 was fixed for delivery of judgment. Due to stay order by the Supreme Court passed on 23.09.2010 the judgment could not be pronounced on the said date. Supreme Court dismissed the Special Leave Petition on 28.09.2010. Thereafter, 30.09.2010 was fixed for pronouncement of judgment.

The following learned counsel argued the matters for different parties as indicated below:

<u>List of the Learned Counsel who have argued in all the suits</u>
(From:- 11.01.2010 to 26.07.2010)

Sl. No.	Name of the Counsel	Parties Name
1	Sri Z. Jilani, Adv.	In O.O.S. No.4 of 1989 for the Plaintiffs (The Sunni Central Board of

		Waqfs U.P.)
2	Sri M.A. Siddiqui, Adv.	For Plaintiff No.7 (Mohd. Hashim)
3	Sri R.L. Verma, Adv. Assisted by Sri Tarunjeet Verma, Adv.	For Def. No.3 (Nirmohi Akhara)
4	Sri P.N. Mishra, Adv. Assisted by Km. Ranjana Agnihotri, Adv.	For Def. No.20 (Ram Janambhumi Punrudhar Samiti) convenor Sri M.M. Gupta
5	Sri M.M. Pandey, Adv.	For Def. No.2/1 (Mahant Suresh Das)
6	Sri Ravi Shanker Prasad, Adv. Assisted by Sri M.M. Pandey, Adv.	For Def. No.2/1 (Mahant Suresh Das)
7	Sri M.M. Pandey, Adv.	For Def. No.2/1 (Mahant Suresh Das)
8	Sri P.R. Ganapathi Iyer, Sr. Adv. Assisted by Sri Rakesh Pandey, Adv.	For Def. No.13/1 (Mahant Dharam Das)
9	Sri M.M. Pandey, Adv.	For Def. No.2/1 (Mahant Suresh Das)
10	Sri Rakesh Pandey, Adv.	For Def. No.13/1 (Mahant Dharam Das)
11	Sri H.S. Jain, Adv.	For Def. No.10 (Hindu Mahasabha)
12	Sri Z. Jilani, Adv.	For plaintiffs in rejoinder argument
13	Sri M.A. Siddiqui, Adv.	For Plaintiff No.7 Mohd. Hashim (in rejoinder)
14	Sri A.K. Pandey,	For Plaintiff (Sri Rajendra Singh)

	Adv.	in O.O.S. No.1 of 1989
15	Sri Z. Jilani, Adv.	For Def. No.10 (The Sunni Central Board of Waqfs)
16	Sri Tarunjeet Verma, Adv.	For Plaintiff (Nirmohi Akhara) in O.O.S. No.3 of 1989
17	Sri R.L. Verma, Adv. Assisted by Sri Tarunjeet Verma, Adv.	For Plaintiff (Nirmohi Akhara) in O.O.S. No.3 of 1989
18	Sri Z. Jilani, Adv. and Sri M.A. Siddiqui, Adv.	For Def. No.9 (The Sunni Central Board of Waqfs)
19	Sri K.N. Bhat, Sr. Adv. Assisted by Sri M.M. Pandey, Adv. & Sri A.K. Pandey, Adv.	For Plaintiffs (Bhagwan Sri Ram Lala Virajman at Ayodhya & others in O.O.S. No.5 of 1989)
20	Sri M.M. Pandey, Adv. Assisted by Sri A.K. Pandey, Adv.	For Plaintiffs in O.O.S. No.5 of 1989
21	Sri Ved Prakash, Adv.	For Plaintiffs in O.O.S. No.5 of 1989
22	Sri R.L. Verma, Adv. Assisted by Sri Tarunjeet Verma, Adv.	For Def. No.3 (Nirmohi Akhara) in O.O.S. No.5 of 1989
23	Sri H.S. Jain, Adv.	For Def. No.11 (Hindu Mahasabha)
24	Sri Z. Jilani, Adv.	For Def.No.4 (The Sunni Central Board of Waqfs)
25	Sri M.A. Siddiqui, Adv.	For Def.No.5 (Mohd. Hashim)
26	Sri J.S. Jain, Adv.	For Def. No.11 (Hindu Mahasabha)

FINDINGS

I- Limitation

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

Suit no. 4 and 3

Almost all the defendants in suit no. 4 particularly defendant no.20 represented by Sri P.N.Misra learned counsel have argued that the suit is barred by limitation. The position of limitation is exactly same in suit no.3 also. Suit No.4 was instituted on 18.12.1961 and Suit No.3 on 17.12.1959.

The argument of Mr. P.N. Misra learned counsel is that as premises in dispute had been attached in proceedings under Section 145,146 Cr.P.C. on 29.12.1949 and had been directed to be given under the receivership of Sri Priya Datt Ram hence relief for possession could not be asked for. In this regard it has

further been argued that as after attachment or after appointment of receiver, the property is custodia legis and supuardar/receiver/court holds the property for the benefit of the true owner hence it is not permissible to seek relief of possession against private/contesting defendant and the only relief which may be asked for is of declaration for which limitation was six years under article 120 of Limitation Act 1908 (misc. article). In this regard reliance has mainly been placed upon two authorities one of Privy council reported in ***Raja Rajgan Maharaja Jagatjit Singh Vs. Raja Partab Bahadur Singh AIR 1942 Privy Council 47*** and the other of Supreme Court reported in ***Deo Kuer V. Sheo Prasad Singh AIR 1966 Supreme Court 359*** (paragraphs 5 and 6).

As far as Supreme Court authority is concerned, it was dealing with the proviso to Section 42 of old Specific Relief Act of 1877 according to which relief for declaration alone was not to be granted if consequential

relief might be asked for but had not been asked for. Supreme Court held that if property is attached in proceedings under Section 145 Cr.P.C., it is custodia legis and it is not necessary in the suit to ask for possession. However, in the authority of the Supreme Court no question of limitation was involved. In the said judgment it was also observed that attachment under Section 145 Cr.P.C. was continuing and no final decision had been taken in the said proceedings even until the decision by the Supreme Court. Obviously it was an attachment pending decision on the ground of emergency.

In **Shanti Kumar Panda vs. Shakuntala Devi A.I.R. 2004 S.C. 115** also same thing has been held. Para 13 thereof is quoted below :-

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

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

In the authority of the Privy council the magistrate had passed a final order on 06.04.1932 in the proceedings under Section 145/146 Cr.P.C., on the applications and agreement of the parties, that pending the decision of Civil Court the land should remain attached and that the proceedings should in the mean time be consigned to records, the land to be released to the party who succeeded in the Civil suit. Attachment order on the ground of emergency had been passed on 23.02.1932. The Privy Council held that thereafter the attaching Magistrate/Tehsildar held the property for true owner. Privy Council also held *"that the suit which was subsequently instituted was rightly confined to a mere declaration of title and was neither in form nor substance a suit for possession of immovable property"*. (The suit had been instituted on 23.01.1933).

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

On the basis of the above authorities, Sri P.N. Misra, learned counsel has strenuously argued that the only suit which could be filed was for declaration. It has further been argued, on the basis of the Privy Council authority, that the limitation for the said suit was six years under article 120 of the old limitation Act and the Limitation started from the date of the attachment order i.e. 29.12.1949.

The first point being clearly covered by the above authorities is accepted. However, the second point relating to start of limitation from 29.12.1949, and no other date is not accepted for the following reasons.

When the suits (except suit no.5) were instituted Limitation Act 1908 (old Limitation Act) was in force. It was replaced by Limitation Act 1963 (new Limitation Act). However, by virtue of Section 31(b) of the new Limitation Act, nothing in the new Limitation Act shall

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

Under the old Limitation Act it was provided under article 120 that time to institute a suit for which Limitation had not been provided in any other article would be six years. The corresponding article under the new Limitation Act is article 113 according to which limitation to file suit is three years from the date when the right to sue accrues, for any suit for which no period of limitation is provided elsewhere in the schedule. Under the new Limitation Act article 58 specifically covers general suits for declaration and provides three years limitation therefor. However, there was no corresponding article for general suits for declaration

under the old Limitation Act hence such suits were covered by misc. article i.e. article 120 providing six years limitation.

First Reason:-

The last order which was passed in proceedings under Section 145 Cr.P.C. in the instant matter was on 30.07.1953. (except the order of 1970 appointing new receiver after the death of the receiver originally appointed). It has been noticed earlier that in suit no.1 ad interim temporary injunction had been granted by the Civil judge on 16.01.1950 which was clarified by order dated 19.01.1950 and the temporary injunction order had been confirmed after hearing both the parties through order dated 03.03.1951.

The learned City Magistrate in his order dated 30.07.1953 passed in Section 145 Cr.P.C. proceedings held as follows in its concluding part :-

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

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

I, therefore, order that the file under Section 145 Cr.P.C. be consigned to records as it is and will be taken out for proceedings further when the temporary injunction is vacated."

From the above quoted portion of the order of the Magistrate it is quite clear that neither proceedings under Section 145 Cr.P.C. had been dropped nor finalized. This position was further clarified by the learned Magistrate through another order dated 31.07.1954 which was passed on an application dated 22.07.1954 filed by Gopal Singh Visharad plaintiff of suit no.1. The prayer in the application was that entire file of the case under Section 145 Cr.P.C. be preserved and not weeded out until such time as it was summoned

by the Civil Court even though under the Rules time might come for its weeding out. The concerned clerk had noted on the application that according to Awadh Criminal Rules file would be due for weeding after 31.12.1956. The following order was passed by the Magistrate on 31.07.1954:

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

When the learned Magistrate had recorded in his order dated 30.07.1953 that no breach of peace could occur, he should have dropped the proceedings under Section 145(5) Cr.P.C. Which is quoted below:

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

In any case if after passing of preliminary order and attachment order considering the case to be of

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

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

(In the case before the Supreme Court, suit had not been filed)

In Dharam Pal vs. Srimati Ram Sri A.I.R. 1993 S.C. 1361 it has been held in the middle of para-5 as follows:

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

the subject of dispute."

Accordingly, Magistrate had absolutely no jurisdiction to keep the matter pending indefinitely. (Technically even till date proceedings u/s 145 Cr.P.C. are pending). He should have either dropped the proceeding on the ground that Civil Court had granted confirmed temporary injunction order or should have passed some final order. In any case Magistrate should have dropped the proceedings or passed some other final order after 26.04.1955 when miscellaneous appeal FAFO no. 154 of 1951 filed against confirmed temporary injunction order dated 03.03.1951 was dismissed by the High Court.

The course adopted by the Magistrate is not warranted by any of the provisions contained in Sections 145 and 146 Cr.P.C. The course adopted by the Magistrate on the one hand confused the parties regarding start of limitation and on the other hand kept

the limitation suspended. The use of the word 'starting' by the Magistrate in its last order dated 30.07.1953 (“it is no use starting proceedings in this case under Section 145 Cr.P.C.”) confounded the confusion.

The above authority of the Privy Council (**Raja Rajgan Maharaja Jagatjit Singh Vs. Raja Partab Bahadur Singh, AIR 1942 Privy council 47)** is not applicable as firstly in that case final order had been passed in proceedings under Section 145 Cr.P.C. hence that might be treated to be the starting point for limitation. Secondly the Privy Council only held that article 120 applied. It did not say any thing regarding starting point for limitation.

Normally suit for declaration is filed after final order under Section 145 Cr.P.C. However, it can not be said that until final order is passed by the Magistrate in proceedings under Section 145 Cr.P.C., suit for declaration can not be filed. In the above authority of the Supreme Court of Deo Kuer, (A.I.R. 1966 S.C. 359) the

suit for declaration had been filed after attachment pending decision (situation being of emergency) by the Magistrate. The proceedings under Section 145 Cr.P.C. had not been finalised even until decision by the Supreme Court still the Supreme Court did not hold the suit to be premature.

It is, therefore quite clear that in case the Magistrate had passed some final order either after dismissal of the appeal directed against the temporary injunction order (when there remained no possibility of vacation of temporary injunction, as referred to in the last sentence of the order dated 30.07.1953 passed by the Magistrate) or on any other date, it would have provided fresh starting point for the purposes of limitation for filing suit for declaration.

Second Reason:-

If in proceedings under Section 145/146 Cr.P.C. between two parties, magistrate passes an order to the

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

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

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

Accordingly, even if it is held that suit no.4 & 3 are barred by limitation, still rights and entitlement of the contesting parties have to be decided in suit no.1 which is undisputedly within time. If the title of plaintiff of suit no.4 i.e. Sunni Central Waqf Board which is also defendant no. 10 in suit no.1 or of plaintiff of suit no.3 i.e. Nirmohi Akharha which is also defendant no.11 in suit no. 1 is decided in suit no.1, that would be sufficient for the purposes of Section 146(1) Cr.P.C.

Third Reason :-

The demolition of the constructed portion of the premises in dispute on 06.12.1992, acquisition of the premises in dispute and adjoining area by the Central Government and the judgment of the Supreme Court in

Doctor Ismail Farooqui's case [1994 (6) S.C.C. 360] changed the whole scenario and gave a fresh starting point for the purposes of limitation. Even if it is assumed that the remedy of all the parties except of plaintiff in suit no.1 stood barred due to lapse of limitation still his/its rights subsisted. Section 27 of New Limitation Act (28 of old Limitation Act) did not extinguish the right to property as due to attachment a suit for possession could not be filed. Section 28 of Limitation Act, 1908 is quoted below:

> *"**28. Extinguishment of right to property.-** At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."*

Demolition of structure was more severe violation of the right in respect of the constructed portion than its attachment. For suits for declaration such situation gives a fresh starting point for limitation. Suits for declaration were provided for by Section 42 of Specific Relief Act

1877 (corresponding provision in Specific Relief Act 1963 is Section 34), which is quoted below:-

> *"**Section-42.** Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such ask for any further relief:*
>
> *Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.*
>
> *Explanation :- A trustee of property is a "person interested to deny" a title adverse to the title of some one is not in existence, and for whom, he would be a trustee."*

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

However, plaintiff may opt to file suit for declaration even after mildest possible invasion or threat. In this regard reference may be made to **Jitendra Nath Ghose and Ors. v. Monmohan Ghose and Ors. AIR 1930 PC 193** . In the said case decree for sale had been passed. Thereafter, execution application was filed. Privy Council held that starting point of limitation for filing suit for declaration by third party transferee was date of filing of execution application and not the date of decree. Of course, if the third party transferee had opted to file the suit for declaration after passing of the decree it would have been quite maintainable and not premature. Similarly in **Mst. Rukhmabai v. Lala Laxminarayan and Ors. AIR 1960 S.C. 335 (para 30 a)** it has been held that for a suit for declaration that several trust deeds etc. were sham the cause of action arose when Commissioner reached the spot to take measurements for preparation of final decree of partition pursuant to preliminary decree of partition which had

been passed on the basis of trust deeds etc. and not at the time of filing of the partition suit or passing of preliminary decree therein. However, in that case also in case plaintiff had opted to file suit for declaration either after the execution of the trust deeds etc. or after filing of partition suit or after the said suit was decreed the suit would have been fully maintainable and not premature.

Fourth Reason:-

The Magistrate/Supardar/Receiver is not expected to hold the property indefinitely after attachment in proceedings under Section 145/146 Cr.P.C. In such situation liberal view of adjudication/ determination of right by the competent Court will have to be taken otherwise uncertainty will be perpetuated. The law can not countenance such situation.

In this regard reference may be made to **Ellappa Naicken vs. Lakshmana Naicken A.I.R. 1949 Madras 71,** which placed reliance upon an earlier Division

Bench authority of the same High Court reported in **Rajah of Venkatagiri v. Isakapalli Subbiah, 26 Madras 410.** In the said case, final order was passed under Section 145/146 Cr.P.C. directing the property to remain under attachment on the ground that magistrate was not in a position to decide that which party was in possession either at the time of the preliminary order or two months before that. Thereafter a suit was filed by one of the parties which was dismissed in default, restoration application was also dismissed and appeal against the said order was also dismissed. It was held that even though no further remedy of suit for declaration was available still any party could file a suit for mesne profits at any time which would not be covered by Article 120 of the Limitation Act (providing 6 years limitation) and in such suit for recovery of mesne profits title will have to be decided and thereupon magistrate would be obliged to deliver possession in favour of that party. In the said authority it has also

been held that as suit for possession could not be filed hence Section 28 Limitation Act (old) was not attracted and right to property was not lost. Under Section 28 of the old Limitation Act (27 of the new act) only where suit for possession is not filed within time, remedy as well as right is lost. However, it is not so in other cases i.e. suit for declaration, where only remedy may be lost but not the right.

In suit no. 4 the prayers are for declaration that the property in suit is mosque, for delivery of possession of mosque if deemed necessary in the opinion of the Court and for a direction to the statutory receiver (i.e. Union of India as per direction of Supreme Court in Ismail Farooqui's case, 1994) to handover the property to the plaintiff have been made. In the prayer clause no prayer for injunction restraining the defendant from interfering in the plaintiff's right and right of other Muslims to offer prayer therein has been made. However, in para 13 of the plaint it has been stated that due to attachment in

proceedings under Section 145 Cr.P.C. and appointment of receiver, Muslims are deprived of their legal and constitutional rights of offering prayers in the said Mosque. Similarly, in para 18 it has been stated the result of the injunction (temporary) order passed in suit no.1 is that while Hindus are permitted to perform *Puja* of the idols placed by them in the Mosque, Muslims are not allowed even to enter the Mosque. In para 21-B of the plaint added in 1995 it has been stated that even after demolition of the Mosque building by the miscreants the land over which the building stood is still Mosque and Muslims are entitled to offer prayers thereon. In para 23 of the plaint dealing with accrual of cause of action firstly it has been stated that cause of action arose on 23.12.1949 since when Hindus were causing obstruction and interference with the rights of the Muslims in general particularly of saying prayers in Mosque. It has further been stated in the said para that injuries so caused are continuing injuries.

Accordingly, the prayer clause read with other allegations in the plaint may be taken to include prayer for declaration to the entitlement of offering prayers continuously and for direction/ injunction in that regard. In this regard reference may be made to a Full Bench Authority of Alllahabad High Court reported in **Faqira and another Vs. Hardewa and others, AIR 1928 All 172 (FB)** wherein it has been held that if by reading the plaint as a whole, relief not specifically asked for may be granted then it shall be granted.

Similarly in **Bhagwati Prasad Vs. Chandramaul, AIR 1966 S.C. 735** it has been held that if a plea is not specifically made out but is covered by some issue by implication then it shall be considered. In the said case plaintiff had described the defendant as tenant. However, defendant denied the tenancy and asserted an arrangement which was found by the Court to be in the nature of licence. The Supreme Court held that eviction of defendant was permissible as according to

his own saying his possession was with leave and licence of the plaintiff even though plaintiff had not taken any such plea.

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

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

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

permitted it in the name of maintaining law and order. Thereafter the City Magistrate while passing preliminary order under Section 145, Cr.P.C. on 29.12.1949 directed for the same, however afterwards the said sentence was scored off. In the original record the sentence is there in one complete line and it has been scored off by drawing a line over the words. However the cutting is not even initialled or signed hence its date cannot be ascertained. Sri P.D. Sharma, the receiver, who was required to submit scheme for management for approval, submitted the scheme to the D.M., Faizabad (undated) mentioning therein that *"The most important item of management is the maintenance of the Bhog and Puja in the condition in which it was carried on when I took over charge."* It is admitted to all the parties that since 23.12.1949 (if not before that) the Puja and Bhog continued in the constructed portion of the premises in dispute and no Muslim offered or could offer Namaz therein. Accordingly, the aforesaid view of the

Privy Council of continuing wrong (Section 23 of Limitation Act, 1908) applies with greater force in Suit No.4. It also applies to suit No.3 as according to its plaintiff Nirmohi Akhara, its right of managing the Puja etc. is constantly being denied.

Fifth reason

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

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

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

as irrespective of dismissal of suit on the ground of delay, determination of the rights and entitlement to possession will be there.

In this regard reference may be made to **Ases Kumar Misra vs. Kisssori Mohan A.I.R. 1924 Calcutta 812** . In the said case the facts were that in proceedings under Section 145/146 Cr.P.C. in between a private person and a society magistrate concluded the proceedings by holding that he was unable to decide the possession hence attachment should continue. Thereafter some third party filed suit for recovery of money against some members of the society, suit was dismissed but findings of ownership was recorded against the society. Even on the basis of this finding magistrate handed over the property to the other party (private person) in proceedings under Section 145 Cr.P.C. even though he was not a party in the civil suit. The High Court fully approved the said approach and

held that it was in accordance with law.

<u>Suit no. 5:-</u> (Deity perpetual minor?)

As far as suit no.5 is concerned (instituted on 01.07.1989) the plaintiffs of this suit are not parties in any other suit however, in view of my above finding that due to wrong order passed by the magistrate dated 30.7.1953 limitation remained suspended (first reason), and for the fifth reason it is held that this suit is also within time.

However, at this juncture one argument of learned counsel for the plaintiff of suit no.5 requires to be noticed. The argument is that deity being perpetual minor, is entitled to the benefit of Sections 6(1) or 7 of Limitation Act 1963 which are quoted below:-

> *"**6(1)** Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the*

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

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

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

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

certainly be clothed with an ad hoc power of representation to protect its interest." (para 10)

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

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

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

pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment; see Radhabai v. Chimnaji, (1878) ILR 3 Bom 27, Zafaryab Ali v. Bakhtawar Singh, (1883) ILR 5 All 497 Chidambaranatha Thambirarn v. P. S. Nallasiva Mudaliar, 6 Mad LW 666 : (AIR 1918 Mad 464), Dasondhay v. Muhammad Abu Nasar, (1911)

ILR 33 All 660 at p. 664: (AIR 1917 Mad 112) (FB), Radha Krishnaji v. Rameshwar Prasad Singh, AIR 1934 Pat 584, Manmohan Haldar v. Dibbendu Prosad Roy, AIR 1949 Cal 199."

In my opinion the observation that an idol is in the position of a minor is confined only to the aspect that just as minor himself cannot file suit and during his minority if a suit is to be filed, it can be filed only through his guardian similarly idol cannot file suit by itself and it can be filed only through someone else who is normally to be a Shabait and in exceptional cases any other worshipper. The above observation cannot be extended to mean that for all other purposes also an Idol is a minor (a perpetual minor).

Section 6(1) of the Limitation Act deals only with three types of persons i.e. minor, idiot and insane. It cannot be applied to any other person natural or juridical. Moreover Section -6 grants a fresh period of limitation 'after the dis-ability has ceased.' Accordingly

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

If the argument advanced by learned counsel for the plaintiff of suit no.5 is accepted then it will mean that against the property of the idol **(debutter property)** no one can mature title by adverse possession, (acquire title through prescription) for the reason that by virtue of Section 27 of new Limitation Act (Section 28 of old Limitation Act) title matures through prescription only at the determination of the period for instituting a suit for possession of any property. If idol is a perpetual minor then limitation will never come to an end (determine).

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

12 years, the debutter property is lost through adverse possession and the person in adverse possession acquires right through prescription under Section 28, Old Limitation Act (Section 27 of the New Limitation Act).

AIR 1926 All 392 (DB), Chitarmal Vs. Panchu Lal

In this authority, it has specifically been held that Section 7 of Old Limitation Act (Section 6 of New Limitation Act) is not applicable to the case of an idol as it cannot be deemed to be perpetual minor for the purposes of limitation. That was a case, which was filed for recovery of possession of immovable property of an idol illegally alienated by the *Shabait*. In the said authority, the opinion of learned author of Treatise on Hindu Law (Sastry's Hindu Law) at page 726, V Edition was not accepted and it was held that the said opinion had not been followed by any High Court. Reliance for the said proposition was placed upon the Privy Council

authorities reported in **Jagdindra Vs. Hemantah, 31 Indian Appeals 203** and **Damodar Das Vs. Adhikari Lakhan Das, 37 Indian Appeals 147.**

Similar view has been taken in **Parkasdas Vs. Janki Ballabha, AIR 1926 Oudh 444**, which, incidentally, was related to a property in the same locality, i.e Mohalla Ram Kot Ayodhya, where property in dispute in the instant suits is situate. In the said case it was not specifically held that idol being minor was entitled to the benefit of Sections 6 & 7 of Limitation Act, however it was held that debutter property could be lost by adverse possession and was actually found lost as such in the said case. Reliance for the said proposition was placed on several authorities including the following Privy Council authorities:

1) **Subaiya Pandaram Vs. M. Mustafa, AIR 1923 P.C. 175**
2) **Gnanasaumbanda P. S. Vs. Velu P., 27 Indian Appeals 69**
3) **Damodar Das Vs. Adhikari Lakhan Das, 37 Indian Appeals 147**.

The leading case of Calcutta High Court reported in **Nilmony Singh Vs. J. Roy, (1896) 23 Cal 536** was also referred.

In **Naurangi Lal Vs. Ram Charan Das, AIR 1930 Patna 455 (DB)**, the above authorities of Allahabad High Court and Oudh have been followed and it has been held that an idol cannot be treated to be minor for the purposes of Sections 6 & 7 of Limitation Act. In the said case, Hon'ble Justice Fazal Ali (who was later on elevated to the Federal Court and after the enforcement of the Constitution was sworn in as judge of the Supreme Court) discussed several authorities (49 in number) and held that he was taking the said view against his initial tentative view. Few authorities of different High Courts taking contrary view were also noticed in the said judgment of the Patna High Court. The above authorities of the Privy Council and the leading authority of Calcutta High Court **Nilmony Singh,**

supra were also considered.

Even though the said judgment was reversed by Privy Council in **Ram Charan Das Vs. Naurangi Lal and Ors. AIR 1933 P.C.75** however the principle that property could be lost by adverse possession was not reversed. The Privy Council disagreed only on the question of starting point of limitation.

Similar view was taken in **Radha Krishan Das Vs. Radha Raman, AIR 1949 Orissa 1**. It was held in Para-15, after discussing several authorities that idol was not minor and its property could be lost (or it could acquire property) through adverse possession.

Calcutta High Court in **Surendra Vs. Sri Sri Bhubaneswari, AIR 1933 Cal 295** held that the doctrine that idol is perpetual minor is extravagant in view of Privy Council authority of **Damodar Das**, supra. The judgment of **Surendra** was confirmed by Privy Council in **Sri Sri Iswari Bhubaneshwari Thakurani Vs. Brojo Nath Dey and others, AIR 1937 P.C. 185.**

In the following authorities of the Supreme Court even though question of perpetual minority of idol was not considered but it was held that idol or math could lose title through adverse possession. Obviously if idol is treated to be minor (perpetual), there arises no question of losing property through adverse possession.

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

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

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

In **Sarangadeva Periya Matam Vs. R. Goundar, AIR 1966 SC 1603** (hereinafter referred to as **S.P. Matam, 1966**), by a Bench of three Hon'ble Judges, it has been held that even in the absence of a *de-jure* or *de-facto mathadhipathi* running of limitation is not suspended. In the said authority, it was held that plaintiff had acquired title by prescription against debutter property. Paragraphs No.6 & 10 of the said authority are quoted below:-

"6. We are inclined to accept the respondents'

contention. Under Art. 144 of the Indian Limitation Act, 1908, limitation for a suit by a math or by any person representing it for possession of immovable properties belonging to it runs from the time when the possession of the defendant becomes adverse to the plaintiff. The math is the owner of the endowed property. Like an idol, the math is a juristic person having the power of acquiring owning and possessing properties and having the capacity of suing and being sued. Being an ideal person, it must of necessity act in relation to its temporal affairs through human agency. See Babajirao v. Luxmandas, (1904) ILR 28 Bom 215 (223). It may acquire property by prescription and may likewise lose property by adverse possession. If the math while in possession of its property is dispossessed to if the possession of a stranger becomes adverse, it suffers an injury and has the right to sue for the recovery of the property. If there is a legally appointed mathadhipathi, he may institute the suit on its behalf; if not, the de facto mathadhipathi may do so, see Mahadeo Prasad Singh v. Karia Bharti, 62 Ind App 47 at p. 51: (AIR 1925 PC 44 at p. 46), and where, necessary, a disciple or other beneficiary of the math may take

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

10. We hold that by the operation of Art. 144 read with S. 28 of the Indian Limitation Act, 1908 the title of the math to the suit lands became extinguished in 1927, and the plaintiff acquired title to the lands by prescription. He continued in possession of the lands until January, 1950. It has been found that in January, 1950 he voluntarily delivered possession of the lands to the math, such delivery of possession did not transfer any title to the math.

The suit was instituted in 1954 and is well within time."

The Privy Council in **31 Indian Appeals 203, Jagadindra Roy Vs. Hemantah** had held that if the Shabait of an idol was minor, then he would get the benefit of Section 7 of Limitation Act and fresh starting point for limitation would be available to him after attaining majority. This authority clearly meant that the Privy Council was of the view that the idol cannot get benefit of Section 7 of Limitation Act (otherwise there was absolutely no question of extending the benefit of the said section to the Shabait). Even otherwise a minor can not be appointed guardian of an other minor. In **Bishwanath's** (1967) case this authority has been referred to. In the authority of the Supreme Court of **S.P. Matam (1966)**, the said view of the Privy Council was slightly doubted and it was held in Para-8 by the Supreme Court as follows:

“8. In Jagadindra Roy's case, (1904) ILT 32 Cal 129 (PC), the dispossession of the idol's lands took place in April 1876. The only shebait of the idol was then a minor, and he sued for recovery of the lands in October 1889 within three years of his attaining majority. The Privy Council held that the plaintiff being a minor at the commencement of the period of limitation was entitled to the benefit of S. 7 of the Indian Limitation Act, 1877 (Act XV of 1877) corresponding to S. 6 of the Indian Limitation Act, 1908, and was entitled to institute the suit within three years of his coming of age. This decision created an anomaly, for, as pointed out by Page, J. in ILR 51 Cal 953 at p. 958: (AIR 1925 Cal 140 at pp. 142-143), in giving the benefit of S. 7 of the Indian Limitation Act, 1877 to the shebait, the Privy Council proceeded on the footing that the right to sue for possession is to be divorced from the proprietary right to the property which is vested in the idol. We do not express any opinion one way or the other on the correctness of Jagadindra Nath Roy's case, (1904) ILR 32 Cal 129 (PC). For the purposes of this case, it is sufficient to say that we are not inclined to extend the principle of that case. In that case, at the commencement of the period of

limitation there was a shebait in existence entitled to sue on behalf of the idol, and on the institution of the suit he successfully claimed that as the person entitled to institute the suit at the time from which the period is to be reckoned, he should get the benefit of S. 7 of the Indian Limitation Act, 1877. In the present case, there was no mathadhipathi in existence in 1915 when limitation commenced to run. Nor is there any question of the minority of a mathadhipathi entitled to sue in 1915 or of applying S. 6 of the Indian Limitation Act, 1908."

It is interesting to note that Hon'ble K. Subba Rao, J. was a member of the Bench, which decided **S.P. Matam**'s case (1966) as well as of the bench which decided **Bishwanath (1967)** by two judges. The judgment of **Bishwanath** was delivered by Hon'ble Subba Rao, C.J. as by that time he had become Chief Justice of the Supreme Court.

In **Bishwanath** (1967), the only point, which was decided was regarding right of worshipper to file suit for recovery of immovable property wrongly sold by the

Shabait. On that point almost all the authorities of different High Courts were considered and two cases which took contrary view, i.e. **Kunj Behari Chandra and others Vs. Sri Sri Shyam Chand Jiu Thakur and others, AIR 1938 Patna 394** and **Artatran Alekhagadi Brahma and others Vs. Sudersan Mohapatra and others, AIR 1954 Orissa 11** were specifically overruled. Eight cases, three by Madras High Court, two by Allahabad High Court, one each by Bombay, Calcatta and Patna High Courts taking the view approved by the Supreme Court were also mentioned.

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

In two judgments of the Supreme Court delivered one and two years before the judgment of **Bishwanath's** case, i.e. **Dr. G.M. Kapur** (1965) supra and **S.P. Matam** (1966) supra three judges Benches of Supreme Court had already taken the view that idol's property could be lost through adverse possession. Hon'ble Subba Rao, J., who dictated the judgment of the **Bishwanath'** case was one of the judges of **S.P. Matam's** case, three Judges Bench. It cannot therefore be said that the bench which decided **Bishwanath's** case (1966) was not aware of the two earlier cases, both by benches of three judges.

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

> "*11. There are two decisions of the Privy Council, namely, Pramatha Nath Mullick v. Pradyumna Kumar Mullick, 52 Ind App 245: (AIR*

1925 PC 139) and Kanhaiya Lal v. Hamid Ali, 60 Ind App 263: (AIR 1933 PC 198 (1)), wherein the Board remanded the case to the High Court in order that the High Court might appoint a disinterested person to represent the idol. No doubt in both the cases no question of any deity filing a suit for its protection arose, but the decisions are authorities for the position that apart from a Shebait, under certain circumstances, the idol can be represented by disinterested persons. B. K. Mukherjea in his book "The Hindu Law of Religious and Charitable Trust" 2nd Edn., summarizes the legal position by way of the following propositions, among others, at p. 249 :

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

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

the idol, then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol."

This view is justified by reason as well by decisions."

B.K. Mukherjee in the same book, a few pages before, opined that an idol is not perpetual minor for the purposes of limitation:

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

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

(In first edition it is on page 258 and in III edition it is on pages 201 and 202)

The Supreme Court did not question that opinion. It cannot therefore be assumed that Supreme Court in **Bishwanath's** case just by one sentence intended to lay down that for the purposes of limitation idol was to be treated as perpetual minor.

Even if it is assumed that Supreme Court in **Bishwanath's** case held that for the purposes of limitation idol is perpetual minor still the said view by a Bench of two Hon'ble Judges being directly in conflict

with two earlier authorities of the Supreme Court each by a Bench of three Hon'ble Judges, i.e. **Dr. G.M. Kapur** (1965) and **S.P. Matam** (1966) cannot be said to be a correct law to be followed. The two authorities of 1965 and 1966, both being by three judges are binding upon us in preference to two Judges authority of **Bishwanath** (1967) if it is assumed that in the authority of **Bishwanath**, it was held that for the purposes of limitation idol is to be treated as minor (perpetual minor).

The privy counsel in **Mosque known as Masjid Shahid Ganj and others Vs. Shiromani Gurdwara Parbandhak Committee, Amritsar and another AIR 1940 P.C. 116** has held that both Muslim as well Hindu religious properties may be lost by adverse possession. "*But there has never been any doubt that the property of a Hindu religious endowment – including a thakurbari is subject to the law of limitation*" (p 122 col.1). The constitution bench of the Supreme Court in Ismail Farooqui (1994) supra has approved the said authority

of the Privy Council and in para 82 (of SCC) has equated mosque with other religious places like Church temple etc. in the matter of limitation/adverse possession and acquisition.

Accordingly, it is held that idol/deity is not minor (perpetual) for the purposes of limitation and debutter property may be lost through adverse possession.

Accordingly, suit no. 3, 4 and 5 are held not to be barred by limitation.

II- Res-judicata and/or admissibility of judgment and assertions made or omitted to be made in the pleadings <u>of Suit no.61/280 of 1885</u>

Issues No.7, 7(b), 7(c), 7(d) & 8 of Suit No.4,
Issues No.5(a), 5(b), 5(c) & 5(d) of Suit No.1,
Issue No.23 of Suit No.5

It has strenuously been argued by the plaintiffs of Suit no.4 that the judgment in the above suit operates as res-judicata. Details of pleadings and the judgment in the said suit have been given in the introduction part of

this judgment. Section 11 C.P.C. alongwith Explanation IV and VI is quoted below:-

> ***11.*** *Res judicata.*- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.
>
> Explanation I .....not quoted
> Explanation II.....not quoted
> Explanation III.....not quoted
>
> Explanation IV- Any matter which might and ought to have been made ground of defence or attach in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.
>
> Explanation V.....not quoted
>
> Explanation VI.- Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.
>
> The first and foremost question is to ascertain that

what was the matter which was finally decided in the suit of 1885. In-fact the judgment in the said suit did not decide anything substantially. The only thing which was decided was that in view of peculiar topography (worshipping places of both the communities situate within the same compound/boundary wall and having common entrance) and due to strong likely hood of riots of very high level between the two communities the plaintiff of the suit Mahant Raghubar Dass could not be permitted to raise construction over the chabootra. Ultimately, in the final judgment, it was held that status quo (order which is almost invariably passed only as an interim order) should be maintained. The suit was therefore dismissed. Refusal to decide the controversy is the actual decision in the said suit. In some moments of weakness I also thought that I should also adopt the same course. However, I resisted the temptation promptly. Accordingly, as virtually nothing was decided in the said suit hence main part of the Section-11 C.P.C.

is not attracted.

It was specifically argued by learned counsel for the Muslim parties (plaintiffs in suit no-4 and defendants in other suits) that Explanation IV to Section-11 was squarely attracted. Elaborating the argument they argued that the plaintiff of the suit of 1885 might and ought to have asserted that the portion which was shown in the map annexed with the plaint as Mosque and in possession of Muslims was not a Mosque and not in possession of Muslims. However, as the plaintiff of the said suit categorically admitted that the constructed portion and the inner court yard was a Mosque and in possession of Muslims, hence there was no sense in asserting otherwise. Accordingly, in my view Explanation IV is also not attracted.

In view of the above findings the question and occasion to decide applicability of Explanation VI do not arise.

Now the question comes regarding admissibility of

the judgment particularly observations made in the judgment and the assertions made and omitted to be made and the admissions in the pleadings of the said suit. Normally question of admissibility of a piece of evidence is not covered by any issue. In the instant suits also no such issue has been framed. However, as the judgments and the pleadings of the said suit if admissible will have lot of bearing on several issues hence it is appropriate to decide their admissibility or otherwise at this juncture. In this regard two Sections of Evidence Act are relevant i.e. Section 13 and 42. The said sections and Section 43 are quoted below:-

> **13. Facts relevant when right of custom is in question.--** Where the question is as to the existence of any right or custom, the following facts are relevant---
>
> (a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence;
>
> (b) particular instances in which the right or custom was claimed, recognized, or exercised or in

which its exercise was disputed, asserted or departed from.

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

43. Judgments, etc., other than those mentioned in sections 40 to 4, when relevant.--- Judgments, orders or decrees, other than those mentioned in sections 40,41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of this Act.

The previous judgment itself may or may not be covered under the definition of the word transaction used in Section 13 however, the case set up by the parties in the previous litigation and its recitation in the judgment obviously fall within the ambit of the word 'transaction'. Even otherwise if it is assumed that a previous judgment does not fall under Section 13 of Evidence Act on its strict, narrow construction still if the judgment is relevant under Section 42 then it may be

taken into consideration and reliance may be placed thereupon. Section 42 is squarely applicable as the earlier judgment releated to matters of a public nature.

In **State of Bihar vs. Radha Krishna Singh A.I.R. 1983, S.C. 684** it was held that previous judgment not in between the parties to the subsequent litigation is not admissible under Section 13 of Evidence Act.

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

However, in this regard some previous authorities of the Supreme Court were not taken into consideration. In **"Tirumala Tirupati Devasthanams v. K. M. Krishnaiah" AIR 1998 SUPREME COURT 1132** it was

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

> **Para 8:** It was argued by the learned counsel for the plaintiff respondent that the earlier judgment in O.S. 51 of 1937dated 15.6.1942 was rendered in favour of the TTD against Hathiramji Mutt, that plaintiff was not a party to that suit and hence any finding as to TTD's title given therein is not admissible as evidence against the present plaintiff in this suit.
>
> **Para-9** In our view, this contention is clearly contrary to the rulings of this Court as well as those of the privy Council. In Srinivas Krishna Rao Kango vs. Narayan Devji Kango & Others [AIR 1954 SC 379], speaking on behalf of a Bench of three learned Judges of this Court, Venkatarama Ayyar, J. held that a judgment not inter parties is admissible in evidence under section 13 of the Evidence Act as evidence of an assertion of a right to property in dispute. A contention that judgments other than those falling under sections 40 to 44 of the Evidence Act were not admissible in evidence was expressly rejected. Again B.K. Mukherjea, J. (as he then
> was) speaking on behalf of a Bench of four learned Judges in Sital Das vs. Sant Ram & Others [AIR 1954 SC 606] held that a previous judgment no inter partes, was admissible in evidence under section 13 of the Evidence Act as a 'transaction' in which a right to property was 'asserted' and

> ‘recognised’. In fact, much earlier, Lord Lindley held in the Privy Council in Dinamoni vs. Brajmohini [1902] [ILR 29 Cal. 190 (198) (PC)] that a previous judgment, not inter partes was admissible in evidence under Section 13 to show who the parties were, what the lands in disputer were and who was declared entitled to retain them. The criticism of the judgment in Dinamoni vs. Brajmohini and Ram Ranjan Chakerbati vs. Ram Narain Singh [1895 ILR 22 Cal 533 (PC)] by sir John Woodroffe in his commentary o the Evidence Act (1931, P 181) was not accepted by Lord Blanesburgh in collector of Gorakhpur vs. Ram Sunder [AIR 1934 PC 157 (61 IA 286)].

Unfortunately in this authority the authority of **State of Bihar vs. R.K.Singh (1983),** supra was not considered. Both the authorities are by two Hon’ble Judges each. Similarly in R.K.Singh’s (1983) authority the earlier two Supreme Court authorities of 1954 one by three Hon’ble Judges and the other by four Hon’ble Judges (both referred to in **Tirumala Tirupati Devasthanams (1998)** authority, Supra) were not considered.

In any case even if Section 13 of the Evidence Act is ignored, the judgment of 1885 is admissible under

Section 42 of the Evidence Act.

In my opinion the more important question which is to be decided is as to whether the admissions and assertions made and omitted to be made in the pleadings of 1885 suit are admissible or not. There cannot be any doubt that pleadings are covered by the definition of 'transactions' as used under Section 13 of Evidence Act. In this regard reference may be made to **Hari Lal vs. Amrik Singh AIR 1978 Allahabad 292** wherein it has been held in para-16 that pleadings in earlier suit not inter partes are admissible under Section 13 of Evidence Act. In the same authority it has also been held that recitals of boundaries in deeds between third parties are admissible. For the said proposition reliance was placed upon the following authorities:-

1. Ms. Katori vs. Om Prakash (AIR 1935 Allahabad 351)
2. Rangayyan v Innasimuthu Mudali (AIR 1956 Madras 226) and

3. Natwar vs. Alkhu ((1913) 11 All LJ 139).

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

As far as the question of admissibility of the judgment of 1885 under Section 42 of Evidence Act is concerned, reference may be made to the Supreme Court authority reported in **"Virupakshayya Shankarayya v. Neelakanta Shivacharya Pattadadevaru" AIR 1995 SUPREME COURT 2187.** In the said case the dispute was regarding Padadayya

of the Math. There was an earlier decision of Privy Council of the State in that regard. The Supreme Court held that even though explanation VI to Section 11 C.P.C. was not attracted as in the earlier litigation present plaintiff was not party however earlier judgment was admissible under Section 42 of Evidence Act. Reversing both the judgments of the courts below the Supreme Court passed the judgment in accordance with the earlier judgment of Privy Council of the State.

It is therefore held that judgment of 1885 suit, admissions and assertions made or omitted to be made in the pleading of the said suits are admissible under Section 42 Evidence Act as well as Section 13 read with Section 42 of the Evidence Act.

III- <u>When the structure in the disputed premises was constructed and by whom and what was its nature:-</u>

This point covers the following issues:

Issue No.1, 1(a) & 1-B(c) of Suit No.4,

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

Muslim Parties particularly Waqf Board in its plaint of Suit No.4 ha**lll**ve asserted that the disputed premises including the constructed portion therein was a mosque constructed by Babar (or on his orders) in 1528. Babar came to India in 1526 and died in 1530. All the Hindu parties have pleaded either solely or in the first instance that the premises in dispute was never constructed as mosque either by Babar or anyone else. However, some of the Hindu parties in the alternative have pleaded that some attempts were made during the period of Babar, to convert the existing temple into a mosque but the attempts did not succeed/ fully succeed. The second alternative case taken by most of the Hindu parties is that even if, it was assumed/ proved that the premises in dispute or the constructed portion and the inner courtyard was a mosque still it ceased to be a mosque since 1934 when during a riot the same was substantially damaged and that

thereafter no Muslim offered prayer/ *namaz* in the said premises.

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

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

time by Mir Baqi, was in the possession and control of Hindus at that time."

Thereafter, an extract from 1928 Faizabad Gazetteer has been quoted wherein it was mentioned that in 1528, Babar came to Ayodhya and destroyed the ancient temple and on its site built a mosque still known as Babar's Mosque. In Para-24 of the plaint, it is mentioned that such a structure (referred to in para-23 of the plaint) raised by the force of arms on land belonging to the Plaintiff Deities, after destroying the ancient Temple situate thereat, with its materials including the Kasauti pillars with figures of Hindu gods carved thereon, could not be a mosque and did not become one inspite of the attempts to treat it as a mosque during the British rule after the annexation of Avadh. Thereafter, in sub-paras (A) to (G), it has been mentioned that the building so erected could not be a mosque under Muslim Law. In Para-26, it has been mentioned that at any rate no payers have ever been offered in the building in dispute recorded as 'Janmasthan Masjid' during the British

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

The Muslim parties in support of their assertion regarding construction of mosque by Babar have heavily relied upon two inscriptions. According to them, one was at the *pulpit* and the other on the main Gate. However, admittedly inscriptions were either totally destroyed or badly damaged in the riots of 1934 and were replaced. Muslim parties also claimed that the replaced inscriptions were exactly the same, which existed since before. The original inscriptions are reproduced in A.S.I. Report titled as The Sharqi Architecture of Jaunpur by A. Fuhrer published in 1889 and in Babar Nama translated in English by A. S. Beveridge (first published in compact book form in 1921). Inscriptions are also reproduced in Epigraphia Indica Arabic and Persian Supplement 1964 and 1965 published by A.S.I. However, the authenticity of these three inscriptions/ copies is highly doubtful.

Moreover A.S.I. Epigraphia Indica of 1964 and 1965 being post *litem motam* cannot be given much weight vide **State of Bihar Vs. R.K. Singh, AIR 1983 SC 684 & Harihar Prasad Singh Vs. D. Prasad, AIR 1956 SC 305.** The manner in which Epigraphia Indica 1964 and 1965 and the book claim to have obtained the copies of the originals is such that not much reliance can be placed thereupon. There is also vast variation in different inscriptions/copies. It is alleged that the inscriptions were in Persian verses denoting the date of construction (in Parsian language every alphabet is allotted a number and addition of the numbers of alphabets of all the words denotes the year). The names of some persons are also selected in such manner that adding the numbers of the alphabets of their names, their year of birth is ascertained. (Such names are called historical names). Relevant words in the Persian on one of the copies of the inscription are stated to denote 935 Hijari corresponding to 15.09.1528 to 05.09.1929 A.D. However, as the inscriptions given in the above book and the reports have not been proved to be true copies of

originals and they cannot be termed as authentic, hence on the basis of these inscriptions alone it cannot be held that either the building was constructed by or under orders of Babur or it was constructed in 1528. In this regard detailed reasons have been given by my learned brother S. Agarwal, J. with which I fully agree.

However, there are several documents which indicate that at least since the middle of 18th Century, the mosque was popularly known as Babari Masjid. It is mentioned as such in several Gazetteers and Municipal and official records and different applications filed before different authorities for different purposes. Most of the parties in their pleadings as well as evidence have stated that the mosque was constructed by or under orders of Babar. No one has pleaded that if there was a mosque on the premises in dispute then it was constructed during the period of any other ruler except Babar.

In one of the copies of the inscriptions, it is mentioned that Mir Baqi under orders of Babar constructed or had constructed a mosque. Babarnama a diary maintained by

Babur has extensively been quoted during arguments particularly its translation by A. S. Beveridge. Babarnama was originally written in Turkish language and was thereafter translated in Persian. Thereafter, it was translated in several languages including English, Urdu and Hindi. However, Babar has himself mentioned that some pages of his diary were lost in a storm. The lost pages include the pages from 02.04.1528 to 18.09.1928. In the pages of 28th March & 2nd April, 1528, it is mentioned that Babar had reached towards other side of the River Sarju/ Ghaghara and had gone for hunting on 02.04.1528 It has also been argued that in entire Babarnama, there is no mention of any person by the name of Mir Baqi.

As relevant pages of Babar's diary/ Babarnama are missing, hence no light can be thrown by it on the question as to whether the mosque in dispute was constructed by Babar or not.

Sri P.N. Mishra, learned counsel for defendant No.20 in Suit No.4 very strenuously argued that Babar was such

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

Joseph Tieffenthaler also mentioned that the mosque was constructed by Aurangzeb after demolition of temple, however immediately thereafter he adds that according to some, it was done by Babur (He also mentions about platform on the left called Bedi i.e. the cradle). The period when Joseph Tieffenthaler visited Ayodhya (1766-71) was about 60 years after the death of Aurangzeb. If any such thing had been done by Aurgangjeb about 60 to 100 years before, it was such an important event that it should not have faded from the memories of the people of Ayodhya. Several such persons at the time of visit of Joseph

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

Sri Jadunath Sarkar has written a voluminous book on Aurangzeb in early 20th Century. The Book is considered to be quite authentic. In the said book Sri Sarkar has been extremely critical of religious policy of Aurangzeb and has described him as religious bigot and fanatic. He has mentioned that Aurangzeb demolished several temples. In Volume-3, Appendix-5, he has given list of all the temples which according to him were demolished by Aurangzeb. There is absolutely no mention of any such demolition at Ayodhya. There is no mention that in Ayodhya Aurangzeb constructed any mosque and that also at a place, which was held sacred by the Hindus.

William Finch a foreign traveller came to India in 1608 and remained here till 1611. He wrote extensive accounts of his travels in India. There is no mention of any mosque in his account relating to Ayodhya. Similarly in Ain-e-Akbari compiled by Abul Fazal during Akbar's period there is no mention of any mosque. However, omission of any

mosque in both these books does not disprove existence of mosque. These two books do not purport to give details of all the religious places particularly of mosques in any particular area.

The first Gazetteer which mentions something about Ayodhya is of 1828 by Walter Hamilton. Relevant portion is quoted below:-

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

Dr. Buchanen had surveyed eastern parts of the country including Ayodhya from 1807 to 1816 and had sent his reports to England. Montgomery Martin published parts of the said reports in 1838 in a six volume book titled as “History, Antiquities, Topography and Statistics of Eastern India”. Relevant portion of the same is quoted below:

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

Thereafter, in the same book, it is mentioned as follows:-

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

In the Thornton's gazeteer 1854/1858 reprinted in 1993 by low price publication, about one page has been devoted to oude (Avadh/Ayodhya). In the said gazetteer heavy reliance is placed on Buchanan's report (who later

on took the name of Hamilton). In Thornton's gazetteer it is mentioned that Bairagis were managing Hanumangari and other Hindu mendicants. It is also mentioned that close to the bank of Ghogra there are extensive ruins said to be those of the fort of Ram King of Oude hero of the Ramayan. Thereafter the following observation of Buchanan has been quoted:

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

Thereafter Thornton writes as follows:

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

flight to heaven, carrying with him the people of his city; in consequence of which it remained desolate until repeopled by Vikramaditya, king of Oojein, half a century before the Christian era, and by him embellished with 360 temples. Not the smallest traces of these temples, however, now remain; and according to native tradition, they were demolished by Aurungebe, who built a mosque on part of the site. The falsehood of the tradition is, however, proved by an inscription on the wall of the mosque, attributing the work to the conqueror Baber, from whom Aurungzebe was fifth 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. Altogether, however, the remains of antiquity in the vicinity of this renowned capital must give very low idea of the state of arts and civilization of the Hindoos at a remote period. A quadrangular coffer of stone, whitewashed, five ells long, four broad, and protruding five or six inches above ground, is pointed out as the cradle in which Rama was born, as the seventh avatar of Vishnu; and is accordingly abundantly honoured by the

pilgrimages and devotions of the Hindoos."

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

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

Cunningham in Archaeological report 1862-63 mentions about Ayodhya (at Page-322) as follows:

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

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

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

Thereafter, comes a historical sketch of Tehsil Fyzabad District Fyzabad by P. Carnegy, officiating Commissioner and Settlement Officer of the District. It was published in 1870. Carnegy has mentioned that Ajudhia is to the Hindu what Macca is to the Mahomedan and Jerusalem to the Jews. It is further mentioned that ancient city of Ajudhia is said to have covered an area of 48 kos (96 miles). Thereafter, reference to Ram and Ramayan has been made. Thereafter, it is mentioned that after the fall of the last of Rama's line, Ajudhia and the royal race became a wilderness and it was converted into a jungle of sweet smelling *keorah*. Thereafter it is mentioned that Vikramajit restored the neglected and forest-concealed Ajudhia. Thereafter, it is mentioned that the most remarkable place was Ramkot "the strong hold of

Ramchandar” which covered a large extent of ground and according to ancient manuscript it was surrounded by 20 bastions” (names of all those bastions are mentioned)

“Within the fort where eight royal mansions where dwelt the patriarch Dasrath, his wives, and Rama his deified son one of eight mentioned his mansion as palace of Kosilla …. his wife of Raja Dasharath. The other one is mentioned as Janam Asthan (Ram's birth place). Thereafter, it is mentioned that according to Sir H. Elliot Bikramajit's constructed 360 temples at Ajudhia on which only 42 were known to the present generation. It is further mentioned that as there are but few things that are really old to be seen in Ajudhia, most of these must be of comparatively recent restoration. A list of these shrines is given as Appendix A. Appendix A contains 209 items. The first item is Janam Asthan which is stated to have been founded/restored by Ram Das Ji 166 years before.

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

“Great astonishment has been expressed at the

recent vitality of the Hindu religion as Ajudhia and it was to test the extent of this chiefly that with no small amount of labour, this statement has been prepared. As the information it contains may be permanently useful I have considered it well to give it a place here. This information is as correct as it can now be made, and that is all that I can say."

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

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

On the first of these the Emperor Babar built the mosque which still bears his name, A.D. 1528. On the second Aurangzeb did the same A.D. 1658-1707; and on the third that sovereign, or his predecessor, built a mosque, according to the well known Mahomedan principle of enforcing their religion on all those whom they conquered.

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

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

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

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

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

Hindus have raised a platform on which they make their offerings.

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

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

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

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

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

In the gazetteer of 1905 and 1928 by H.R. Nevill it is mentioned that in 1528 Babar came to Ajodhya and destroyed the ancient temple and on its site build mosque still known as Babar's mosque and the materials of the old structure were largely employed and many of the columns are in good preservation which are called Kasauti 7 to 8 feet in length. It is further mentioned that mosque has two inscriptions one of the outside and the other on the pulpit giving year of construction as 935 Hijri. This portion has been quoted in para-23 of the plaint of Suit No.5 and has been reproduced in the earlier part of this judgment under the heading of pleading and sub-heading Suit No.5. Thereafter, it is mentioned therein as follows:

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

thence making a desperate assault on the Hanuman Garhi they charged up the steps of the temple, but were driven back with considerable loss. The Hindu then made a counter attack and stormed the Janamasthan at the gate of which 75 Musalmans were buried."

Thereafter it is mentioned in the same para as follows:-

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

In all the Gazettes, which have heavily been relied upon by the Hindu parties, it is mentioned that the constructed portion of the premises in dispute was a mosque. Tiffin Thaler mentioned that it was a mosque. In various government records, it is mentioned as mosque. In the plaint of suit of 1885, it was mentioned as mosque particularly in the map annexed along with plaint. In the

judgments of the said suit (the Trial Court, First Appellate Court and Second Appellate Court) the structure was mentioned as mosque. In the report and letters of Sri K.K.K. Nayer, the then D.M. of Faizabad of December 1949 and in the map prepared by him it was referred as mosque. In the letters of S.P. Faizabad of December 1949 and February 1950 also same thing was mentioned. In para 12 of written statement filed in Suit no.1 on behalf of State of U.P. defendant no.6 on 25.04.1950 by the then D.M./Deputy Commissioner, Faizabad Sri G.W. Ugra, who had succeeded to Sri Nayer as well as in para 12 of written statement filed by S.P. Faizabad – Defendant no.9 it is described as mosque. Para 12 was sworn on personal knowledge in both the written statements. Para-12 of both the written statements is exactly same and is quoted below:-

> *"The the property in suit is known as Babri Mosque and it has for a long period been in use as a mosque for the purpose of worship by the Muslims. It has not been in use as a temple of Sri Ram Chanderji."*

If the structure in the disputed premises was not a

mosque then there was absolutely no occasion, reason or explanation as to why idols were not there prior to 23.12.1949 even though according to the case taken up by several Hindu parties, it was treated by Hindus to be place of worship.

It is admitted to the parties and amply proved on record that in 1856 or 1857, grill/ railing wall was constructed to bifurcate the constructed portion and the inner courtyard from the outer courtyard. In Para-26 of plaint of Suit No.5 also, it has been admitted that after annexation of Avadh (1956), boundary wall was raised by them in the courtyard. This fact is also mentioned in the judgments of suit of 1855 and various Gazettes. If the constructed portion had not been mosque there was no question of separating it from Ram Chabutra. The last but not the least reason to hold that the constructed portion was mosque (or part of mosque) is that if it had not been a mosque, it would not have been demolished by an unruly, uncontrolled Hindu mob on 06.12.1992.

Accordingly, from the above it is proved that the

constructed portion of the premises in dispute was constructed as a mosque by or under orders of Babar. It was actually built by Mir Baqui or some one else is not much material.

A mosque even if its construction remains as a mosque cannot be treated to be mosque if no prayers are offered in it and it is in the possession, occupation and use of non-Muslims as held by the Privy Council in Mosque known as **Masjid Shahid Ganj Vs. S.G.P.C. Amritsar AIR 1940 P.C. 116** approved in **Dr. M. Ismail Farooqi Vs. Union of India, 1994 (6) S.C.C. 360.** Accordingly, unless it is proved that prayers were being offered in the premises in dispute, or the Hindus had not exclusively possessed the constructed portion and inner court yard it cannot be held to be a mosque or a continuing mosque uptil 22nd/ 23rd December, 1949. The case set up and the argument of some of the Hindu parties that till 1855 no prayers (*Namaz*) were offered in the mosque is not at all acceptable. If a mosque is referred to as mosque in several gazetteers, books etc. and nothing else is said

then it means that it is a mosque in use as such. A defunct mosque where prayers are not at all offered, whenever mentioned as mosque, is bound to be further qualified as defunct and not in use. If construction of mosque could not be obstructed, how offering of prayer in it could be obstructed. Moreover, there was absolutely no sense in dividing the premises in dispute by railing in 1856 or 1857 if Muslims were not offering *Namaz* in the constructed portion till then. In the riot of 1855 seventy Muslims were killed while taking shelter in the premises in dispute. After such a huge defeat *Namaz* could not be for the first time started thereat.

For discontinuance of possession two things are necessary one is abandonment of possession and the other is walking in by some one else. Mere abandonment is not complete discontinuance of possession. In this regard, Muslim parties have tried to prove that regular prayers (five times in a day) were being offered in the premises in dispute until 22nd December, 1949, however they have not been able to prove it. In para 22 of written

statement by defendants no. 1 to 5 (Muslim parties) in suit no.1, they have themselves admitted that last prayer offered in the building in dispute was friday prayer on 16.12.1949. This clearly proves that regular prayers (five times in a day) were not offered in the premises in dispute for some time since before 22.12.1949.

The fact that friday prayers were being offered uptill 16.12.1949 is evident from the letter of the S.P., of the D.M. and the Diary of the D.M. mentioned in the introduction part of this judgment. For the admissibility of the report/ diary of D.M. and letters of S.P. and D.M. reference may be made to the following authorities:-

(i) **Baldeo Das vs. Gobind Das AIR 1914 All. 59**

In this authority Kotwal's report that who built the temple in question was held admissible.

(ii) **Krishna Nandan Prasad Verma v. The State, AIR 1958 Patna 166**

(iii) **Bakhshish Singh Dhaliwal Vs. The State of Punjab, AIR 1967 SC 752**

In this authority, it has been held that war diaries are admissible in evidence even though there inspection is not permissible.

(iv) **Kuar Shyam Pratap Singh v. Collector of Etawah, representing Rani Rathorni Narain Kunwar and Ors., AIR 1946 PC 103**

In this authority, it has been held that pedigree kept by court of wards is admissible.

(v) **State of Bihar Vs. R.K. Singh, AIR 1983 SC 684**

If the Muslims had completely abandoned the premises in dispute and were not using it even for firday prayers for decades, years or months before 23.12.1949, there is no reason or explanation as to why the idol was not kept inside earlier.

Accordingly, it is held that for some time before 23.12.1949, Muslims were offering only friday prayers in the premises in dispute. However, since when regular prayers (five times a day) stopped and only friday prayers

were offered has not even been attempted to be proved by any of the parties. On the contrary, in spite of clear evidence to the contrary, as discussed above, Muslim parties in their oral evidence attempted to show that regular prayers were offered till the night of 22.12.1949 and Hindu parties pleaded and attempted to show in oral evidence that even friday prayers were never offered or at least since 1934 were not offered. Some of the Hindu parties pleaded and attempted to prove that premises in dispute was never a mosque. Such an attitude by both the parties in respect of a religious matter is not appreciable.

Accordingly, in such scenario the only finding which may be recorded is that till 1934 Muslims were offering regular prayers and since 1934 till 22.12.1949 only friday prayers in the premises in dispute. However, offering of only friday prayers is also sufficient for continuance of possession and use.

IV- <u>Whether the site of the premises in dispute was treated to be birth-place of Lord Ram before construction of the mosque and whether there was any temple standing thereupon, which was demolished for constructing the mosque:-</u>

Issues No.1(b), 11, 14, 19(a), 19(c) & 19(f) of Suit No.4,
Issue No.1 of Suit No.1,
Issues No.5, 14, 22 & 24 of Suit No.5

It is one of the most important points to be decided in these suits. It has already been noticed that total area of premises in dispute is 1482.5 square yards (1500 square yards in round figures) as given in the map prepared by Sri Shiv Shanker Lal Vakil/ Commissioner in Suit No.1. During arguments, it was enquired from almost every learned counsel appearing for different Hindu parties as to whether according to his party, the 1500 square yards premises in dispute was the Lord Ram's birth-place/ land (Janam Asthan/ Bhoomi), nothing but birth-place/ land and the whole birth-place/ land (borrowing from the terminology of oath administered to a witness before his oral statement; truth, nothing but truth and the whole truth). Each and every learned counsel replied in affirmative. Almost all the learned counsel for Hindu parties argued that as no

other place in Ayodhya was worshipped as the birth place and as Muslims have not been able to point out any other such place hence premises in dispute is the birth-place. Some thing was said by a baba (saint) in December 1949 as noted in the diary of the D.M. (quoted in Introduction part). This is not the law of evidence. The burden to prove a fact lies upon the party who asserts it. If A is sued for injuring some one by his car and he denies that it was not his car which hit that person, then A can not be asked to show that which other car had hit the person concerned.

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. Similar statement under order X Rule 2 C.P.C. was given on the same date by Messrs M.A. Siddiqui and Syed Irfan Ahmad learned counsel for other Muslim parties. The statement is quoted below:-

> "*For the purposes of this case there is no dispute about the faith of Hindu devotees of Lord Rama regarding the birth of Lord Rama at Ayodhya as described in Balmiki Ramayana or as existing today. It is, however, disputed and denied that the site of Babri Masjid was the place of birth of Lord Rama. It is also denied that there was any Ram Janam Bhoomi Temple at the site of Babri Masjid at any time whatsoever.*
>
> *The existence of Nirmohi Akhara from the second half of Nineteenth Century onwards is also not disputed. It is, however, denied and disputed that Nirmohi Akhara was in existence and specially in Ayodhya in 16th Century A.D. or in 1528 A.D. and it is also denied that any idols were there in the building of the Babri Masjid up to 22nd December, 1949."*

With relation to the birth of Lord Ram, the disputed premises has been referred to by Hindu parties as J*anam Asthan* or *Janam Bhoomi*. The word '*Janam'* in English means 'birth', '*Asthan'* means 'place' and '*bhoomi'* means 'land'. No one has used the word Janam Asthal (birth site in English). In common parlance, the word birth-place denotes the village, town or city where one is born.

During arguments, it was also inquired from the learned counsel for different Hindu parties that according to them, the words *'Janam Asthan'* or '*Janam Bhoomi*' in the context in question denoted what, whether it meant the exact site where Kaushallia the mother of Lord Ram gave birth to him (which from its very nature could be very very small area of 5 to 10 square yards only) or it meant the room in which the birth took place, or it meant the mansion where mother of Lord Ram resided. None of the learned counsel could give any specific reply to this query. At this juncture it

may be noticed again that in the plaint of suit no.5 by the deities no effort has been made to identify, specify and pin point 'the birth place'. The position is other wise. It has been stated to be too well known to need any description. It is also mentioned in the plaint that both the annexed maps clarify the position. First map is of premises in dispute and the second of the premises in dispute and lot of adjoining land most of which was barren (parti) and unused. Raja Dasharath was a King. In olden times there was not much demand on the land. It is given in several books and gazetteers that the fort of Raja Dasrath was quite big. The mother of Lord Ram was one of his three or four favourite queens. Accordingly, it can not be assumed that she used to live in a 'mansion' constructed only on an area of 1500 square yards. At that time even the houses of medium level people must be of quite larger area.

It has been mentioned in several books as well as gazetteers that for a long time till first century, B.C.,

Ayodhya was completely deserted and was almost a jungle. Raja Vikramaditya in First Century, B.C. after great research located several places connected with activities of Lord Ram in Ayodhya and constructed/ got constructed 360 temples thereupon. However, it has also been mentioned that most of those temples fell down after passage of time of few centuries and were in ruined condition. It has also been noticed in various books and gazetteers that even before the construction of the mosque in question thousands of pilgrims visited Ayodhya and treated and believed it to be birth place of Lord Ram and revered the same as such.

The original *Ramayan* being in Sanskrit, which was a language understood by a very-very limited elite was not accessible to common-men until Tulsi Das (1532-1623 A.D.) wrote *Ram Charit Manas* (from 1574 to 1577 A.D.) in common-men's language *Awadhi.* If a temple standing on the premises in dispute had been demolished and a mosque had been constructed

thereupon less than 50 years before Tulsi Das wrote *Ram Charit Manas* at Ayodhya, there was no reason for not mentioning the said fact by him in his famous book. Even if it is assumed that the mosque was subsequently constructed by *Aurangzeb* still *Tulsi Das* should have mentioned in *Ram Charit Manas* that a specific small piece of land admeasuring 1500 square yards or a temple standing on such a site was birth-place of Lord Ram. Several learned counsel appearing for different Hindu parties tried to explain this vital omission on the ground that Tulsi Das was afraid that in case he mentioned it, Mughal Emperor of that time would not like that and he would be harmed. Such a wild allegation/ accusation against a poet of repute and calibre of Tulasi Das is rather unpalatable even to non Hindus. Apart from religious importance *Ram Charit Manas* has got great poetical value. Poetry is basically flight of imagination. Wealth and fear are two great retarding gravitational forces for flight of imagination. No wealthy

or fearful person has composed great poetry (This principle does not apply to prose. Leo Tolstoy who wrote *'War and Peace'* the best novel of the world was a feudal, lord of Russia of considerable wealth and position). Moreover, Tulasi Das had given up all the comforts of life and had virtually renounced the world by separating himself from his wife for writing *Ram Charit Manas* at Ayodhya. A poet in such situation and of such calibre is not expected to be fearful in writing the truth. Even if the explanation given by learned counsel is accepted still it will not improve the position much. Symbolism and similes are two most essential, handy tools of poetry. Accordingly, if not directly then at least symbolically or in similes some indication could have been given by Tulsi Das regarding the premises in dispute to be birth-place of Lord Ram and demolition of temple. Iqbal in one of his verses has said that the poetry (as well as philosophy) in essence is a word of desire which cannot be uttered face to face

Even in Ayodhya Mahatim compiled during the period of Akbar, there is no clear indication that the premises in dispute was birth-place of Lord Ram. Hans Bakker, a German Research Scholar who has made great efforts in locating important sites of *Ramayan* also could not pinpoint the premises in dispute as birth-place of Lord Ram in his book Ayodhya published in 1986.

Joseph Tieffenthaler in 1766-71 and Thornton in his Gazetteer of 1854/58 note conflicting views of locals of Ayodhya regarding the Mughal Emperor who demolished the temple and constructed the mosque i.e. either Babar or Aurangzeb. Such a mega event, if actually takes place, is not forgotten for centuries. The confusion particularly during the period of Tieffenthaler disproves the alleged event.

Conclusions of A.S.I. Report 2003, already quoted, are not of much help in this regard for two reasons. Firstly, the conclusion that there is 'evidence of continuity in structural phases from the tenth Century

onward upto the construction of the disputed structure' is directly in conflict with the pleadings, gazetteers and history books. Neither it has been pleaded by any party nor mentioned in any gazetteer or most of the history books that after construction of temples by Vikramadittya in first Century B.C. (or third or fourth century A.D., according to some) and till the construction of the mosque in question around 1528 A.D. any construction activity was carried out at the site of the premises in dispute or around that. Secondly, in case some temple had been demolished for constructing the mosque then the superstructure material of the temple would not have gone inside the ground. It should have been either reused or removed. No learned counsel appearing for any of the Hindu parties has been able to explain this position.

It has been mentioned in the A.S.I. Report 2003 that underground portion contained several such items, which are associated with the temples of north India,

e.g. mutilated sculpture of divine couple, faliage patterns, amalaka, lotus motive etc. Only in case of severe earthquake or in case of flood of very high magnitude superstructure immediately goes down inside the ground otherwise remains of a ruined building go inside the ground after centuries and not immediately after falling down of the building. It is also important to note that neither there is any requirement nor practice that even in the foundations of temple, there must be such items, which may denote the nature of the superstructure.

Accordingly, it is abundantly clear that firstly no temple was demolished for constructing the mosque and secondly until the mosque was constructed during the period of Babar, the premises in dispute was neither treated nor believed to be the birth-place nothing but birth-place and the whole birth-place of Lord Ram. It is inconceivable that Babar (or Aurangzeb) should have first made or got made thorough research to ascertain

the exact birth-place of Lord Ram, which was not known to anyone for centuries and then got constructed the mosque on the said site.

The only thing which can be guessed, and it will be quite an informed guess taking the place of finding in a matter, which is centuries old, is that a very large area was considered to be birth-place of Lord Ram by general Hindus in the sense that they treated that somewhere in that large area Lord Ram was born however, they were unable to identify and ascertain the exact place of birth, and that in that large area there were ruins of several temples and at a random small spot in that large area Babar got constructed the mosque in question.

Since after construction of the mosque Hindus started treating/believing the site thereof as the exact birth place of Lord Ram. It has come in the oral evidence of several Hindus and some Muslims (discussed in detail in the judgment of brother

S.Agarwal,J) that Hindus believed that the most precise place of birth of Lord Ram was the place beneath the Central dome of the Mosque. Accordingly, it is held that for some time before 1949 Hindus started to believe as such.

Sri Jilani, learned counsel for Waqf Board and other Muslim parties has fairly conceded that it is quite possible that some material of some ruined temple may have been used in the construction of the mosque. Carnegy has also mentioned that when Faizabad was inhabited, several people while constructing their houses in Faizabad took away the materials of ruined temples from Ayodhya.

Carnegy has also mentioned that Ayodhya was important for Jains and Baudhs also apart from Hindus and their religious places were also there in Ayodhya. Relevant paragraphs of Carnegy's sketch published in 1870 are quoted below:

"The cradle alike of Hindus, Budhists and Jains.---It is not easy to over-estimate the historical importance of the place which at various times and in different ages has been known by the names of Kosala, Ajudhia and Oudh; because it may be said to have given a religion to a large portion of the human race, being the cradle alike of the Hindus, the Budhists, and the Jains.

Of Budhism too, Kosala has without doubt, a strong claim to be considered the mother. Kapila and Kasinagara both in Gorakhpur and both of that country (Kosala) are the Alpha and Omega of Sakya Muni, the founder of that faith. It was at Kapila that he was born; it was at Ajudhia that he preached, perhaps composed those doctrines which have conferred upon him a world-wide fame; and it was at Kasinagara that he finally reached that much desiderated stage of annihilation by sanctification, which is known to his followers as Nirvana B.C. 550.

In Ajudhia then, we have the mother of the Hindus, as typified by Rama, the conqueror of the South; of the Budhists, as being the scene of the

first great protest against caste by the originator of a creed whose disciples are still counted by millions; and of the Jains, as being the birth-place of the originator of doctrines which are still reserved by several of our most influential mercantile families."

In the same report, Carnegy has mentioned that the Kasauti pillars, which were used in the construction of mosque, strongly resembled Buddhist pillars which he had seen at Benaras. (Said portion has already been quoted earlier).

Accordingly, it is also possible that there were also ruins of some Buddhist religious place on and around the land on which the mosque was constructed and some material thereof was used in the construction of mosque.

V- Whether idols were placed inside the constructed portion for the first time on 23.12.1949?

Issue No.12 of Suit No.4,
Issue No.2 of Suit No.1,

Issue No.1 of Suit No.3,
Issues No.3(a) & 4 of Suit No.5

It has been held under the previous heading that the constructed portion and the inner courtyard was a mosque and used by Muslims for offering only friday prayer for some time before 22/23.12.1949. (Prior to that friday fell on 16.12.1949). In Para-27 of plaint of Suit No.5, it is mentioned that in the night of 22nd/23rd December, 1949, the idol of Bhagwan Sri Ram was installed with due ceremony under the central dome of the building also. Sri Deoki Nandan Agarwala, original plaintiff No.3 in Suit No.5 also in his statement under Order X Rule 2 C.P.C. dated 30.04.1992 categorically stated that the idol was placed inside the central dome on 22nd/ 23rd December, 1949. In the said statement, it was also mentioned that Sri Paramhans Ramchandra along with some other person placed/ transferred the idol to the central dome. Sri Paramhans Ramchandra plaintiff of Suit No.2 (already got dismissed as withdrawn) also in his oral statement categorically asserted/ admitted that the idol was so

placed on 22nd/ 23rd December, 1949. Dharam Das, chela of Baba Abhai Ram Das substituted at the place of Baba Abhai Ram Das after his death as Defendant No.13 in Suit No.4 categorically admitted in para 11-A of his written statement that his Guru Baba Abhai Ram Das placed the idol on the pulpit in the early hours of 23.12.1949. (It is unfortunate that late Baba Abhai Ram Das in his written statement did not admit the said fact). It is stated in para 13 of the written statement filed by the Deputy Commissioner, Faizabad on behalf of State of U.P. Defendant No.6 and in para 13 of the written statement filed by the S.P. of Faizabad Defendant No.9 in Suit No.1 that "on the night of 22nd December 1949 the idols of Sri Ram Chandra Ji were surreptitiously and wrongly put inside it." In the the diary/ report and letters of D.M. and S.P. of December 1949, referred to in the introduction part, same thing was stated repeatedly.

Accordingly, it is held that the idols were kept on the pulpit inside the constructed portion/ mosque for the first time in the night of 22nd/23rd December, 1949.

VI- When the Ram Chabutra etc. in the outer courtyard came into existence:-

Issues No.19(a) & 27 of Suit No.4,
Issues No.2, 3 & 4 of Suit No.1,
Issue No.1 of Suit No.3,

During arguments learned counsel for Waqf Board and other Muslim parties could not give even a tentative period when Ram Chabutra etc. in the outer courtyard came into existence, however some Muslim parties stated that it was constructed in 1855. Some of the Hindu parties asserted that it was in existence since the time of construction of the building in the premises in dispute. Both the versions are two extremes. Tiffenthaler who visited the area in question in between 1766 to 1771 A.D., noted the existence of the Ram Chabutra. Accordingly, it must have been there since before. Its existence is noticed in several subsequent gazetteers reports etc. On the other hand, it is inconceivable that at the time of construction of mosque simultaneously a worshipping place of Hindus would have been either

permitted to remain inside the boundary wall or permitted to be constructed therein. Accordingly, the only thing which can be said is that it came into existence before visit of Joseph Tieffenthaler but after construction of mosque. Similar is the position of Sita Rasoi near the northern gate, which was opened in 1877.

VII- <u>Possession and Title:-</u>

Issues No.2, 4, 13, 15, 19(a) & 28 of Suit No.4,
Issues No.2, 3, 4 & 7 of Suit No.1

From the above it is quite clear that since much before 1855 both the parties were using the premises in dispute as their religious places. The constructed portion and the entire adjoining land of the premises in dispute was surrounded by a boundary wall having a gate. It was not very big in area (only 1500 square yards). There is no such suggestion on the part of any of the parties that the premises in dispute was used for any other purpose except worship. In such situation, the moment one enters

the main gate he is in the premises. Thereafter, it cannot be said that some one is in only part of the premises. For convenient use, different owners/ possessors may exclusively use different portions of a premises, however it will not mitigate against joint possession. To illustrate if a person dies leaving behind a moderate house and two sons and the sons for the sake of convenience use different portions of the house along with their families, it cannot be said that they are not in joint possession of the entire house. Use and occupation of different portion by each son for the sake of convenience does not amount to formal partition. Exactly similar is the position in respect of premises in dispute also. The position cannot be said to have substantially changed by construction of the railing in 1856/ 1857. This bifurcation may also very well be described as convenient use of separate portions by two joint possessors.

Muslims have not been able to prove that the land belonged to Babar under whose orders the mosque was constructed. Similarly Hindus have not been able to prove

that there was any existing temple at the place where the mosque was constructed after demolishing the temple. It has also not been proved by the Hindus that the specific small portion i.e. premises in dispute of 1500 square yards was treated, believed and worshipped as birth-place of Lord Ram before construction of mosque. In such situation when both the parties have failed to prove initial title, (commencement of title) it is possession and possession alone which decides the question of title in accordance with Section 110, Evidence Act, which is quoted below:-

> *"**110. Burden of proof as to ownership.-** When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."*

The principle of this Section applies with greater force in case of very old possession for about a century or more.

Ownership is highest form of title. On the principle

that whole includes part, the Section 110, Evidence Act applies to such title also, which is inferior to ownership. In the matter of worshipping places, ownership does not vest in any human being.

In **"Patinhare Purayil Nabeesumma v. Miniyatan Zacharias" AIR 2008 SC 1456,** in Paras No.19 to 24, particularly Para No. 24, it has been held that if on agricultural land possession for a long period is proved presumption of title follows under Section 110, Evidence Act backward as well as forward. Similarly in **"Gurunath Manohar Pavaskar v. Nagesh Siddappa Navalgund" AIR 2008 S 901,** it has been held that if possession at a particular point of time is proved, its presumption backward and forward follows (Para-12).

In **Lachho Vs. Har Sahai, (1890) 12 ILR All. 46,** it was held as follows:

> *"The question of onus in such cases is regulated by the principle formulated in S.110 of the Evidence Act, I of 1872, a principle which only gives effect to a well known principle of law common to all systems of jurisprudence, that possession is prima facie*

evidence of title."

At another place, it was held that "*But I also hold that when possession for thirty or forty years is proved to have been peaceably enjoyed, the person who has recently dispossessed such plaintiff has to meet the presumption of law, that the plaintiff's long possession indicates his ownership of the property."*

In the said judgment, the plea that the person in possession was licensee was not allowed to be raised as it has not been pleaded. In **"Nair Service Society Ltd. v. K. C. Alexander" AIR 1968 SC 1165,** it has been held in Para-15 that:

> **"***When the facts disclose no title in either party, possession alone decides.*"

The above authority has been followed in **"Chief Conservator of Forests, Govt. of A.P. v. Collector" AIR 2003 SC 1805.** In Paragraphs-17 to 21, it has been held that in the absence of any clear title with either party, the party in possession is presumed to be holding the title.

These principles apply with greater force in case of joint possession.

Accordingly, in view of the above findings and in accordance with the principle of Section 110, Evidence Act, i.e. title follows possession it is held that both the parties were/ are joint title holders in possession of the premises in dispute. Even if it is assumed that muslims were dispossessed for six days from 23.12.1949 till 29.12.1949, when property in dispute was attached it will be of no consequence. Since 29.12.1949 receiver is holding the property for the benefit of true owner.

VIII- <u>Whether the mosque was valid mosque etc.</u>

Issues No. 1-B (b), 19(d), 19(e), 19(f) and 20(a) of Suit No.4,
Issue No.6 of Suit No.3,
Issues No. 10 and 11 of Suit No.5

Under Muslim law no one can construct a mosque over the land of the other unless the other i.e. the owner permits or sanctions afterwards for the same. It has been held earlier that it is not proved that the land over

which the mosque was constructed belonged to Babar or to the person under whose orders the mosque was constructed. However, it has also been held that it has not been proved that land belonged to any one else hence from existence of mosque for a long period title will be presumed. Accordingly, it cannot be said that the mosque was not a valid mosque having been constructed over the land of some one else.

As far as dedication is concerned, there is no difficulty in presuming the dedication by user. If a mosque is constructed at a place which is not adjacent to residence or other building of the person who constructs the mosque and public offers prayer therein, dedication by user is to be presumed. It has been held in the earlier part of this judgment that since its construction prayers were offered in the mosque in question and Friday prayer were being offered uptil 16.12.1949.

The fact that there was no minaret in the mosque is

utterly immaterial. It is not an essential condition of mosque.

The fact that there was no arrangement for vazoo (washing exposed parts of body before prayer) is a bit strange. Even though it is not one of the most essential parts of a mosque however, normally in the mosques such provision is there. Even though in the year 1949 no place for vazoo was there however, in the map prepared by the Amin in the suit of 1885 such a place has been shown. Accordingly, it cannot be said that the mosque did not remain a mosque as facility for vazoo was dis-continued some time after 1885. Most of the people who come to a mosque for offering prayer do vazoo in their houses however, some use the facility for vazoo in the mosque.

There is no absolute prohibition that near or in a graveyard there cannot be a mosque. In any case the graveyard around the mosque came into existence after construction of mosque as about 75 Muslims were killed

in the riot of 1855 and buried around the mosque.

Use of the material of the ruined temple in constructing the mosque cannot be said to be desirable. However, it is not such that it renders the mosque to be no mosque in the eye of law. The figures if any on the kasauti pillars were scratched in such manner that they did not remain visible. However, even if some figure retained some character, use and continuance of such pillar in the mosque can by maximum be said to be irregular. It cannot destruct the very character of mosque. It is correct that in a mosque there should not be any photo or carving of any living creature however, it is for the conscience of the Muslims who in a mosque go to pray to decide as to whether it is appropriate for them to offer prayer even if it contains one or two such pillars on which such figures may be discernible even though with some difficulty.

In the suit of 1945 (R.S. No.29 of 1945) in between Sunni and Shiya Waqf Board it has been held that the

mosque in question is a Sunni Waqf. During arguments no learned counsel on behalf of Shiya Waqf Board raised any argument regarding the mosque in question to be Shiya Waqf.

IX- Miscellaneous findings

(a) Whether premises in dispute a deity etc.

Issues No.1 of Suit No.5

As has been held in the earlier part of this judgment, it is not proved that since before the construction of the mosque the premises in dispute was specifically treated or believed to be the birth place of Lord Rama. Accordingly, it is not necessary to decide as to whether in any case land itself can be a deity under Hindu Law or not.

However, there cannot be any doubt that an idol is a deity capable of holding property. Accordingly, suit no.5 is quite maintainable on behalf of plaintiff no.1.

(b) **Issue No. 21 of Suit No.4;-**

I fully agree with the view taken by my esteemed brother Sudhir Agarwal,J in his judgment to the effect that even though deity is not one of the defendants in suit no.4 still the suit cannot be dismissed on this ground as deity is sufficiently represented. Moreover, suit no.5 is on behalf of deity/idol and as all the suits have been consolidated hence the defect if any (of non impleadment of deity) in suit no.4 stood cured.

(c) **Adverse possession:-**

Issues No. 4,10,15 of Suit No.4,
Issues No. 3 and 8 of Suit No.3,
Issue No. 16 of Suit No.5,

As has been held in the earlier part of this judgment, both the parties are in joint possession since before 1855 hence there is no need to decide the question of adverse possession and its requirement.

(d) <u>Issue no.1-B (a) of suit no.4</u>

As the structure which was standing at the time of filing of the suit has been demolished on 6.12.1992 hence it is no more necessary to decide the question of identification of the property and plot no. etc. now the premises in dispute including the site of the demolished constructed portion is to be ascertained by the possession of the present makeshift temple constructed on 6/7 December 1992 under the Central Board. In any case the property shown by letters A,B,C,D,E,F in the map prepared by the Commissioner in suit no.1 is the premises in dispute as held earlier.

(e) In respect of findings on other issues (except issues relating to relief) I fully agree with the findings of my brother Sudhir Agarwal, J. subject to any thing contrary stated/found in this judgment of mine.

Relief:-

Issue No.16 of Suit No.4,
Issue No.17 of Suit No.1,
Issue No.13 of Suit No.3,
Issue No.30 of Suit No.5

Order VII Rule 7, C.P.C. is quoted below:

*"**7. Relief to be specifically stated**.- Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claim by the defendant in his written statement."*

In the Privy Council authority reported in **Khagendra Narain Chowdhry Vs. Matangini Debi, (1890) ILR 17 Cal. 814,** the facts were that two Zamindars were claiming exclusive ownership over certain source of water *(Sota).* Both the parties had filed cross suits. Sub-ordinate Judge decided in favour of one of the parties, i.e. Zamindars of Mechpara. The High

Court differed with the Sub-ordinate Judge and held that both the parties had failed to prove title to the exclusive possession of the *Sota* in question. Accordingly, High Court had dismissed both the suits. The Privy Council held has follows:

> "*Their Lordships arrive at the same conclusion as the High Court with regard to the insufficiency of proof given either by the zemindars of Mechpara or by the zemindars of Chapar as to the right and title to the exclusive possession of the sota in question. But their Lordships are of opinion that the decrees of the High Court cannot be supported as pronounced by the High Court. They are of opinion that, although neither party has proved a title to an exclusive possession, there can be no doubt that possession belongs to the zemindars of Mechpara and to the zemindars of Chapar.*
>
> *The evidence, in the opinion of their Lordships is insufficient, as already stated, to establish an exclusive possession by either of the parties. On the other hand, it is equally cogent in their Lordships' opinion to show that there is possession between the two.*

The result that their Lordships arrive at is that the decrees of the Subordinate Court and of the High Court should be respectively reversed, and each of the parties be declared entitled to an equal moiety of the sota opposite to and adjoining their respective zemindaris, and be decreed to be put into possession thereof accordingly."

In none of the suits joint possession had been claimed still the Privy Council granted decree for joint possession.

In **Muthu Ramakrishna Naicken vs. Marimuthu Goundan and Anr, AIR 1914 Madras 128 (D.B.),** it has been held in the last two sentences of the judgment that:

"*Though the suit is one in ejectment, a decree for joint possession may be passed.*"

In **AIR 1913 Madras 567,** the suit was filed for exclusive possession, however it was decreed for joint possession and it was directed that parties might file suit for partition.

In "**Pandohi Ahir v. Faruq Khan and Anr." AIR**

1954 All 191, the suit for possession had been filed. The High Court held that the prayer clause in the plaint was not properly worded and the Courts below had also not given due consideration to the decree which should have been passed holding that one of the defendants was co-sharer. The claim of the plaintiff was decreed for joint possession even though no payer for joint possession had been made.

In **Sardar Ali Raza Khan Vs. Sardar Nawazish Ali Khan, AIR 1943 Oudh 243 (DB),** it was held that even though suit for exclusive title and possession was filed, however in view of complicated question involved in the case, it was not expected of the plaintiff to pray for joint possession even in the alternative. Ultimately, decree for the possession of one fifth of a particular immovable property was passed in favour of the plaintiff. The plea that such a decree was not asked for and in the absence of amendment in the plaint it could not be granted was turned down. Two last paragraphs on Page

No.259 & 260 (except quotations) are quoted below:

> "*No doubt contention No. 3 that the defendant being in sole possession of the property is a trespasser so far as the shares of the plaintiff and his brothers are concerned is correct. Nevertheless, if we accepted the finding of the Hon'ble Single Judge that he is owner of one-third under the deed of appointment he would not be liable to ejectment excepting by partition. It is also correct to say that where more is claimed any smaller amount may be given if found due to the plaintiff. These points are not the points on which the learned trial Judge has based his refusal to give a decree for joint possession. He considers that it would be an unjustifiable alteration of the nature of the suit, unless the plaintiff had amended his plaint. We have considered this point of view carefully and have come to the conclusion that a decree for joint possession would not be such alteration of the frame of the suit as to cause any hardship or injustice to the defendant. It is true that plaintiff was given an opportunity of amending his plaint but had he done so, it appears to us that he would have been giving up all claim to the very*

much larger benefits which he claimed in this appeal. He could scarcely be expected to do this when so many intricate questions of law were involved. The suit was complicated, and it was difficult for plaintiff to know exactly what he would get. Many of these legal points might, from the litigant's point of view, be decided one way or the other. We have no reason to think that his claim to all the property was not bona fide. That being so, we think it would be hard to penalise him and put him to the trouble of bringing another suit merely because it turns out that he claimed too much and that his claim if successful in toto would have involved the ejectment of the defendant. Appellant's learned Counsel cites Mulla's Civil Procedure Code (Edn. 11), Order 14, Rule 1 at p. 691,

In the present case, there is certainly some measure of inconsistency between the plaintiff's claim to sole and exclusive rights over the whole property under the will and his claim as co-heir on account of the failure of the gift over and the absolute vesting of all these properties in Mohammad Ali Khan. The litigation however is so complicated that neither side has completely

succeeded in keeping its case free from inconsistency. We think that it would be quite wrong to give the plaintiff a decree for possession of the whole property on behalf of himself and his brothers who are his co-heirs. He brought the suit for possession which would exclude his brothers, and to give him a decree in a representative capacity would be entirely inconsistent with the frame of the suit. We do not, however, consider that there is anything illegal or unjust in granting him a personal decree for the share of the property which has been found to be his. This decree will not be binding upon his brothers who were not parties to the suit, nor on his sisters who are said by the parties to the suit to be excluded from inheritance. As to the argument supported by an application and a certified copy of a registered sale deed that the appellant has sold his share to another member of the family, we do not think that this can affect the decision of the appeal. Up to practically the end of the hearing of this appeal the fact was never brought to the notice of the Court, and on the evidence on the file there can be no doubt that plaintiff is entitled to a share of this property. If he has sold it, the vendee's interest will

not be affected adversely by a decree for possession being given to the appellant. In fact the giving of such a decree will, in our opinion, be in the interests of the vendee too. We therefore allow the appeal of the appellant to this extent that he be given a decree for the possession of one-fifth of the Rakh Juliana property but we dismiss the rest of his appeal. The parties will get their costs proportionate to success and failure in both Courts."

In **"Managobinda v. Brajabandhu Misra" AIR 1986 ORISSA 281,** in Para-11 onwards, it was held that if exclusive ownership is claimed but joint ownership is proved, suit can be decreed for joint ownership. That was a case for exclusive title. Some of the authorities quoted above were considered in the said authority of Orissa High Court.

In "**Pendyala Narasimham v. Pendyala Venkata Narasimha Rao", AIR 1963 AP 78**, amendment was also allowed. In Para-24 of the said authority, it was held

that “On the other hand, there are decisions from which the principle emerges that a suit for ejectment could be regarded as one for partition if the plaintiff was found entitled to it even in the absence of an alternative claim.” Several other authorities were considered in the said authority also.

In **Gangaram Ramachandra Vs. Butrusao, AIR 1952 Nagpur 202 (DB),** by Hon’ble Bose and Hidayatullah, JJ., in Para-27 it was held that “*we can see no reason why a suit for exclusive possession of 16 annas cannot be turned into a suit for partition and possession of such share as may be determined to belong to the plaintiff if the defendants contend, or it is found that the plaintiff is not entitled to the whole but only to a part.”*

In **"Smt. Neelawwa v. Smt. Shivawwa" AIR 1989 KARNATAKA 45** placing reliance upon “**Rangappa v. Jayamma” (1987) 2 Kant LJ 369** it has been held as follows in Para-10:

"10. It is contended by Sri A.B. Patil, learned Counsel for respondent/defendant that in the suit the plaintiff has only sought for a declaration and injunction restraining the defendant from alienating the suit property and there is no prayer for partition and separate possession, therefore, the prayer made by the appellant cannot at all be granted. No doubt in the plaint there is no specific prayer made by the plaintiff seeking partition and separate possession of her share in the suit land. In our opinion, this should not come in the way of granting a preliminary decree for partition and separate possession of the share of the plaintiff. Once it is declared that the plaintiff is entitled to a half share in the suit land, the necessary consequence of it is to divide the suit land and give her half share. As all the persons entitled to a share in the suit land are parties to the suit, in a suit of this nature the relief for partition must be deemed to have been prayed for in the suit. It is also relevant to notice that the relief of partition and separate possession flows from the same cause of action which forms the basis for the present suit. Denial of such a relief would only lead to another suit. Multiplicity of proceedings should normally be avoided as the

same tends to delay justice. In the facts and circumstances of the case the relief of partition and separate possession becomes a consequential relief. In First Appeal No. 231 of 1987 , Rangappa v. Jayamma decided on 17-6-1987 under more or less similar circumstances we have considered the scope of R.7 of O.VII of the Civil P.C. and held as follows : -*

"The words " and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for" are wide enough to empower the Court to grant such relief. The plaintiff is entitled to, on the facts established on the evidence on record, even if such relief has not been specifically prayed for.

8.1. The provisions of O.VII R.7 of the C.P.C. are so widely worded that they do enable the Court to pass a decree for partition in a suit for declaration of title to immoveable property and possession thereof where it turns out that the plaintiff is not entitled to all the interest claimed by him in the suit property. In such a situation there is nothing unusual in giving relief to the parties by directing partition of the suit property according to the share

of the parties established in the suit. The normal rule that relief not founded on the pleadings should not be granted is not without an exception. Where substantial matters constituting the title of all the parties are touched in the issues and have been fully put in evidence, the case does not fall within the aforesaid rule. The Court has to look into the substance of the claim in determining the nature of the relief to be granted. Of course, the Court while moulding the relief must take care to see that relief it grants is not inconsistent with the plaintiff's claim, and is based on the same cause of action on which the relief claimed in the suit, that it occasions no prejudice or causes embarrassment to the other side; that it is not larger than the one 2claimed in the suit, even if, the plaintiff is really entitled to it, unless he amends the plaint; that it had not been barred by time on the date of presentation of the plaint.

8.2. No doubt the plaintiff has sought for exclusive title and he has not been able to prove his exclusive title; but has been able to prove that he is entitled to a half share in the suit properties. When a party claims exclusive title to the suit property and is liable to establish that he is entitled to half of

the suit property, it will not be unusual for the Court to pass a decree for partition and possession of his half share. In fact such a relief flows from the relief prayed for in the plaint that he is the exclusive owner of the entire property. When a larger relief is claimed and what is established is not the entire relief claimed in the suit but a part of it, as whole includes a part, larger relief includes smaller relief, and it also arises out of the same cause of action. Therefore in the instant case, nothing prevented the Court to pass a decree for partition, in order to avoid another suit for partition and to give relief to the party in conformity with the right he had established."

Therefore we are of the view that instead of driving the plaintiff to another suit for partition, in conformity with the right she has established, it is just and appropriate to pass a preliminary decree for partition and separate possession of her half share. The plaintiff has not also lost her right in the suit property because the suit is filed within 12 years from the date of the death of her father. In other words, within 12 years from the date the property developed upon her or the succession opened. Therefore, even if a separate suit has to

be filed for partition, the defendant does not have any sustainable defence. Therefore no prejudice will be caused to the defendant/respondent if a preliminary decree for partition and separate possession is passed in this suit itself. Accordingly Point No. 2 is also answered in the affirmative and in favour of the plaintiff/appellant."

Accordingly, in view of the VIIth finding (Supra) all the three parties (Muslims, Hindus and Nirmohi Akhara) are entitled to a declaration of joint title and possession to the extent of one third each and a preliminary decree to that effect is to be passed.

In the matter of actual partition it is only desirable but not necessary to allot that part of property to a party which was in his exclusive use and occupation. Accordingly, in view of peculiar facts and circumstances it is held that in actual partition, the portion where the idol is presently kept in the makeshift temple will be allotted to the Hindus and Nirmohi Akhara will be allotted land including Ram Chabutra and Sita Rasoi as

shown in the map, plan I. However, to adjust all the three parties at the time of actual partition slight variation in share of any party may be made to be compensated by allotting the adjoining land acquired by the Central Government.

Epilogue

My judgment is short, very short. Either I may be admired as an artist who knows where to stop, particularly in such sensitive, delicate matter or I may be castigated for being so casual in such a momentous task. Sometimes patience is intense action, silence is speech and pauses are punches.

I have not delved too deep in the history and the archaeology. This I have done for four reasons. Firstly this exercise was not absolutely essential to decide these suits. Secondly I was not sure as to whether at the end of the tortuous voyage I would have found a treasure or faced a monster (treasure of truth or monster

of confusion worst confounded). Thirdly having no pretence of knowledge of history I did not want to be caught in the crossfire of historians. Fourthly, the Supreme Court in **Karnataka Board of Waqf Vs. Government of India, 2004 (10) SCC 779** has held in Para-8 as follows:-

> *"As far as a title suit of civil nature is concerned, there is no room for historical facts and claims. Reliance on borderline historical facts will lead to erroneous conclusions."*

As this judgment is not finally deciding the matter and as the most crucial stage is to come after it hence I remind both the warring factions of the following.

The one quality which epitomized the character of Ram is tyag (sacrifice).

When prophet Mohammad entered into a treaty with the rival group at Hudayliyah, it appeared to be abject surrender even to his staunch supporters. However the Quran described that as clear victory and it

did prove so. Within a short span therefrom Muslims entered the Mecca as victors, and not a drop of blood was shed.

Under the sub-heading of demolition I have admired our resilience. However we must realise that such things do not happen in quick succession. Another fall and we may not be able to rise again, at least quickly. Today the pace of the world is faster than it was in 1992. We may be crushed.

I quote two verses of Iqbal which were also quoted by Justice R.S. Dhawan in **A.C. Datt vs. Rajiv Gandhi, AIR 1990 Allahabad 38:**

"''वतन की फिंक्र कर नादां मुसीबत आने वाली है ।
तेरी बरबादियों के मश्वरे हैं आसमानों में ।।

न समझोगे तो मिट जाओगे ऐ हिन्दोस्तां वालों ।
तुम्हारी दास्तां तक भी न होगी दास्तानों में ।।''

An observation of Darwin is also worth quoting at this juncture (what an authority to quote in a religious

matter/ dispute!):

"Only those species survived which collaborated and improvised."

Muslims must also ponder that at present the entire world wants to know the exact teaching of Islam in respect of relationship of Muslims with others. Hostility – peace – friendship – tolerance - opportunity to impress others with the Message - opportunity to strike wherever and whenever possible – or what? In this regard Muslims in India enjoy a unique position. They have been rulers here, they have been ruled and now they are sharers in power (of course junior partners). They are not in majority but they are also not negligible minority (Maximum member of Muslims in any country after Indonesia is in India.) In other countries either the Muslims are in huge majority which makes them indifferent to the problem in question or in negligible minority which makes them redundant. Indian Muslims have also inherited huge legacy of religious learning and

knowledge. They are therefore in the best position to tell the world the correct position. Let them start with their role in the resolution of the conflict at hand.

Before parting I thank Hon'ble the Chief Justice C.K. Prasad (now an Hon'ble Judge of Supreme Court) for giving the responsibility and providing opportunity to me to decide this historical case by inducting me in this Bench. We are also thankful to Hon'ble the Chief Justice H.L. Ghokhale (now an Hon'ble Judge of Supreme Court) for inducting Hon'ble Sudhir Agarwal, J. in this Bench who is extremely labourious, very upright and considerably balanced.

GIST OF THE FINDINGS

1. The disputed structure was constructed as mosque by or under orders of Babar.

2. It is not proved by direct evidence that premises in dispute including constructed portion belonged to Babar

or the person who constructed the mosque or under whose orders it was constructed.

3. No temple was demolished for constructing the mosque.

4. Mosque was constructed over the ruins of temples which were lying in utter ruins since a very long time before the construction of mosque and some material thereof was used in construction of the mosque.

5. That for a very long time till the construction of the mosque it was treated/believed by Hindus that some where in a very large area of which premises in dispute is a very small part birth place of Lord Ram was situated, however, the belief did not relate to any specified small area within that bigger area specifically the premises in dispute.

6. That after some time of construction of the mosque Hindus started identifying the premises in dispute as exact birth place of Lord Ram or a place wherein exact birth place was situated.

7. That much before 1855 Ram Chabutra and Seeta Rasoi had come into existence and Hindus were worshipping in the same. It was very very unique and absolutely unprecedented situation that in side the boundary wall and compound of the mosque Hindu religious places were there which were actually being worshipped along with offerings of Namaz by Muslims in the mosque.

8. That in view of the above gist of the finding at serial no.7 both the parties Muslims as well as Hindus are held to be in joint possession of the entire premises in dispute.

9. That even though for the sake of convenience both the parties i.e. Muslims and Hindus were using and occupying different portions of the premises in dispute still it did not amount to formal partition and both continued to be in joint possession of the entire premises in dispute.

10. That both the parties have failed to prove

commencement of their title hence by virtue of Section 110 Evidence Act both are held to be joint title holders on the basis of joint possession.

11. That for some decades before 1949 Hindus started treating/believing the place beneath the Central dome of mosque (where at present make sift temple stands) to be exact birth place of Lord Ram.

12. That idol was placed for the first time beneath the Central dome of the mosque in the early hours of 23.12.1949.

11. That in view of the above both the parties are declared to be joint title holders in possession of the entire premises in dispute and a preliminary decree to that effect is passed with the condition that at the time of actual partition by meets and bounds at the stage of preparation of final decree the portion beneath the Central dome where at present make sift temple stands will be allotted to the share of the Hindus.

Order:-

Accordingly, all the three sets of parties, i.e. Muslims, Hindus and Nirmohi Akhara are declared joint title holders of the property/ premises in dispute as described by letters A B C D E F in the map Plan-I prepared by Sri Shiv Shanker Lal, Pleader/ Commissioner appointed by Court in Suit No.1 to the extent of one third share each for using and managing the same for worshipping. A preliminary decree to this effect is passed.

However, it is further declared that the portion below the central dome where at present the idol is kept in makeshift temple will be allotted to Hindus in final decree.

It is further directed that Nirmohi Akhara will be allotted share including that part which is shown by the words Ram Chabutra and Sita Rasoi in the said map.

It is further clarified that even though all the three parties are declared to have one third share each,

however if while allotting exact portions some minor adjustment in the share is to be made then the same will be made and the adversely affected party may be compensated by allotting some portion of the adjoining land which has been acquired by the Central Government.

The parties are at liberty to file their suggestions for actual partition by metes and bounds within three months.

List immediately after filing of any suggestion/ application for preparation of final decree after obtaining necessary instructions from Hon'ble the Chief Justice.

S*tatus quo* as prevailing till date pursuant to Supreme Court judgment of Ismail Farooqui (1994(6) Sec 360) in all its minutest details shall be maintained for a period of three months unless this order is modified or vacated earlier.

Date:30.09.2010
RS/NLY/VKG