

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4740 OF 2011**

IN THE MATTER OF:

SHRI GOPAL SINGH VISHARAD
SURVIVED BY SRI RAJENDRA SINGH ... APPELLANT

VERSUS

FAROOQ AHMAD & ORS. ... RESPONDENTS

SUBMISSIONS ON BEHALF OF Mr. RANJIT KUMAR, SR.

ADVOCATE IN REJOINDER BY THE APPELLANT

PAPER BOOK

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ADVOCATE FOR THE APPELLANT : MS. RUCHI KOHLI

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1. The instant suit was filed on 16th January 1950 praying for the following reliefs:

- (a) *Declaration may kindly be made to this effect 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, details whereof has been given in the end of the suit plaint by going near the idols without any let or hindrance and defendants No. 6 & 7 to 9 and the Defendant No. 10 and their assigns have no right to interfere in the said rights.*
- (b) *Permanent and perpetual injunction order may kindly be issued against the Defendants thereby restraining the defendants No. 1 to 6 and 7 to 9 and Defendants No. 10 and their assigns from removing the placed idols of Lord Shri Ram Chandra and others from the place which has been detailed herein below and they should also not close the way leading to that and should not interfere in the worship and darshan in any manner.*
- (c) *Cost of the proceedings may also be awarded in favour of the Plaintiff against the Defendants.*
- (d) *Pass any such other and further relief as may be deemed fit and proper in the facts and circumstances of the present case against the Defendant and in favour of the Plaintiff."*

9(c) Are the said provisions of the U.P. Act 13 of 1996 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?

(b) Are the rights set up by the plaintiff in this suit independent of the provisions of Section 91 CPC? If not, its effect.

Issue No. 12: - Is the suit bad for want of steps and notice under Order 1 Rule 8 CPC? If so, its effect?

Issue No. 13: - Is the suit No. 2 of 50 Shri Gopal Singh Visharad v. Zahoor Ahmad bad for want of notice under Section 80 CPC.

Issue No.14: - Is the suit No. 25 of 50 Param Hans Ram Chandra v. Zahoor Ahmad bad for want of valid notice under Section 80 CPC?

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?"

3. The findings recorded on the said issues by Agarwal J. are as follows: -

"1. Issue 1 (Suit-1) – It is held that the place of birth, as believed and worshipped by Hindus, is the area covered under the central dome of the three domed structure, i.e., the disputed structure in the inner Courtyard in the premises of dispute.

2. Issue 2 (Suit-1) – It is held that the idols were kept under the central dome of the disputed structure within inner Courtyard in the night of 22nd/23rd December, 1949 and prior thereto the same existed in the outer

Courtyard. Therefore, on 16.01.1950 when Suit -1 was filed the said idol existed in the inner Courtyard under the central dome of the disputed structure, i.e., prior to the filing of the suit. So far as the Charan Paduka is concerned, the said premises existed in the outer Courtyard. Since Suit-1 is confined only to the inner Courtyard, question of existence of Charan Paduka on the site in suit does not arise.

3. Issues 3 and 4 (Suit-1)- It is held that plaintiffs have right to worship. The place in suit to the extent it has been held by this Court to be the birthplace of Lord Rama and if an idol is also placed in such a place the same can also be worshipped, but this is subject to reasonable restrictions like security, safety, maintenance, etc.

4. Issues 5(a), 5(c), 5(d), 9(c) and 11(a) (Suit-1) are answered in negative.

5. Issue 5(b) (Suit-1) – Held, the Suit 1885 was decided against Mahant Raghubar Das and he was not granted any relief by the respective Courts, and, no more.

6. Issue 6 (Suit-1) is answered in negative. The defendants have failed to prove that the property in dispute was constructed by ShahanshahEmperor Babar in 1528 AD.

7. Issue 7 (Suit-1) is decided in negative, i.e., against the defendants muslim parties.

8. Issue 8 (Suit-1) is answered in negative. Suit is not barred by proviso to Section 42 of Specific Relief Act, 1963.

9. Issue 9 (Suit-1) is decided in favour of plaintiffs (Suit-1).

10. Issue 9(a) (Suit-1) is answered in favour of plaintiffs (Suit-1).

11. Issue 9(b) (Suit-1) is answered against the plaintiffs.

12. Issue 10 (Suit-1) is answered in negative, i.e., in favour of plaintiffs of Suit-1.

13. Issue 11 (b) (Suit-1) is answered in affirmative.

14. Issue 12, 13, 15, 16 and 21 (Suit-1) are answered in negative, i.e., in favour of the plaintiffs (Suit-1).

15. Issue 14 (Suit-1) has become redundant after dismissal of Suit No. 25 of 1950 as withdrawn.

16. Issue 17 (suit-1) – The plaintiffs is declared to have right of worship at the site in dispute including the part of the land which is held by this Court to be the place of birth of Lord Rama according to the faith and belief of Hindus but this right is subject to such restrictions as may be necessary by authorities concerned in regard to law and order, i.e., safety, security and also for the maintenance of place of worship etc. The plaintiffs is not entitled for any other relief.”

4. Khan J. at Page No. 71 of Vol. 1 gave findings on limitation in all the Suit Nos. 1, 3, 4 & 5, including Issues Nos. 8 & 10 of Suit No.1 and after discussion held at Page No. 76 as under: -

“...Accordingly, even if it is held that suit No. 4 & 3 are barred by limitation, still rights and entitlement of the contesting parties to 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. 8 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....”

(Emphasis supplied)

Thus, clearly holding that suit No.1 was undisputedly within time.

5. That Khan J. on the question of *res judicata* and admissibility of judgment and assertions made in the 1885 suit again considered the issues in suit Nos. 1, 4 & 5 arising there from at page No. 87 Vol.1 and written a finding at page No. 90 of Vol.1 as under:-

“...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...”

6. On the question of when the structure in disputed premises were constructed and by whom the learned Judge again considered all the issues in combined manner at page No. 90 including Issue No.6 of suit 1 and held at page No. 100 of Vol. 1 as under:-

"....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 disused 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....."

7. On the question whether the site of premises in dispute was treated to be the birth place of Lord Ram before construction of the mosque and whether there was any temple standing thereon which was demolished, again Khan J. consolidated all the issues of the suit Nos. 1, 4 & 5 at page No. 100 of Vol.1 and held at page Nos. 103 – 104 of Vol.1 as under: -

"...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 through 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 the construction of the mosque 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....."

(Emphasis supplied)

8. On the question whether idols were placed inside the constructed portion for the first time on 23.12.1949, Khan J. while consolidating the issues arises in suit Nos. 1, 3, 4 & 5 at page No. 104 held at page No. 105 of Vol. 1 as under: -

"...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..."

9. Regarding the existence of Ram Chabutra, the issues arising in suit Nos. 1, 3 & 4 were consolidated by Khan J. at page No. 105 of Vol.1 and it was held as under: -

“....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....”

10. On the question of possession and title arises in suit Nos. 1 & 4, it was held at page No. 107 of Vol. 1 by Khan J. as under: -

“...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.....”

11. The other issues arising in other suits, not in suit No.1, were discussed by learned Judge and then on the question of relief arising in suits Nos. 1, 3, 4 & 5 relying on Order VII rule 7 of Code of Civil Procedure, 1908 which reads as under: -

“..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...”

It was held at page Nos. 113-114 of Vol. 1 as under: -

“....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 in actual partition, the portion where the idols 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... ”

12. Sharma J. in his judgment after considering the Issue Nos. 3, 4 & 7 and noting the issues including the statements made, gave the findings on issues from page Nos. 3482 and relied on the findings made in suit No. 4 on most of the issues and ultimately dismissed the suit with easy cost at page No. 3489.
13. The Appellant/Plaintiff has outlined the above only for the reason that the issues framed and findings arrived at in suit No.1 have not been put in the chart filed before this Hon'ble Court containing the findings of three Hon'ble Judges of the High Court viz. Vol. A-5 submitted during the course of hearing.
14. The note submitted by the Counsel for the Defendant No.10 in suit No.1 Sunni Central Board of Waqf (Vol. A-87) has given selective findings/observations and summarized what was stated in the plaint or in the written statement whereas the Plaintiff/Appellant in suit No.1 took the Court through the entire pleadings as also through the exhibits and the evidence led on behalf of the Plaintiff without 'selective extracts' since 'selective extracts' do not give the entire

context of what was stated either before or later and is a gist. It ought to be treated only as a submission and not as to the actual content of either the pleadings or evidence in the most respectful submission of the Plaintiff/Appellant.

15. For the chronology of what happened before and after the filing of the plaint certain facts may be noted once again. It is categorical assertion of the Plaintiff in suit No.1 in para 1 itself of the plaint that the original Plaintiff was a follower of Sanatan Dharm and being resident of Ayodhya used to worship and have darshan of deities and idols and that the Plaintiff was worshipping and having darshan of idol of Bhagwan Shri Ram Chandra Ji in that place of Janambhoomi, details whereof had been given at the end of the plaint. Para 1 & 2 at page No. 2 of Vol. 86 of the plaint are quoted herein below for ready reference: -

"1. That the original Plaintiff, follower of Sanatan Dharm and is the resident of Ayodhya and as per his religion, he used to worship and have the darshan of the deities and idols and the present plaintiff like his deceased father (original Plaintiff) is the follower of Sanatan Dharma and performs the worship and has the darshan of the deities and holy places etc.

2. That the Plaintiff has been worshipping and having darshan of the idol of Lord Shri Ram Chandra Ji and Charan Paduka (foot impressions) etc. in that place of Janambhumi, details whereof has been given hereinbleow and he is entitled to perform worship and have darshan in that place without any obstruction or interference and forever in future also.

(Emphasis supplied)"

16. It was this right of the Plaintiff which had been interfered with and therefore the suit had been filed on 16th January 1950.

That the written statement in the instant case was filed on 21st February, 1950 (kindly see page Nos. 8 – 17 of Vol. 86). In paragraph 12 of the written statement at page No. 11 of Vol.86, it is been categorically stated as under: -

“12. That in respect of the above suit the plaintiff filed a map in which the mosque has been clearly depicted and did not object to it. The suit related and the relief claimed there under was only in respect of a chabootra now the contention of the Plaintiff is that the entire building is the place of temple Janamsthan which is wholly wrong and baseless. The case has been fabricated and has been filed fraudulently. (Emphasis supplied)”

Thus, it is clear that the suit of 1885 was only *qua* the chabutra.

Similarly, in paragraph 13, it is stated as under: -

“13. That the case respecting the Chabutra was not entertained and dismissed and the appeal brought against the judgment was also dismissed”

17. In paragraph 25 of the written statement, it was stated that the proceedings under Section 145 Cr. P.C. were wholly wrong and that the rights of the Defendants Muslims parties have been infringed and are being conducted for helping the opposite parties. Para 25 of the written statement is quoted herein below for ready reference: -

“That so far as the Defendant Mujeeb is concerned he knows that Defendant No. 9 has initiated the proceedings under Section 145 Cr. P.C. respecting the building in question i.e. Babri Mosque that the proceedings were wholly wrong and against the justice. That the rights of the Defendant Mujeeb and other defendants have been infringed and the proceedings has been conducted for helping the

*opposite parties including the Defendant No. 7, 8 Guni
Dutt Singh former City Magistrate, Faizabad.
(Emphasis supplied) ”*

18. While, it is relevant here to state regarding paragraph 25 of the written statement *qua* 145 proceedings is that when this written statement was filed on 21st February 1950, it is very apparent that the Muslims Defendants Nos. 1 to 5 were very well aware of the Section 145 proceedings. However, these Muslims parties did not choose to file any affidavit or there say before the City Magistrate who had by its order dated 29th December 1949 asked the parties to file their affidavits as is quoted herein below in the next paragraph.

In fact other Muslims parties between 08th-16th February 1950, filed affidavits before the City Magistrate stating, *inter alia*, that the Babri Masjid was constructed after breaking the Janam Bhumi. Some of these affidavits have all been exhibited as Exhibit 1 to 14 by the Plaintiff/Appellant herein in Vol. 87 from page Nos. 1-60. These affidavits in vernacular language are also available at page Nos. 3789-3792 and then page Nos. 3793-3802 and then page Nos. 3805 – 3825 of Vol. 3. These affidavits further stated that Muslims had stopped offering Namaz here after 1934 and that the Hindus have taken possession.

19. What needs to be highlighted here was the submission of the Counsel for the Appellant herein is that these affidavit were looked into by the Civil Judge in the instant suit when the order of injunction/stay was confirmed on 03rd March 1951, as extracted herein below in paragraph 22, wherein it is noted “it

further appears from the copies of number of affidavits of certain muslims residents of Ayodhya that at least from 1936 onwards the muslims have neither used the site as a mosque nor offered prayers there." This order of learned Civil Judge was confirmed by the High Court in appeal on 26th April 1955.

Thus, it was the respectful submission of the Appellant that these affidavits have corroborative value in as much as that even when the Defendant in suit filed written statement on 21st February 1950, after these aforesaid affidavits were filed in the Cr. P.C. proceedings, they did not object to such stand being taken neither in their written statement in this suit nor did they take the same stand by filing affidavits before the City Magistrate where the proceedings under Section 145 Cr. P.C. were still pending to the knowledge of these Muslim parties. Further, the affidavits having been brought on record in this suit and duly exhibited, definitely point to historical facts and cannot be rejected outrightly if despite public notices being published in three newspapers, none files any contrary statement, contrary to those who said that temple was demolished to build a mosque. One set of Muslim parties gave affidavits which proved the case of the Plaintiff/Appellant herein while another set of Muslim parties did not object in the Section 145 proceedings and on the contrary stated in their written statement in the instant suit that 145 proceedings were to help the Hindu parties as extracted hereinabove.

20. Secondly, the Counsel for the Sunni Central Board of Waqf in their note is relying on the written statement of the State Government to submit that the State was opposing suit filed by the Appellant, but has not extracted the statement of the State Government recorded on 23rd April, 1962 / 28th May, 1962 (kindly see page No. 3612 of Vol.3) and referred to in the Judgment of Agarwal J. in paragraph 49 at page No. 152 of Vol. 1. This statement was read as common stand of the State Government in all the suits which had been consolidated and heard together. The said statement reads as under:-

"...The petitioners Defendants begs to submit as follows: -

- 1. That the Govt. is not interestted in the properties is dispute and as such the petitioners don't propose to contest the suit.*
- 2. That the petitioners, in the circumstances be exempted from costs.*
- 3. That the petitioner defendants 6 to 8 are State Officials and their actions in respect of the properties in dispute were bonafide in due discharge of their official duties.*
- 4. That the petitioner defendants don't contest plaintiffs application u/o 1 & 8 C.P.C.*

In the circumstances it is prayed that the petitioner defendants be exempted from costs of the suit.

*Place on record.
now W.S. filed.*

*Sd/-
Narayan Das Khattry
D.G.C©
for defendants 5 to 8
23.04.1962/ 28.05.1962
114/1ka 1"*

21. The order that was passed on 29th December 1949 by the Magistrate in the 145 proceedings is as under: -

"...Whereas I, Markendeya Singh, Magistrate First Class and Additional City Magistrate, Faizabad-cum-Ayodhya, am fully satisfied 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, situate 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 bona fide residents of Ayodhya or who claim rights of proprietorship or worship in the property in dispute;*
- (2) Hindu who are bona fide 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."

Accordingly, the District Magistrate addressed letters dated 30th December, 1949 to the editors of the English Daily, the Urdu Weekly and the Hindi Weekly as follows: -

"No. 513/XV-37-1

From:

*The District Magistrate
Faizabad*

To

*The Editor
Urdu Weekly 'Akhtar',
Faizabad*

Please have the attached order Section 145 Code of Criminal Procedure on the question of a dispute between Hindus and Muslims in Ayodhya over rights of proprietorship and worship in the buildings. claimed variously as Barbri Masjid and Janamabhumi Mandir, published in the next issue of your newspaper.

*For District Magistrate
30-12-1949*

No. 513/XV-37-1

From:

*The District Magistrate
Faizabad*

To

*Shri R.P. Arora,
Local correspondent 'Leader',
Faizabad*

Please have the attached order Section 145 Code of Criminal Procedure on the question of a dispute between Hindus and Muslims in Ayodhya over rights of proprietorship and worship in the buildings. claimed variously as Barbri Masjid and Janamabhumi Mandir, published in the next issue of your newspaper.

For District Magistrate
30-12-1949

No. 513/XV-37-1

From:

The District Magistrate
Faizabad

To

The Editor
Hindi weekly 'Virakta',
Ayodhya, Faizabad

Please have the attached order Section 145
Code of Criminal Procedure on the question of a
dispute between Hindus and Muslims in Ayodhya over
rights of proprietorship and worship in the buildings.

For District Magistrate
30-12-1949"

On 05th January 1950, Priya Dat Ram, who was the Chairman of
Ayodhya and Faizabad Municipal Corporation and appointed as a
Receiver on 29th December 1949 took charge with an inventory
which is at page Nos. 3780-3781 of Vol.3. Further, the said
Receiver, submitted a report to the District Magistrate of Faizabad
(at page Nos. 3784-3785 of Vol. 3).

22. On 16th January 1950, the trial Court passed the order: -

*"Issue interim injunction in the meanwhile as prayed
for"*

The prayer in the interim injunction was as under: -

*"Therefore, the applicant prays that a temporary
injunction be issued against the defendants in the
effect that they should not remove the idols of Shri
Bhagwan Ram Chandra and others from Asthan
Janam Bhumi, the details of which are given in the
plaint, till the decision of the case, and they further be
ordered not to close the Parvesh Dwar and other
passage of ingress and egress to the visitors and also*

that they should not place any obstacle in the Pooja and Darshan."

The said order was modified on 19th January 1950 to read as under:-

"...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."

Subsequently, by the detailed order dated 03rd March, 1951, the interim order passed in the suit was confirmed and directed to remain in force until the suit was disposed of. The said order is at page Nos. 3802-3804 of Vol. 3 and after noting the pleadings/arguments of the parties, the learned Civil Judge held as under: -

"...For the purpose of these proceedings it has to be seen whether the plaintiff has a fair question to raise as to the existence of the right alleged, whether he is endanger of losing that right and whether irreparable injury or inconvenience is likely to result to him, in case the injunction order is drawn. It is conceded on all hands that the idol in question were on the disputed site before filing of the suit. It further appears from the copies of a number of affidavits of certain muslims residents of Ayodhya that at least from 1936 onwards the muslims have neither used the site as a mosque nor offered prayers there and that the Hindus have been performing their puja etc. on the disputed site. Nothing has been pointed out to discredit these affidavits, which along with the existence with the idols on the disputed site clearly show that the plaintiff has got the fair case to go to the trial. The defendants 1 to 5 rely on a number of documents to show that the building in dispute has always been mosque. It is not possible at this stage to anticipate any decision on this point because it will have to be decided after considering all the oral and documentary evidence that may be adduced by the parties in this case. The undisputed facts remains that on the date of the suit the idols of Shri Ram Chandra and others did exist on the site and

that worship was being performed by the Hindus.....The affidavits referred to above does make out a prima facie case in favour of the plaintiff.

As to the balance of convenience, it is obvious that the effect of vacating the interim injunction at this stage is likely to deprive the plaintiff of the right claimed by him in the suit. Moreover, it is matter of admission between the parties that there are several other mosques in the Mahalla in question. The local muslims will not therefore, be put to much inconvenience if the interim injunction remains in force during the pendency of the case.

For these reasons, I hold that the status quo should be maintained.

ORDER

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

*Sd. Bir Singh
Civil Judge
3.3.51"*

(Emphasis Supplied)

The above order of the learned Civil Judge having been challenged in appeal, was confirmed by the Hon'ble High Court itself on 26th April 1955. Kindly refer to paragraph 59 at page No. 157 of Vol.1, at the end of paragraph at page No. 160 of Agarwal. J.

23. In the meantime, the transfer petition was filed to transfer the Section 145 proceedings before the High Court of Judicature at Allahabad in Miscellaneous Case No. 208 of 1950, wherein the Hon'ble High Court vide order dated 03rd February 1950 passed an order, which as under (at page No. 3776 of Vol.3): -

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

24. The transfer petition itself is at page Nos. 3786-3788/3826-3829 of Vol. 3 and the Report of the City Magistrate in reply dated 05th April 1950 is at page Nos. 3829-3830 which was forwarded to the Hon'ble High Court on 06th April, 1950. The said transfer petition was dismissed on 30th May, 1950 by the Hon'ble High Court. The said order is quoted in paragraph 114 of the Judgment of Agarwal J.
25. That it is relevant to note that the learned Civil Judge vide order dated 25th March, 1950, after hearing the objections by the parties against the interim order decided to get a map of the locality and building prepared through the Commissioner. The said Commissioner Shri Shiv Shankar Lal submitted a report on 25th May, 1950 (kindly see page 4218 of Vol. 3). Then, thereafter the objections were filed to the Report of the Commissioner and the learned Civil Judge vide order dated 20th November, 1950 passed a detailed order with reference to the objections which is quoted in paragraph 127 of the Agarwal J.
26. It is also important to state here that Defendant Nos. 1 to 5 in suit No.1 filed an application praying that the suit be treated as a representative suit under Order I Rule 8 of the Code of Civil Procedure, 1908 which was opposed by the Plaintiff/Appellant herein. The learned Civil Judge vide the order dated 27th October 1951 dismissed the application for treating the suit as a representative suit (see para 130 of Vol.1, Agarwal J.).

27. Subsequently, the Plaintiff/Appellant in suit No.1 herein made an application to the Court of City Magistrate, Faizabad that the entire file of the case under Section 145 Cr. P.C. be preserved and not weeded out until such time it is not summoned by the Civil Court and an order thereon was passed on 30th July 1953 consigning the file to record to be taken out for proceeding when the temporary injunction is vacated (Kindly see the application and the order at page Nos. 3836-3838 of Vol. 3).
28. As aforesaid, the said order confirming the stay passed by the Civil Judge on 03rd March, 1951 was challenged in appeal and the same was dismissed on 26th April, 1955 (kindly see Para 59 at page 160 of Vol.1).
29. As regards the exhibits on which comments have been offered by the Counsel for the Sunni Central Board of Waqf viz. Exhibits 15 to 33, suffice it is to say that **it is clear from these exhibits that right from 1858 the place was always shown as "Janam Asthan Masjid" or "Masjid Janam Asthan" signifying that the place was always Janam Asthan and that the Masjid was located on the Janam Asthan. Regarding the rights of the parties about the trees, chabutra or collection of rents etc., etc., the matter was decided mostly against the Muslims parties and that any comment to the contrary by the Defendant Board is wrong.**

(Emphasis supplied)

30. As regards the oral evidence and the personal right to worship, the following is stated from the evidence of the witnesses for the Plaintiff/Appellant: -

REPLY TO THE CONCLUSION @ Pg: 28 of A-87:

- (a) The Original plaintiff and his son who was substituted later have a personal right of worship at the place believed to be Janmasthan. This fact has come out clearly in the evidence of D.W. 1/1 as can be seen from the following: @ Pg 7752/vol 47 para 13:

"The original plaintiff and the present plaintiff also have been having the darshans and offering prayers before the idols of Lord Rama and others and they have also been having parikrama of the Janambhumi premises. In the Garbhagriha located in the disputed premises, there are pillars of 12 touchstones on which are inscribed the idols of gods and goddesses."

- (b) The worship of janmasthan is matter of faith and was practiced by the plaintiff bonafide. The belief was independent of the placing of idols in 1949 and continue to worship this Janmasthan in the presence of the idol. Placing of the idols in janmasthan is not an illegal act as per the faith and belief of the plaintiff.

- (c) The evidence both oral and documentary is consistent regarding the Janmasthan. In this regard see pg 7756 and 7757 of the deposition DW1/1:-

@ Pg 7756: In 1949, I was only 10 years old. At that time, I had got my senses and used to understand everything. Prior to the incident of 22/23 December 1949, I used to go to the disputed site for darshan with my father.

@ Pg 7757: The witness said that after January 1950 also he had gone there to perform parikrama and pooja. After 1950 when he went to have the darshan of Ram Chabutra temple, Sitarasoi and Shiv Darbar, he could have the darshans without anybody stopping him, i.e. there were no restrictions from the police in having the darshans of those places. The police restrictions were on offering prayers in the inside portion of

the iron bar wall or on offering prayers inside the Janmabhumi temple.

@ pg 7779/vol 47: *As per my faith and belief, Lord Rama was born lakhs of years ago. I had heard this from my ancestors and my faith is based on what I have heard from my ancestors. That the disputed site is the Shri Ramjanmabhumi and the birth place I have heard from my ancestors and I have read this also.*

I was told this by my father and my grand father and the elderly people of Ayodhya that Lord Rama was born beneath the middle dome of the three domed building and that is what is known as Garbh Griha.

@ Pg 7785/ vol 47: *This is wrong to say that before 1950, I never went to the disputed site. It is wrong to say that till 22nd December 1949, there used to be Namaz all the five times and the Friday Namaz in the disputed building. It is wrong to say that neither Lord Rama was born at the disputed site nor has it been the birth place of Lord Rama.*

@ pg 7750/vol 47 para 8 and para 9: *"8. The family of the plaintiff is follower of Sanatan Dharm. The father of the plaintiff used to live at the Swargdwar locality of Ayodhya alongwith his family and as per the tenets of his religion, he used to have darshans and offer prayers at the idols of gods and goddesses. The present plaintiff is Sanatan Dharmi also like his late father (original plaintiff) and offers prayers before gods and goddesses and goes for darshans of shrines".*

Para 9: *"My date of birth is 11th January 1939. I spent my childhood at Ayodhya only and my primary schooling, High School and upto the Intermediate level was done at Ayodhya"...*

@ Pg 7751/vol 47 para 12 : *"That right from my childhood, I alongwith my parents, used to visit the temples at Ayodhya for darshan and prayers. At Ayodhya, I would regularly have darshan and offer prayers especially at Hanumangarhi, Kanakbhavan and the temple located at Janmabhumi.*

12. I have accepted the suit filed by my late father Shri Gopal Singh Visharad - the original plaintiff in order to protect my religious right because there was interference in my religious

@ Pg 7752/vol 47 para 13 : "The original plaintiff and the present plaintiff also have been having the darshans and offering prayers before the idols of Lord Rama and others and they have also been having parikrama of the Janamabhumi premises. In the Garbhagriha located in the disputed premises, there are pillars of 12 touchstones on which are inscribed the idols of gods and goddesses."

@ Pg 7754/vol 47 para 19 and 20: "Lord Rama and his birthplace in Ayodhya is the symbol of the faith and belief of the crores of Indians and devotees of Lord Rama. The plaintiff also has the same faith and belief in Lord Rama and accordingly, he has been and will always continue having the darshans and offering prayers before the idols of Lord Rama and other gods and goddesses located at the janmabhumi."

Para 20 : "That even after the demolition on 5th December, 1992 of the building where Lord Rama was seated, he continues to be present there and the devotees and the plaintiff himself have been having darshans and offering prayers there."

@ Pg 7788/ vol 47: "On seeing that, the witness said, "It is correct, this suit is not for my religious rights alone. The words Hindu people and devotees of Rama (Hindu Janata and Rambhakta) in the above excerpt. I have used for the same purpose."

@ Pg 7789/vol. 47 : "The witness was shown para 8 of the objection filed by his father on 18.8.1959 and was asked whether his father had written that he had filed the suit for his personal rights."

(d) 2. DW1/2 Krishan Chandra Singh: Vol. 47, Cross Examination

@ Page 7799:

@Page 7804: "Before 1949 when I went for the first time to the disputed site it was seen that the devotees used to salute at the site below the dome considering it Janambhoomi. They did not use to offer Prasad, flowers and coins etc. At that time the devotees used to salute from the wall having bars and did not go inside."

@Page 7806: "The household deity of me, my family and all Hindus is Lord Rama and Lord Rama is worshipped in both

form and formless image. My family members and I worship the form image of Lord Rama."

@Page 7851: *"What I have written section 14 of my main examination affidavit that ' under the middle peak of which..... is considered Janambhoomi.' is correct. This is very old information and all Saints and Hindu devotees believe it. I learnt it the first time in 1932-34 when I went there with my father. I had this information for the first time in the year 1932 and I was told this by my father and some other saint. By standing at the wall having railing and regarding in person the presence of Lord Ram under the middle dome, we used to offer flowers and do Dandwat Pranam (salute lying prostrate)."*

(e) 3. D.W. 1/3 Dr. SAHADEV PRASAD DUBEY: (pg 7874)

@ Pg 7877 /vol 47 para 11: *"Ram Janam Bhoomi Temple is situated at a hillock in Ramkot Mohalla, Ayodhya and under its surface ruins of many old temples exist. These temples were built at different intervals in several centuries because restoration and reconstruction work of these temples was carried out as and when required. The building portion of the temple which collapsed on 6th December, 1992, ruins of a 12' Century temple exist under its rubble, which was built around the eleventh century by a King belonging to Gaharwar dynasty."*

@ Pg 7884/ vol 47: *"Above Singhdwar there was a picture of Garud Bhagwan (God) appeared between the two lions."*

@ Pg 7899/vol 47: ***Question:*** *How many people were present in Janakpuri at the time of marriage of Ramchander Ji? (On this question the Learned Advocate of Plaintiff, Shri Puttu Lal Mishra raised an objection and said that this incident relates to the Treta Yuga and the witness was not present at that time and therefore asking him about the number is irrelevant and out of context).*

Answer: *Many people were present there.*

Janakpuri is now in Nepal. Earlier, it was in Bihar. There are still many places in Janakpuri which are related to Rama. There is a Dasharath Mandir in Janakpuri. I do not have any other information about Janakpuri. I did not find the

opportunity to visit Janakpuri. Janakpuri is situated at the India-Nepal border."

@ Pg: 7908/vol 47 : "At the end of Para 7 of my affidavit, a reference has been made about the Parikrama of the place which is in relation to the Parikrama of the disputed building in the Janam Bhoomi Mandir. It is not in my knowledge whether Parikrama of the Janamsthan Mandir located in the northern side of the road takes place or not. I have neither done Parikrama there nor seen any person doing Parikrama."

(Emphasis supplied)

31. On the individual right of the worship apart from the judgments cited earlier, there are very many judgments of Yore which can be brought to the notice of this Hon'ble Court wherein it has been held by several of the High Courts that the right of the worship is a civil right enforceable in the Court of law and is an inherent right independent of custom. The Madras High Court, Bombay High Court, Allahabad High Court, Calcutta High Court, have taken this view right from 1880 and if necessary, the Plaintiff/Appellant will supply copies to the Hon'ble Court.
32. In conclusion, it is respectfully submitted that the case of the Plaintiff/Appellant ought to be decreed in totality and that any part of the findings in the Judgments of the High Court which is against the Plaintiff/Appellant be set aside. The right of worship at the Janam Asthan by the Plaintiff/Appellant is unfettered civil right and that the substituted Plaintiff being a worshipper himself has the right to continue the proceedings. This objection was not raised earlier before the High Court where the Plaintiff/Appellant was substituted nor any issue struck and has been raised for the first time in this Hon'ble Court.

33. As a conclusion on aspects dealt with during hearing, it is stated that there are places of worship without idols, such as 'Kailash Parbat', 'Sangam of Allahabad', 'Amarnath Caves', 'Jawalamukhi Temple in Himachal Pradesh', etc. Even the Sun Temple in Konark does not have idol, but there is no Puja done any more.
34. It is therefore, prayed that the suit No. 1 of 1989 (Suit 1 of 1950) be decreed.

SETTLED BY:

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