

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4905 OF 2010

IN THE MATTER OF:

NIRMOHI AKHARA AND ANR

... APPELLANT

VERSUS

RAJENDRA SINGH AND ORS.

... RESPONDENTS

WRITTEN SUBMISSIONS

ON BEHALF OF THE APPELLANT - NIRMOHI AKHARA
BY SUSHIL KUMAR JAIN, SR. ADVOCATE

PLAINTIFF IN OOS NO. 3 OF 1989

A. Pleadings

1. The O.O.S. No.3 of 1989 (Regular Suit No.26 of 1959) was filed on 17.12.1959 by the Nirmohi Akhara (Plaintiff No. 1) and Its Mahant and Sabrakar Mahant Raghunath Das. It was filed against the following defendants:-
 - (1) Defendant No. 1 - Babu Priya Datt Ram (Receiver appointed in the proceedings under section 145 Cr. P.C.). He was later replaced with Shri Jamuna Prasad in Oct. 1989.
 - (2) Defendant No. 2-5 were State of U.P., Deputy Commissioner Faizabad, City Magistrate and S.P. Faizabad.
 - (3) Defendant No.6 to 8 and 11 - Individual Muslim Parties (Def 6-8 were impleaded in the suit in a representative Capacity for which permission was granted on 21.12.1959). Defendant No.11 Mohd. Farook was added vide order of Court dated 03.12.1991.
 - (4) Defendant No.9- U.P. Sunni Central Board of Waqfs Lucknow was added as a defendant vide order of Court dated 23.08.1989.
 - (5) Defendant No. 10 - Umesh Chandra Pandey was impleaded as defendant No.10 on 28.01.1989 on his own application.
2. The case of plaintiff Nirmohi Akhara was that for a very long time in Ayodhya an ancient math and Akhara of Ramanandi Baragis called "Nirmohi" 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 was belonging to and in possession of the Akhara which was also acting as its Manager through its Mahant and Sarbrahkar who had been managing and receiving offerings made there at in the form of money etc.
3. In the Map Attached to the suit, the temple of the Janma Bhumi was described by the letters E.F.G.K.P.N.M.L.E. And the Main temple was described by the letters E.F.G.H.I.J.K.L.E. Since the property attached in the S. 145 Proceedings related only to the main temple (also described generally as the "Inner Courtyard"), the suit was confined to the said inner courtyard and the constructed portion. (A copy of the plaint map is attached for ready reference as Annexure A).

It is stated that so far as the "outer courtyard" is concerned, it has always been in possession of the Nirmohi Akhara. The said portion was not attached under the order dated 29.12.1959 and continued to be in possession of the Akhara. The suit of the plaintiff - Nirmohi Akhara is therefore confined to the Inner Courtyard only. It is to be noted that till filing of suit No. OOS No. 4 of 1989 by the Sunni Central Board of Waqfs in the years 1961, there was no dispute raised by any party relating to the Outer Courtyard. In the Outer Courtyard, there were undisputed structures of the plaintiff including the Sita Rasoi, Bhandar Griha as well as the Chabutra. OOS No. 1 of 1989 filed by Gopal Singh Visharad was also concerned with the inner courtyard only.

5. Further the access of the Main Temple or the Inner Courtyard is through the Outer Courtyard only. There is no separate access to the Main Temple Area which is claimed by the Muslim Parties as the "Babri Masjid". It was specifically pleaded by the Plaintiffs (in Para 5) that no Mohammedan could or ever did enter the temple Building. It was specifically stated that no mohammedan has even attempted to enter it at least since 1934.
6. In Para-4 it was stated that Nirmohi Akhara possessed the temple and none others but Hindus were allowed to enter and worship therein. After the demolition on 06.12.1992, plaint was amended and it was asserted that the "main temple" and other temples of Nirmohi Akhara were demolished by some miscreants, who had no religion, caste or creed.
7. In Para-7, it was stated that due to wrongful attachment, plaintiffs had wrongfully been deprived of management and charge of the temple. It was stated that the said proceedings were continuing and that the plaintiff had been waiting for dropping of the said proceedings under Section 145, Cr.P.C., hence initiation of a suit had become inevitable. It was stated that the Cause of action had 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. In the suit relief in the nature of Mandatory Injunction was prayed 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.

B. ISSUES (Suit No. 3)

8. In Suit No. 3, the High Court had framed the following issues:-

- 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.

IssueNo.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 :- "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." (added by Hon'ble High Court order dated 23.2.96)

9. Out of the aforesaid issues, Issue No. 11, 12 and 15 were not pressed (*See Para 1292 Page 909*) The said issues were therefore decided in favour of the appellant Plaintiff.
10. In relation to the other issues, since there are three separate opinions expressed by the three Judges comprising the Bench of the High Court, the findings and final conclusion recorded in the three judgments on the issue are being reproduced in the form of a chart for easy convenience:-

ISSUE	HON'BLE S. U. KHANJ.	HON'BLE SUDHIR AGARWAL, J.	HON'BLE DHARAM VEER SHARMA, J
1. Is there a temple of Janam Bhumi with idols installed therein as alleged in para 3 of the plaint?	<p>"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."</p> <p>Pg 105, Vol.1</p>	<p>Against the plaintiff.</p> <p>"4425. Therefore, the manner in which the plaintiff has depicted the premises in dispute and claimed it to be a temple is not correct in view of our findings recorded above. The premises in dispute cannot be treated to be a temple in the manner it is being pleaded and claimed by the plaintiffs (Suit-3). <u>Though there are other aspects of the matter which we have already discussed, subject to those findings, as pointed out above also, in our view, issue No.1(Suit-3) has to be answered in negative. It is decided accordingly.</u>"</p>	<p>Decided as per Suit 4.</p> <p>"The disputed structure has already been demolished on 06.12.1992 and there is no evidence to establish that at the disputed structure there was any temple inside the structure belonging to plaintiff no.1, in which he installed the idol of Lord Ram Chandra Ji, Laxman Ji and Saligram Ji from times immemorial."</p>
2. Does the property in suit belong to the plaintiff No.1?		<p>Against the plaintiff.</p> <p>"4482. As is evident, the property in suit for the purpose of Suit-3 is the premises within the inner courtyard. The plaintiff, though claimed to be the owner thereof and its counsel has also made a statement to this effect under Order X Rule 2 C.P.C., but not even a single document has been placed on record to show the title. Faced with this situation, the plaintiff sought to claim acquisition of title by way of adverse possession against the Muslim parties. This claim we have already negated above. We answer this issue in negative, i.e., against the plaintiff"</p>	<p>Against the plaintiff.</p> <p>As per Suit 4.</p>

3. Have plaintiffs acquired title by adverse possession for over 12 years?	<p>"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"</p> <p>Pg 109, Vol.1</p>	<p>Against the plaintiff.</p> <p>Para 3024.</p>	<p>Against the plaintiff.</p> <p>As per Suit 4.</p>
4. Are plaintiffs entitled to get management and charge of the said temple?		<p>PS-2846.</p> <p>Against the plaintiff.</p> <p>"4484..... We have also held that the idols were kept under the central dome inside the inner courtyard in the night of 22nd/23rd December, 1949. The plaintiffs having disputed this incident being a factitious and fabricated story, the question of treating them as Shebait in respect of the idols placed under the central dome on 22nd/23rd December, 1949 does not arise since according to their own pleadings, they have not admitted any where of taking care of the deity in the inner courtyard under the central dome of the disputed structure. Issue No. 4 (Suit-3), therefore, is answered in negative, i.e., against the plaintiffs."</p>	<p>Against the plaintiff.</p> <p>As per Suit 4.</p>

<p>5. Is the property in suit a mosque made by Emperor Babar known as Babari masjid?</p>	<p>"Accordingly, from the above it is proved that the 226 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."</p> <p>Pg 99, Vol.1</p> <p><i>Pg 100 find</i></p>	<p>Defendant has failed to prove that the property in dispute was constructed by Babur.</p> <p>"1682. It is a matter of further probe by Historians and others to find out other details after making an honest and independent inquiry into the matter. The three issues, therefore, are answered as under:</p> <p>(A) Issue no.6 (Suit-1) and Issue No.5 (Suit-3) are answered in negative. The defendants have failed to prove that the property in dispute was constructed by Shanshah/Emperor Babar in 1528 AD. Accordingly, the question as to whether Babar constructed the property in dispute as a 'mosque' does not arise and needs no answer....."</p>	<p>Decided with Issue 1</p>
<p>6. Was the alleged mosque dedicated by Emperor Babar for worship by Muslims in general and made a public waqf property?</p> <p><i>Pg 113 vol 2</i></p>	<p>Dedication presumed.</p> <p>".....Accordingly, it cannot be said that the mosque was not a valid mosque having been constructed over the land of some one else."</p> <p>Pg 107, Vol.1</p>	<p>Not proved.</p> <p>" 3345. In the absence of any evidence direct, circumstantial or otherwise and also due to inapplication of any principle with respect to presumption etc., we are constrained to hold that issue 6 (Suit-3) is not proved at all hence answered in negative."</p>	<p>Decided with Issue 1</p>
<p>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?</p>		<p>No, In favour of the plaintiff</p>	<p>As per Suit 4.</p>

7(b) Is the said notification final and binding? Its effect.		No. In favour of the plaintiff	As per Suit 4.
<p>8. Have the rights of the plaintiffs extinguished for want of possession for over 12 years prior to the suit?</p>	<p>Held that parties in joint possession hence no need to decide question of adverse possession</p> <p>Pg 109, Vol.1</p> <p>[decided with Issue 3]</p>	<p>Negative. Against the Plaintiff.</p> <p><i>"3075. The suit having been filed in 1959, it cannot be said that in the preceding 12 years the plaintiffs never had possession over the property in dispute (inner courtyard). Neither the plaintiffs could discharge burden of proof that they own the property in dispute nor the defendants could prove by leading trustworthy evidence that the plaintiffs were the owner but remain dispossessed from the property in dispute for over 12 years and that prior or upto the date of the suit, defendants fulfilled all the requirement to clear the plea of adverse possession. Issue no. 8 (Suit-3) is decided accordingly in negative."</i></p>	<p>Against the plaintiff.</p> <p>As per Suit 4.</p>

<p>9. Is the suit within time?</p> <p><u>9</u></p> <p><u>Limitation</u></p> <p>Pg-157,158</p>	<p>Yes</p> <p>Pg 87, Vol.1</p>	<p>Against the plaintiff.</p> <p>2580. Sri Verma stated that in the revenue entries, the name of the Mahant of Nirmohi Akhara was directed to be entered in 1941 and this shows the title of the plaintiffs over the entire property in dispute. We find no reason to agree. An entry in revenue record does not confer any title. When the dispute of title was already raised, the plaintiffs had to get this dispute settled in one or the other way failing which they would not succeed in claiming possession of the property in dispute (i.e. inner Courtyard). In any case, since Arts. 144, 142 and 47 are inapplicable and the counsel for the plaintiffs has also not been able to show any continuing wrong in the matter, we find that the suit is barred by limitation vide Art. 120 of the Limitation Act. Issue No. 9 (Suit-3) is accordingly answered in negative and against the plaintiffs 41(Suit-3).</p>	<p>Against the plaintiff.</p> <p>As per Suit 4.</p> <p>" Therefore, the suit could only be filed within 6 years, therefore, the suit is barred by limitation. Issue No.3 is decided against the plaintiffs and in favour of the defendants."</p>
<p>10.(a) Is the suit bad for want of notice u/s80C?</p>		<p>In favour of the plaintiff</p> <p>"644. The entire issue 10 (a) and 10 (b) (Suit-3) is, accordingly, decided in favour of plaintiffs (Suit-3). We hold that a private defendant cannot raise objection regarding maintainability of suit for want of notice under Section 80 C.P.C."</p> <p>Pg 670, Vol.1</p>	<p>In favour of the plaintiff</p>
<p>10.(b) Is the above plea available to contesting defendants?</p>		<p>Same as above</p>	<p>In favour of the plaintiff</p>

11. Is the suit bad for non-joinder of necessary defendants?	Issue decided Specifically. Miscellaneous Findings (e) In respect of findings on other issues (except issue relating to relief) I fully agree with the findings of my brother Sudhir Agarwal J. Subject to anything contrary stated found in this judgment of mine.	In favour of the plaintiff. Not Pressed. Para 1292.	"This issue is identical to issue no. 21 of OOS No. 4 of 1989. In view of the finding on the leading case, issue if decided accordingly." (Page 3495) Issue No. 21 was decided against Plaintiff of OOS 4 of 1989 by holding that the idols and deities were necessary parties without whom no effective relief can be granted.
12. Are defendants entitled to special costs u/s 35 C.P.C.?		In favour of the plaintiff. Not Pressed. Para 1292.	No
13. To what relief, if any, is the plaintiff entitled?	All the three parties (Muslims, Hindus, Nirmohi Akhara) entitled to declaration of joint title and possession to the extent of 1/3 rd share each and a preliminary decree is passed to that effect Pg 1	No relief. "4557. In view of our findings in respect of issues no. 2, 3, 4, 9 and 14 the plaintiff, Suit-3, is not entitled to any relief."	Suit is dismissed

14. Is the suit not maintainable as framed?	<p>Issue decided Not</p> <p>Specifically. Miscellaneous Findings</p> <p>(e) In respect of findings on other issues (except issue relating to relief) I fully agree with the findings of my brother Sudhir Agarwal J. Subject to anything contrary stated found in this judgment of mine.</p> <p>Note:-</p> <p>The reasoning in the judgment While deciding the issue of Limitation (i.e. the reasoning second and fifth reason) would lead to a conclusion that the suit was maintainable.</p> <p>The learned judge also grants relief and hence it can be inferred that he decided the issue of maintainability in favour of the plaintiff.</p>	<p>Not maintainable.</p> <p>"4486. This issue has arisen for the reason that the property in dispute was attached and handed over to the Receiver pursuant to a statutory order passed by the Magistrate under Section 145 Cr.P.C. on 29.12.1949. <u>If the plaintiff (Suit-3) had any grievance, it could have filed objection before the Magistrate inasmuch order of attachment was a preliminary order and was subject to the final order under Section 145(2) Cr.P.C., but no such objection appears to have been filed by the plaintiff (Suit-3) before the Magistrate. The plaintiffs did not seek any declaration about its title or status and without determining the same, the Civil Judge could not have directed handing over charge from the Receiver to the plaintiff. It is for this reason, in our view, Suit-3 is not maintainable. The issue is answered accordingly"</u></p>	<p>In favour of the Plaintiff</p> <p>"On behalf of the defendants it has nowhere been argued as to how the suit has wrongly been framed. The suit was properly registered. No material has been placed before this court as to how the suit is not maintainable. Consequently, issue no 14 is decided in favour of the plaintiff and against the defendants." (See page 3495)</p>
15. Is the suit property valued and Court-Fee paid sufficient?		<p>In favour of the plaintiff. Not Pressed.</p> <p>Para 1292.</p>	

16. Is the suit bad for want of notice u/s 83 of U.P. Act 13 of 1936?		No	
17. 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.		In favour of the plaintiff "799. We accordingly, in view of the above discussion, decide the issue no. 17 (Suit-3) in favour of the plaintiffs by holding that Nirmohi Akhara, plaintiff no. 1 is a Panchayati Math of Ramanandi Sect of Vairagi and as such is a religious denomination following its religious faith and pursuit according to its own custom. We however further hold that its continuance in Ayodhya find sometimes after 1734 AD and not earlier thereto."	In favour of the plaintiff

Pg 751, Vol.1

11. Thus from the aforesaid, it is evident that the Issue No. 1, 2, 3, 4, 5, 8 and 9 (by majority) have been decided against the Plaintiff - Nirmohi Akhara and hence relief prayed for has been denied to the Plaintiff. Issue No. 6, 7(a) and 7(b), 10, 11, 12, 14 (by majority), 15, 16 and 17 have however been decided in favour of the Plaintiff - Nirmohi Akhara and against the defendants. It is thus submitted that in the appeal arising out of Suit No. OOS 3 of 1989, the plaintiff is first concentrating on the said issues which have been decided against him.