IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10866-10867 OF 2010

IN THE MATTER OF: -

M. Siddiq (D) Thr. Lrs. — Appellant

VERSUS

Mahant Suresh Das & Ors. etc. etc. — Respondents

AND

OTHER CONNECTED CIVIL APPEALS

NOTE ON LIMITATION AND ADVERSE POSSESSION
BY DR. RAJEEV DHAVAN, SENIOR ADVOCATE

ADVOCATE ON RECORD: EJAZ MAQBOOL

NOTE ON LIMITATION AND ADVERSE POSSESSION

I. REASON FOR APPEAL

1.1. This Appeal is against the findings of the Majority (Justice Sudhir Agarwal and Justice Sharma) wherein it was held that:

1. The Suit 4 is barred by limitation;
11. The Sunni Waqf Board and Muslim petitioners lost their possessory title by adverse possession

However, Justice Khan took the viewthat the Suit 4 was within limitation but that the Hindus and Muslims were in joint possession, necessitating a division into three parts. In this division, if the decree holders' claim could not be accommodated in the Inner and Outer Courtyards, they would be accommodated elsewhere, presumably, in the 67 acres on which the judgment in *Ismail Faruqui (1994)* 6 *SCC* 3600rdered a status quo.

1.2. The argument by the Hindu parties is that if Suit No.4 was dismissed on grounds of limitation, no question arises of giving the Muslims Partiesany share of the property at all.

The operative part of the order reads as follows: **(Impugned Judgment, Vol. I, pg.116)**

> *'Accordingly, all the three sets ofparties, i.e.Muslims, Hindus and Nirmohi Akhara are declared jointtitle holders of the property/premises in dispute asdescribed by letters ABCDEF in the map Plan-Iprepared by Sri Shiv Shanker Lal, Pleader/Commissioner appointed by Court in Suit No.1 to itheextent of one third share each for using and managingthe same for worshipping. A preliminary decree to thiseffect is passed.*
>
> *However, it is further declared that the portionbelow the central dome where at present the idol is keptin makeshift temple will be allotted to Hindus in finaldecree.*
>
> *It is further directed that Nirmohi Akhara will beallotted share including that part which is shown by thewords Ram Chabutra and Sita Rasoi in the said map.*
>
> *It is further clarified that even though all the threeparties are declared to have one third share each, however if while allotting exact portions some minoradjustment in the share is to be made then the same willbe made and the adversely affected party may becompensated by allotting some portion of the adjoiningland which has been acquired by the CentraIGovernment.'*

1.3. Given the logistics of distribution of 2/3fd to Hindu parties, the chances are that the Muslims would be accommodated elsewhere.

1.4. Justice Khan supported granting joint possession to the Plaintiffs in Suit 3 and 4 which were barred by limitation and Suit 5 where adverse possession would apply on the basis that:

a) Limitation did not extinguish the right
b) The said right could be adjudicated in the other suits not barred by limitation
c) Further, where title did not exist but possession short of title was established a decree of joint possession could be grantedeven if not prayed for. (Impugned Judgment Volume 1 pgs. 71-87).

For this, while considering relief he relied on the Privy Council case of *Khagendra* v. *Matangiri (/890)* 17 *Cal.* 814 and decisions of the Madras, Allahabad and Oudh courts and in the peculiar facts of the case. (Judgment Volume I pp. 109-114)

1.5. Justice Agarwal held that both the Muslims and the Hindus used the inner courtyard.without compulsive interference (Judgment Volume II, pp. 1975-1976). Thus, the proposed partition was made on the basis of use. (**Judgment** Volume III, pp.2871-2872)

1.6. Two further scenarios are theoretically possible on the basis:

(i) If one the parties is able to prove absence of.limitation or acquisition by adverse possession, the entire area of inner and outer court yard would long to such a party; or
(ii) if none are able to prove a valid legal possessory title (not based on illegality) , the property would not belong to any body.

1.7. In the present case, it is the endeavour of the Muslim parties to show that they have a possessory title under a valid waqf without being challenged by adverse possession.

1.8 Equally, any prescriptive right to pray at the chabutra or Sita-ki-rasoi and use of the bhandar were lost when the sites were:

a) illegally abandoned on 22_23fd December 1949; and
b) the illegal destruction of the mosque of 6thDecember 1992, giving, *interalia*, a fresh cause of action in favour of the Muslims.

1.9 Further, as a matter of obligation, the Union of India and State of UP be directed to re-build the mosque; and, in the alternative, Muslims be permitted to re-build it as a heritage site and, if title to the mosque is denied.

Finally, the site not to be treated as *bona vacantia.*

II. FINDINGS IN THE IMPUGNED JUDGMENT

(A) On Limitation

2.1 It is submitted that the issue of limitation in Suit 4 was decided against the Muslim parties by a majority of 2:1. While Justice Khan held that the all suits, including Suit 4 were within Limitation, Justice Agarwal & Justice Sharma held that the Suit was barred by limitation.

2.2 The findings of Justice Khan *qua* the issue oflimitation are as follows:-

1. The proceedings under Section 145 CrPC have neither been dropped nor finalized. Normally, the suit for delaration is filed after the final order is passed by the Magistrate in the proceedings under Section 145. Thus, had the magistrate passed any final order, it would have provided a fresh starting point for the purposes of Limitation for filing suit for declaration. [Pg. 73 & 75 of Vol. I of the Impugned Judgment]

11. **I f** the attachment is continuing pending a decision in proceedings under Section 145, then it is not necessary that both parties file suit for declaration. Suit for declaration by one of the parties is sufficient to adjudicate the rights of both the parties. Therefore, even if Suit 4 is barred by limitation, the rights of the Plaintiffs of Suit 4 can be decided in Suit 1, which was admittedly filed within the period of limitation. [Pgs. 75-76Nol. I of the Impugned Judgment]

111. The demolition of the disputed structure on 6.12.1992, the subsequent acquisition of the premises in dispute and the adjoining area by the Central Government and the judgment of this Hon'ble Court in *Dr. Ismail Faruqui* v. *Union ofIndia* [(1994)6 SCC 360] gave a fresh starting point for the purposes of limitation. Demolition of structure was more severe violation of the right of the parties, than its attachment and such a situation gives a fresh starting point for the purposes of limitation. [Pg. 76Nol. I of the Impugned Judgment]

IV. Since Magistrate/Receiver is not expected to hold the property indefinitely after attachment, in such situations a liberal view will have to be taken. [Pg. 77Nol. I of the Impugned Judgment]

a) In case of a suit for declaration, if the suit is filed beyond the period of limitation, only the remedy is lost but not the right. [Pg. 77*N* 01. I of the Impugned Judgment]
b) When the prayer of Suit 4 is read with other allegations in the Plaint, it can be taken to include the prayer for declaration to the entitlement of offering prayers continuously and for direction/injunction in that regard. [Pg. 78Nol. I of the Impugned Judgment]

c) The provision of continuing wrong (Section 23 of Limitation) Act applies with greater force to Suit 4. [Pg. *79N*01. I of the Impugned Judgment]

v. Even if Suit No.4 is barred by limitation, the Court is required to record a finding and pronounce judgment on all issues required by Order 14 Rule 2(1) C.P.C. [Pg. *79Nol.* I of the Impugned Judgment]

a) Idol/Deity is not minor (perpetual) for the purposes of limitation and debutter property maybe lost through adverse possession. [Pg. *87Nol.* I of the Impugned Judgment]

2.3 Justice Sudhir Agarwal, while holding the Suit 4 is barred by limitation holds as follows:-

1. In a suit for declaration of title, Article 142 and 144 of the Limitation Act, 1908 are not applicable and in the absence of any other provision prescribing a different limitation it is Article 120 which is attracted and a limitation period of 6 years would be applicable. (para 2402- Page *1453Nol.* II of the Impugned Judgment)

11. Limitation of 12 years under Article 144 of the Limitation Act,1908 would not apply as Article 144 has no application in the present case. Article 144 contemplates a plea of adverse possession by the defendant and not the plaintiffs. Since the plaintiffs could not place anything to persuade the court that such a plea was in fact taken by the defendant, Article 144 is not applicable to OOS No.4 of 1989. (Para 2396- Page. *1492Nol.* II of the Impugned Judgment)

111. Mere addition of the relief of possession would not attract a larger period of limitation provided by another provision namely Article 142 or 144 of the Limitation Act, 1908 when on the basis of the pleadings it would be clear that merely a suit for declaration was necessary and the prayer for restoration of possession was superfluous for the reason that the defendants who dispossessed the plaintiffs were not continuing in possession on the date on which the suit was filed. The property in dispute came to be under attachment of the Court. (Para 2434 - Page *1460Nol.* II of the Impugned Judgment)

IV. The alleged wrong was not a continuing wrong. A distinction has to be made between a continuing wrong and continuance of effect of wrong. In the present case the plaintiffs were ousted from the disputed premises on 22/23 December, 1949 and the wrong is complete thereon since thereafter they are totally dispossessed from the property in dispute on the ground

that they have no title. (Para 2439 - Page *1461Nol.* II of the Impugned Judgment)

2.4 Hon'ble Mr. Justice Dharamveer Sharma while holding that OOS No.4 of 1989 is barred by limitation, observed as follows:-

a. The Plaintiffs have brought a suit to recover the property which is custodia legis (in the hands of Receiver in the proceedings under Section 145 Cr. P.C.). It is settled law that such a suit is considered as a suit for declaration as there is no continuing wrong. Accordingly, if the suit is brought for declaration after 6 years from the attachment after applying Article 120, it has to be held to be barred by Limitation. *(Pg.29931* Volume III of the Impugned Judgment)

b. The object of the proceedings under Section 145 Cr. P.C. is to determine as to which party was in possession on the date of the proceedings and to declare that such party be entitled to retain possession, the possession of the Court during the attachment in course of the proceedings ensures for the benefit of such parties in whose favor such a declaration has to be made. Accordingly, Article 142 and 144 of the Limitation Act have no application in this case. *(Pg.29931* Volume III of the Impugned Judgment)

c. Article 142 applied only where the Plaintiff while in possession has been dispossessed or discontinued possession. In this case, since the property was attached, the question of dispossession does not arise. *(Pg.2993-29941* Volume III of the Impugned Judgment)

d. Article 142 and 144 do not apply where the relief of possession is not the primary relief. Since in the instant matter primary relief is of declaration, consequently, Article 120 of the Limitation Act would apply. *(Pg.29941* Volume III of the Impugned Judgment)

e. The property in suit was attached in criminal proceedings under Section 145 Cr Pc. The Plaintiffs have brought the suit for declaration of their title in the year 1961 and for the recovery of possession over the property in suit was claimed in the year 1995. Thus, at the time of filing of the suit, it was barred by time. (Pg. *29941* Volume III of the Impugned Judgment)

f. Suit of Plaintiffs is actually a suit for declaration which is governed by Article 120 of the Limitation Act,1908 and not governed by Article 142 or 144 of the said Limitation Act. (Pg. *29951* Volume III of the Impugned Judgment)

g. Possession can only be claimed within the time limit prescribed under the law of limitation and amendment in the plaint does not confer any right to get a relief of possession as the amendment cannot relate back to the date

of the institution of the suit. **(Page No. 3377 Volume III of the Impugned Judgment)**

2.5 It is submitted that the findings of the Majority, in as much as it holds that Suit 4 is barred by limitation are contrary to the law and tests for limitation.

(B) On Adverse Possession

2.6 As discussed in the note on titleJustice Khan has held that both Hindus and Muslims were in joint possession of the disputed site since before 1855, in view of the said finding, Justice Khan has held that there is no need to decide the question of Adverse Possession. **[Pg. 109Nol. I** of the **Impugned Judgment]**

2.7 Justice Agarwal in his judgment has observed the following:

i. *In respect of Adverse Possession being claimed by Hindu Parties:*

- None of the defendants in Suit 4 have pleaded the ingredients as necessary to encompass a claim of Adverse Possession. **[Pg. 1747 @ para *3115Nol.* II** of the **Impugned Judgment]**
- Further the Hindu parties have claimed that the land itself being a deity has been continuously being worshipped by Hindus. However, the Hindus have not been able to show exclusive possession of the entire disputed site, except the outer courtyard, since 1856-57 i.e. after the erection of dividing wall by visitors. Therefore the Hindus have perfected their rights over the Outer Courtyard. **[Pg. 1747** @ **para *3115Nol.* II** of the **Impugned Judgment]**

11. *In Respect of Adverse Possession as being claimed by the Muslim Parties:*

- Muslim parties have failed to prove the ingredients of adverse possession, there is no evidence to show entry of the Muslims in the property in suit from 1528 AD. **[Pg. 1661 @ para 2991-2993/Vol. II of the Impugned Judgment]**
- There is no evidence of possession by Muslims of the property in suit. They did not have possession of the outer courtyard at least since 1856-57, when the dividing wall was raised by the British. With respect of the outer courtyard, they could have at best only had a right of passage. **[Pg. 1745 @ para 3107Nol. II]**
- The possession of the Hindus over the Outer Courtyard was open and to the knowledge of the Muslims , which is evident from the documents of 1858 that the Mutawalli of the mosque in dispute made several complaints, however those structures continued in the said premises and the entry of the Hindus and their worship continued. **[Pg. 1745 @ para 3107Nol. II]**

- It cannot be said that the Muslims never visited the inner courtyard or no Namaz was offered there till 1949, but that by itself would not constitute 'possession' in law. This was a beneficiary enjoyment by Muslims shouldering with their Hindu brethren and visiting premises within the inner Courtyard worshipping in their own way. **[Pg. 1745 @ para 3108Nol. II]**
- On one hand there is a claim of the plaintiffs that since regular Namaz used to be held in the mosque, the requisite material like farsh, pitchers, broom etc. should have been recovered by the Receiver, but no such material was found by him, which leads to the inference that no such material existed. This weakens the claim of the Muslims with regard to exclusive possession, in the form of continuous worship. **[Pg. 1745 @ para 3108Nol. II]**
- There was no abandonment by Muslims of the property in dispute. They continued to exercise the claim over it and got its recognition from Britishers in the form of grant. The maintenance of the building to extent of the disputed structure and Partition wall is also evident. The Hindus have not shown anything otherwise. The entre of the Muslims in the inner courtyard for Namaz is also evident. The Hindus and the Muslims both visited the disputed property as worshippers, the only difference was Hindus visited the entire property and the Muslims were confined to the inner courtyard. **[Pg. 1746 @ para 3109Nol. II]**
- Muslims have failed to prove that the property in Suit 4 was in their possession upto 1949. However, it can be said that the Hindus and Muslims alike were in possession of the inner courtyard, while the possession of the outer courtyard was lost by the Muslim community atleast from 1856-57 onwards. **[Pg. 1746 @ para 3110No1.II]**
- No question of dispossession of Muslims from outer courtyard since it was not in their possession in 1949 and prior thereto. So far as the inner courtyard is concerned they have discontinued with the possession at least from 23.12.1949. Prior to 23.12.1949, the possession of the inner courtyard was enjoyed by the Muslims with Hindus. So far as dispossession is concerned, neither the Muslims have alleged that they were dispossessed at any point of time nor have proved the same. **[Pg. 1746 @ para 3110-3111Nol. II]**
- Accordingly the Issue No. 10 (Suit 4)- *Whether the Plaintiffs have perfected their rights by Adverse possession as alleged in the*

Plaint? Was answered in negative and against the Muslim Parties. **[Pg. 1746 @ para *3112Nol.* II]**

2.8 Hon'ble Mr. Justice Dharamveer Sharma observed as follows:-

1. Hindu Nihang Sikhs were continuously worshiping in the inner courtyard and there is no evidence that they were completely removed from the suit premises. **(Page No. 3369 Volume III** of the **Impugned Judgment)**
11. Revenue records fail to establish exclusive possession of Muslims as the disputed property was shown as Nazul Land therein which belongs to the State and there cannot be adverse possession against the State. **(Page No. 3369 and 3371 Volume III of the Impugned Judgment).**
111. Hindus have proved that they were worshiping even after the disputed structure was constructed. **(page No. 3370 Volume III of the Impugned Judgment)**
IV. Muslims were not in possession from 1961 to 2010. **(Page No. 3371 Volume III** of the **Impugned Judgment)**
v. More than half of the property was in the exclusive possession of the Hindus as acknowledged by the Court in 1885. **(Page No. 3372 Volume III of the Impugned Judgment).**
VI. No evidence to show that after the damage caused to the Mosque in 1934, Muslims continued in possession. **(page No. 3374 Volume III of the Impugned Judgment)**
V11. Disputed structure was never exclusively used by Muslims from 1858 and onwards and even in the year 1885 it was not in the exclusive control of Muslims but was in exclusive control of Hindus **(Page No. 3378 Volume III of the Impugned Judgment)**
V111. Offering of namaz upto 22.12.1949 has not been proved. **(Page No. 3378 Volume III** of the **Impugned Judgment)**

III. Pleadings and Relief Claimed:

A. Plaint

3.1 Suit 4 has been filed by the Sunni Board of Waqfs and 10 Muslims versus Hindu parties, the State officials and members of representatives of the Shia community.

3.2 The idol is represented by its Shebait, the Nirmohi Akhara and did not require specific impleadment as per the law relating to shebaits.

3.3 Suit 4 was a representative suit on behalf of the Muslims against all Hindus in a representative capacity. Thus, Plaint pro 19 (at pp.90-91) reads as follows

'19. The present suit is filed by the plaintiffs, on behalf of and for the benefit of the entire Muslim community and an application for necessary permission under Order 1 Rule 8 c.P.C. is filed alongwith the plaint.

Similarly the defendants are sued as representing the entire Hindu Community and an application for necessary permission under order 1 Rule 8 CP. C. is filed alongwith the plaint.

Corrected under Court's order dated
Today Sd./- 21.12.61
Amended under Court's order dated
Today Sd./-21.12.61 ,

3.4 Generally, the plaint records

a. The presence of the mosque since 1528;
b. The British government recognized the grant given by Babur, continued by the nawabs and itself continued the grant in cash and, later, the assignment of rent free villages;
c. Various documents and the Suit of 1885 recognized the existence of the mosque which is binding;
d. The mosque and graveyard vest in the almighty;
e. The Muslims were in possession throughout and offered prayers till 22-23rd December 1949 even after the attempt to destroy in 1934 or the intrusions of the Nihang Sikhs in 1857.
f. Post 29thDecember 1949, the property was attached and held for the real owner.
g. The destruction of the mosque in 1992 was in violation of the orders of the Supreme Court and by the Hindus.

3.5 It is specifically pleaded (at pro 21 A)

"21-A. That in violation of the orders of the Hon'ble Supreme Court, dated is" November, 1991 *passed in three Writ Petitions and in violation of the orders of this Hon'ble Court dated* 3.2.1986, 14.8.1989 *and* 7.11.1989 *etc. the Babri Masjid was demolished on 6th December, 1992. The idols wrongly placed in the premises of the Babri Masjid between the night of 22nd - 23rd December,* 1949 *were removed by the destructors of Babri Masjid and thereafter an illegal structure was created on 7th December,* 1992 *in violation of all the orders of the courts mentioned above and the undertakings given in the Hon'ble Supreme Court. These acts of demolition and destruction of the mosque were carried out by the miscreants and criminals with the connivance of the then State Government of the BJP. As the demolition and change in the position of the spot was made in defiance and flagrant violation of the various orders of this Hon'ble court and the Hon'ble Supreme Court, the plaintiffs are entitled for the restoration of the building as it existed on* 5.12.1992."

The relief of 'any further relief in pro 24(d) may be read in conjunction with this pleading.

3.6 The cause of action for the purposes of limitation is to be found at pro 23 pp. 92- 93

"23. That cause of action for the suit against the Hindu public arose on 23.12.1949 *at Ajodhiya District Faizabad within the jurisdiction of this Hon'ble Court when the 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 and performing other religious ceremonies in the mosque. The Hindus are also causing obstructions to the Muslims gang in the graveyard, (Ganj-Shahidan) and reciting Fatiha to the dead persons buried therein. The injuries so caused are continuing injuries are the cause of action arising therefrom is renewed de-die-indiem and as against defendants* 5 *to* 9 *the cause of action arose to the plaintiffs on* 29.12.1949 *the date on which the defendant No.7 the City Magistrate Faizabad-cum-Ajodhiaya attached the mosque in suit and handed over possession of the same to Sri PriyaDutt Ram defendant no.9 as the receiver, who assumed charge of the same on January* 5, *1950.* ,,

3.7 The Relief Claimed at pro 24 pp 93-4 is as follows:

(a) A declaration to the effect that the property indicated by letters ABCD in the sketch map attached to the plaint is public mosque commonly known as 'Babri Masjid' and that the land adjoining the mosque shown in the sketch map by letters EFGH is a public Muslim grave yard as specified in para 2 *of the plaint may be decreed.*

(b) That in case in the opinion of the Court delivery of possession is deemed to be the proper remedy, a decree for delivery of possession of the mosque and grave yard in suit by removal of the idols and other articles which the Hindus may have placed in the mosque as objects of their worship be passed in plaintiff's favour, against the defendants.

Amendment/Addition made as per Court's order dt.25.5.95 Sd/-

(bb) That the statutory Receiver be commanded to hand over the property in dispute described in the Schedule 'A' of the Plaint by removing the unauthorised structures erected thereon. ,,

(c) Costs of the suit be decreed in favour of the plaintiffs.

(d) Any other or further relief which the Hon'ble Court considers proper may be granted. ,,

B. Comment on Relief

3.8 It is relevant to mention that in C. *Natrajan* v. *Ashim Bai, (2007)* 14 *SCC* 183, a similar relief was sought *viz.* at pro 2 of the judgment:

> *'2. The appellant herein filed a suit against the respondents claiming, inter alia, for the following reliefs:*
>
> *"(a) For declaration of the plaintiff's title to the suit property;*
>
> *(b) For consequential injunction, restraining the defendants, their men, agents, servants, etc. from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.*
>
> *(c) Alternatively, if for any reason this Hon'ble Court comes to a conclusion that the plaintiff is out of possession, for recovery of vacant possession of the suit property;*
>
> *(d) Directing the defendant to pay the costs of this suit. "*

3.9 A plea in such a form would not invalidate an independent and additional relief. Although, this case was in respect of an Order 7 Rule **11** rejection, the Court specifically observed: (at pr. 14-15)

> *'14. If the plaintiff is to be granted a relief of recovery of possession, the suit could be filed within a period of* 12 *years. It is one thing to say that whether such a relief can be granted or not after the evidence is led by the parties but it is another thing to say that the plaint is to be rejected on the ground that the same is barred by any law. In the suit which has been filed for possession, as a consequence of declaration of the plaintiff's title, Article* 58 *will have no application.*
>
> *15. Learned counsel appearing on behalf of the respondent, however, placed strong reliance upon a decision of this Court in S.M Karim* v. *Bibi Sakina to contend that alternative plea cannot be considered for arriving at a conclusion that he has been dispossessed. '*

The Court further relied upon various judgments (at pro 17-18) to observed an issue had to be framed, noting that:

> *"Limitation would not commence unless there has been a clear and unequivocal threat to the right claimed by the plaintiff"*

3.10 It is also relevant to draw attention to the judgment in *Ghewarchand* v. *Mahendra Singh, (2018) 10 SCC* 588 to the effect that where an alternative plea of injunction and possession is made, these would be treated as independent reliefs. It would be apposite to refer to prs.17 -21:

> *'17. It is not in dispute as the pleadings would go to show that the suit property was the subject-matter of the proceedings under Section* 145 *of the Criminal Procedure Code,* 1973 *(hereinafter referred to as "CrPC")*

between the parties before the City Magistrate wherein both the parties were claiming their right, title and interest including asserting their possession over the suit property against each other. It is also not in dispute that the City Magistrate vide his order dated 23-12-1966 *attached the suit property.*

18. The plaintiffs, therefore, filed a civil suit on 19-12-1978 *for claiming a declaration of their title on the suit property, injunction and possession against the defendants. Since the suit was for declaration, permanent injunction and possession, Article* 65 *of the Limitation Act was applicable, which provides a limitation of* 12 *years for filing the suit which is to be counted from the date when the possession of the defendant becomes adverse to the plaintiffs.*

19. As per the allegations in the plaint, the defendants' possession, according to the plaintiffs, became adverse when the defendants in Section 145 CrPC proceedings asserted their right, title and interest over the suit property to the knowledge of the plaintiffs for the first time and which eventually culminated in passing of an attachment order by the City Magistrate on 23-12-1966. *This action on the part of the defendants, according to the plaintiffs, cast cloud on the plaintiffs' right, title and interest over the suit property and thus furnished a cause of action for claiming declaration of their ownership over the suit property and other consequential reliefs against the defendants in relation to the suit property. (See Para* 23 *of the plaint.)*

20. In our opinion, the plaintiffs, therefore, rightly filed the civil suit on 19-12-1978 within 12 *years from the date of attachment order dated 23-12-1966. The assertion of the right, title and interest over the suit property by the defendants having been noticed by the plaintiffs for the first time in proceedings of Section* 145 *CrPC before the City Magistrate, they were justified in filing a suit for declaration and possession. It was, therefore, rightly held to be within limitation by the trial court by applying Article 65 of the Limitation Act.*

21. In order to decide the question of limitation as to whether the suit is filed within time or not, the Court is mainly required to see the plaint allegations and how the plaintiff has pleaded the accrual of cause of action for filing the suit. In this case, we find that the plaintiffs satisfied this requirement to bring their suit within limitation. '

3.11 Significantly, in the case, the plaintiffs were unsuited on grounds of limitation(at pro 22)

> *'22. As mentioned above, the defendants (respondents) lost the suit on merits on all fronts as they could neither prove their title and nor their lawful possession over the suit property. They, however, succeeded in the High Court only on the point of limitation which had resulted in non-suiting the plaintiffs. Since the defendants did not file any cross-objection in the appeal against the adverse findings recorded by the two courts below against them, it is not necessary for this Court to examine the legality and correctness of those findings in this appeal. '*

C. Written Statements (WS)

Cal Hindu Parties:

3.12 On behalf of the Hindu Parties the following averments were made in their Written Submissions:

- WS's of Nirmohi Akharaand Mahant Raghunath Das (at Running Volume 72, ppl09-120, 121-122 and 123-128). The gist of the WSs are:
  - (i) There is no mosque called Babri Masjid, built by Baburwho made no conquest of any territory in India. There were no grave or grave yard. Muslims could not have prayed at the mosque which did not exist. No mosque was damaged in 1934. The placing of idols in the mosque on 22-23rdDecember was "a flasehood". The BJP Government "in active connivance with the local administration demolished the Temple known as SumitraBhawan". The chabutra has existed from times immemorial though it has a history from 1885. The temple destroyed in 1992 was the temple of Janam Bhumi. Nirmohi temples were also destroyed on 11thDecember 1992. The Chabutra, Ram Temple, Chatti Puja, Sita Rasoi and Bhandar were also destroyed in 1992.
  - (ii) Although the Nirmohi Akhara has been existed "since days of yore", Mahant Raghubar Das was the mahant of the temple Janma-Ashant on the north of the site.
  - (iii) Although Muslims invoked Order 1 Rule 8,they cannot represent the Shia Muslims.
  - (iv) Since no Muslims entered into the temple since 1934, the Nirmohi Akhara had Deity regained title by adverse possession.
  - (v) The Nirmohi Akhara's customs was registered on 19thMarch 1949

- In WS, Defendant 10 (Akhil Bhartiya Hindu Mahasabha) specially asserted (at Running Volume 72, pp.136-146, 147-151)
  (i) After Independence, 'the original Hindu law was revived, the Constitution itself having been imposed by misrepresentation is voidable ab initio and the country is to be ruled totally according to Hindu law and canons of Hindu jurisprudence.Tsee Running Volume 72, pp. 135)
  (ii) Equally, the 'Muslim law cannot be made applicable in "bharatvarsha". (see Running Volume 72, pp. 148)
  (iii) Principles of secularism require that Muslims not offer prayers in the vicinity of the birthplace of Lord Ram but outside the parikrama (see Running Volume 72, pp. 149)
  (iv) Secularism is one of the pillars of Vedic Religion (see Running Volume 72, pp. 150)
- The other Hindu parties broadly argued that: (Running Volume 72, pp. 96-108,152-217)
  (i) The mosque is not a mosque according to Islamic law without vazoo, minarets, and based on destruction;
  (ii) There is no mosque only a temple;
  (iii) The Muslim suit is time barred;
  (iv) Muslims do not have 'the legal and constitutional rights to offer prayers at the sight of Ram Janma Bhumi' (p. 201);
  (v) The Order 1 Rule 8 does not mean all Hindus were represented;
  (vi) Defendant 20 (Madan Mohan Gupta) stated at p.216 (pr 6):

  '...in case the court decree the suit for the reconstruction of the demolished structure, it is necessary that it should be built in the original shape and model having 14 *pillars with the figures of Hindu deity, lotuses, swastic and Ram Chabutra, Sita Rasoi and temple of Ram Lala. '*

  (vii) The rest of the narrative about travellers etc to establish belief and sacrality.

3.13 All these written statements were duly replicated (See Running Vol. 72, pp.218-233)

(b) Official parties:

3.14 The Government does not claim any interest in the suit property, does not contest the suit, does not contest the Order 1 Rule 8, wants exemption from costs and asserts that the actions of the state were in *bona fide* discharge of its duties. (see Running Volume 72, pp. 131)

3.15 The Shias' had given support to the Sunni case in Suit V as defendants 22, 24, 25 (see Running Volume 72, pp, 325-342). The variance now is by way of Appeal filed in 2017 (Diary No. 22744 of 2017) titled *'Shia central Board of Waqf UP. Vs. Sunni Central Board of Waqf'* against a decision of 30.03.1946 which is also wrong on merits.

3.16 While the Plaint and Replication are straight forward, the WS's are in denial and founded on the superiority of Hindu claims as a matter of law, constitution and belief supported by travellers.

IV. FACTS, EXHIBITS & WITNESSES PERTAINING TO THE ISSUE OF LIMITATION

Facts

4.1 It is submitted that the following facts are relevant for determining the date of cause of action in the present suit:-

a) 22/23.12.1949: The Muslim Parties were dispossessed from the Babri Mosque for the first time on account of desecration of the Mosque.

b) 29.12.1949: A preliminary order under Section 145, Cr. P.C. was issued by Additional City Magistrate. Simultaneously an attachment order was also passed. The disputed site was directed to be given in the receivership of Sri Priya Datt Ram, Chairman, Municipal Board. It is pertinent to note that only a portion of the disputed property was attached, the outer courtyard and the graveyard, both of which were also a part of the disputed property were not attached.

c) 5.1.1950: Sri Priya Datt Ram took charge and made an inventory of the attached properties. He also submitted the scheme of management (in accordance with preliminary order) to the D.M.

d) 30.07.1953: On July 30, 1953, the proceedings under Section 145 CrPC were put in abeyance in view of the pending suits on the ground that the same would be taken up after the disposal of the suits as the finding of the Civil Court will be binding on the Criminal Court

e) 18.12.1961: Suit 4 was filed wherein the following was prayed:-

1. Declaration that the disputed structure (with the inner and outer courtyard together) is the Babri Masjid and the land adjoining the mosque is a Muslim graveyard.
11. Delivery of possession of the mosque and graveyards after removal of the idols and other articles which Hindus have placed in the mosque.

f) 6.12.1992: Babri Masjid was demolished in violation of the orders passed by this Hon'ble Court.

g) 25.5.1995: The Plaint in Suit 4 was amended to include the following prayer:-

"That the Statutory Receiver be commanded to hand over the property in dispute ... by removing the unauthorized structures erected thereon"

Exhibits showing continuous use of the Mosque

4.2 It is submitted that Article 142 stipulates that a person who has been dispossessed or discontinued of his possession of the property, can initiate a suit seeking restoration of possession of the immovable property within 12 years. It presupposes the possession of such person over the immovable property before he is dispossessed or discontinued of his possession.

4.3 In this regard it is relevant to mention that even the Hindu Parties have acknowledged the possession of the Muslims till December 16,1949, therefore since no evidence has been led to establish that the Muslims were in fact dispossessed between December 16,1949 to December 22/23,1949, the possession of the Muslim parties would be deemed to have continued till December *22/23,1949*- until the desecration of the Mosque.

4.4 In view of the above admission of the Hindu Parties, it is submitted that no exhibits are necessary to be shown in order to establish the possession of the Muslim parties till December 22/23,1949.

4.5 Additionally, it is submitted that the exhibits showing the continuous possession of the Muslim parties over the disputed site have already been discussed in detail while addressing the issue on title. These exhibits have also been shown by Mr. Zafaryab Jilani in his submissions (Submission No. A 71). For the sake of convenience, a list of these exhibits provided below:-

S. No.	Exhibit No.	Nature of Document	Reference
1.	Ext. A-4, Ext. A-5 and Ext. A-6 of (Suit –4)	Certified copy of the order dated 4-6-1942, decree dated 6-7-1942 and Terms of compromise filed in R.S. No. 95 of 1941 *Dlo* 4-6-1942 by the Additional Civil Judge Faizabad (Sri Mahant Ram Charan Das Vs. Raghunath Das and others)	Vol. 91, Pgs. 41 etc. (Pgs. 14-16) (Pgs. 17-45) (Pgs.46-76)
2.	Ext. A-49 (Suit-I)	Order dated 12-5-1934 for cleaning of Babri Masjid and for its use for religious services	Vol. 3, Pgs.124
3.	Ext. A-6 (Suit-1)	Application of Mohd. Zaki and others dated 5-6-1934 for recovery of the amount from Bairagies	Vol. 3 Pgs.23-25
4.	Ext.A-43 (Suit-1)	Order of D.C. / D.M. regarding payment of compensation dated 6-10-1934 regarding the Babri Mosque Ayodhya.	Vol. 3, Pgs. 101

5.	Ext.A-51 (Suit-1)	Application of Tahawar Khan dated 25-2-1935 for payment of his Bills regarding repair of Babri Mosque.	Vol. 3, Pgs.127-128
6.	Ext.A-45 (Suit-I)	Order of D. C. Faizabad dated 26-2-35 to S.D.M. Sadar for inspection of the work done for payment of Bills of Babri Mosque.	Vol. 3, Pgs.115
7.	Ext.A-44 (Suit-I)	Estimate of Tahawar Khan Contractor dated 15-4-1935 for repair of Babri Masjid.	Vol. 3, Pgs.ll1-114
8.	Ext.A-50 (Suit-1)	Application of Tahawar Khan, contractor dated 16-4-1935 regarding delay for submission of the Bill for repair of Babri Masjid.	Vol. 3, Pgs.126
9.	Ext.A-48 (Suit-1)	Inspection Note dated 21-11-1935 by Zorawar Sharma, Assistant Engineer PWD Faizabad regarding repair of Babri Masjid. The work seen on the site and found done satisfactorily.	Vol. 3, Pgs.121-123
10.	Ext.A-46 (Suit-1)	Report of the Bill clerk dated 27-1-1936 on the Bill of contractor regarding the construction of the Mosque.	Vol. 3, Pgs.117
II.	Ext.A-47 (Suit-1)	Order of Mr. A. D. Dixon dated 29-1-1936 regarding the payment of the work of repair of Babri Masjid.	Vol. 3, Pgs. 119
12.	Ext.A-52 (Suit-1)	Application of Tahawar Husain contractor dated 30-4-1936 regarding less payment of his Bill for the repair of Babri Masjid.	Vol. 3, Pgs.129-130
13.	Ext. A-7	Agreement lundertaking executed by Syed Mohd. Zaki, Trustee of Babri Masjid dated 25-7-1936 in favour of Maulvi Abdul Ghaffar, Pesh Imam of Babri Masjid regarding payment of his outstanding salary till 1935 to be paid in 2 years.	Vol. 3, Pgs. 26-27
14.	Ext.A-67 (Suit-l)	Application of Syed Mohd. Zaki dated 19/20^{tn} July 1938 filed before the Waqf Commissioner, Faizabad in the proceeding *uls* 4 of the Waqf Act 1936. (See para 7)	Vol. 3, Pgs.148-151
15.	Ext.A-61 (Suit-1)	Application of Abdul Ghaffar, Pesh Imam, Babri Masjid dated ZO" August, 1938 submitted in person before the Waqf Commissioner Faizabad, included in WaqfFile No. 26, Faizabad, praying for direction to Mohd. Zaki, Mutawalli Babri Masjid for payment out of arrears of salary @ *5/-* per month due upto 31st July, 1938, totalling to Rs. *389/-* (only Rs. 40 paid ıı terms of agreement) and (copy of Agreement also filed with the application)	Vol. 3 Pgs.137-138

16.	Ext. A-66 (Suit-I)	Reply of Sayed Kalbe Hussain *Sio* Syed Mohd. Razi (brother of Syed Mohd. Zaki - former Mutawalli) dated 20-12-1943 against the Notice of Sunni WaqfBoard dated 27-10-1943 stating clearly about the arrangement ofNamaaz etc. and payment of salaries to Pesh Imam and Moazzin and also about Sadhu and hut in the outer compound of the Moque (Bhandar)	Vol. 3 Pgs.145-147
17.	Ext. A-65 (Suit-I)	Notice of Shia Waqf Board dated 11-4-1945 given to Sunni Waqf Board for instituting a suit U/S 5 (2) of the D.P. Muslim Waqf Act, 1936 against the Notification dated 26-2-1944 declaring it a Sunni Waqf.	Vol. 3, Pgs.143-144
18.	Ext.A-62 (Suit-I)	Notice dated 25-11-1948 from Secretary Sunni Waqf Board to Munshi Javed Husain about charge of Tauliat due to the death of Syed Kalbe Husain, w.e.f. 27th June, as Mutawalli / Trustee of Babri Masjid.	Vol. 3, Pgs.139
19.	Ext.A-63 (Suit-l)	Mohd. Ibrahim, Waqf Inspector submitted his Report dated December *10/12,* 1949, stating that on investigation it was revealed that Muslims were harassed by Hindus and Sikhs if they go and pray in the Masjid.	Vol. 10 Pgs.1330-1331
20.	Ext.A-64 (Suit-l)	Report of Syed Mohd. Ibrahim, Waqf Inspector, dated 23-12-1949 (10 A.M.) regarding the then condition of Babri Masjid stating that Keys remain with Muslims and only Friday prayers are offered.	Vol. 3, Pgs.140-142

Witnesses showing regular namaz at the Mosque

4.6 In addition to the exhibits mentioned above, there are several witness statements which show that Muslims were continuously offering Namaz at the disputed site. However, at the outset it is relevant to note that these witnesses were on flimsy grounds which were unrelated to the facts qua which they were deposing.

4.7 As mentioned above, there are several witnesses who have stated that they had been regularly offering Namaz in the Babri Mosque, until its desecration in 1949. However, in this note we are only mentioning the list of those witnesses which Mr. Jilani have already shown in detail and which have also been mentioned in his submissions (Submission No. A 71). These are:-

S. No.	Witnesses	Statement relating to offering of Namaz	Reference
1.	PW-l Mohammad Hashim	Aged about 75 years in 1996. Offered five times prayersl Jumma prayerl Taraweeh prayers u to 22.12.1949 @	Vol. 45 Pgs.7209-7332

	Resident of Ayodhya	Pgs. 7210 -7213	
2.	PW-2 Haji Mahboob Ahmad Resident of Ayodhya	Aged about 58 years in 1996. I had been offering five-time Namaz, except (Apart from) the Friday Namaz, there. Last time I had offered Namaz on December 22, 1949. @ Pgs. 3736	Vol. 31 Pgs.3735-3832
3.	PW-3 Shri Farooq Ahmad Resident of Ayodhya	wrong to say that no Muslim has gone in this campus after 1934 or Namaz was not recited there. @ Pgs. 3863	Vol. 31 Pgs.3833-3932
4.	PW-4 Shri Mohd. Yaseen Resident of Ayodhya	Aged about 66 years in 1996. I started reading Jumme Ki Namaz at about 12 years of age. I offered Jumme Ki Namaz in Babri Masjid. @ Pgs. 3934-35	Vol. 31 Pgs.3933-3985
5.	PW-5 Shri Abdul Rahman Resident of Magalsi, District and Tehsil Faizabad	Aged about aged 71 years in 1996. In 1945 and 1946 I had recited the holy Quran in Babri Masjid also. This Babri Masjid was in Ayodhya. @Pgs. 3987	Vol. 31 Pgs.3986-4000 & Vol. 32 Pgs.4OO l-4036
6.	PW-6 Mohd. Yunus Siddiqi, Advocate, Resident of Faizabad City	Aged 63 years In 1996. Offering prayers in Babri Masjid since around 1945 @ Pgs. 4038-39	Vol. 32 Pgs.4037-4102
7.	PW-7 Hashmatullah Ansari Resident of Ayodhya	Aged about 65 years in 1996. Offered Namaz in Babri Masjid since 1943 @ Pgs.4103-04	Vol. 32 Pgs.4103-4162
8.	PW-8 Shri Abdul Aziz Resident of Shajahanpur, Faizabad	Aged about 70 years in 1996. Offered Namaz in Babri Masjid since around 1936 @Pgs. 4164	Vol. 32 Pgs.4163-4223
9.	PW-9 Shri Saiyad Akh1ak Ahmed Resident of Ayodhya	Aged about 60 years in 1997. Offered Namaz several times in Babri Masjid upto 1949 @ Pgs. 4225	Vol. 32 Pgs.4224-4250 & Vol. 33 Pgs.4251-

			4330
10.	PW-14 Shri Jaleel Ahmed Resident of Faizabad	Aged 78 years in 1999. I had been there and I have also offered Namaz there. For the last time, I had offered the Namaz on Juma before placing of the Idol at the Masjid. [@ Pgs. 47831	Vol. 35 Pgs.4783-4851
11.	PW-21 Dr. M. Hashim Qidwai Resident of Aligarh	Aged about 80 years in 2001. Offered Namaz in Babri Masjid from 1939 to 1941. @ Pgs. 5760 Elected as MP Rajya Sabha @ Pgs. 5762	Vol. 39 Pgs.5759-5830
12.	PW-23 Mohd. Qasim Ansari Resident of Ayodhya	Aged 74 years ıı ı 2002. I have performed Namaz ıı ı that mosque number of times. I had offered the Namaz of Fajir Zohar, Asir, Magrib, Isha and Tarvih. Said again that I had recited the Jumma Namaz also. For the last time I offered the Namaz there on 22nd December, 1949. @ Pgs. 5873	Vol. 39 Pgs.5872-5940
13.	PW-25 Shri Sibte Mohd. Naqvi Resident of Akbarpur, Faizabad	Aged 76 years in 2002. Had seen Namazis going to Babri Masjid for offering Namaz since 1948. @ Pgs. 6020	Vol. 40 Pgs.6018-6063

THESE WERE REJECTED BY THE HON'BLE COURT ON THE BASIS OF MINOR LAPSES OF MEMORY AND AGE.

4.8 In view of the foregoing, the following conclusions can be derived :-

a) In 1528, the Babri Mosque was constructed under the command of Babur. The maintenance & upkeep of the mosque was realized by a cash grant payable by the Royal Treasury during the rule of Babur. Subsequently, the British continued the grant. Needless to say that the grant would not have been continued had the Muslims abandoned the mosque as is alleged by the opposite parties.

b) Several attempts of trespass and encroachment by Hindus and Sikhs were successfully resisted by Muslims. Even the state authorities protected the rights of the Muslims by directing:-

- Eviction of the Hindu/Sikh squatters from the mosque
- Removal of any construction made by them

This once again shows that Muslims were in possession of the mosque and left no stone unturned to prevent encroachment and trespass in the mosque.

c) The general belief of the Hindus, atleast in the year 1885 was that the birthplace of Lord Ram was at the Ram Chabutara.

1. In 1885, a suit was filed seeking permission to construct a temple on the Chabutara, which permission was denied.

11. Further, in the plaint of the 1885 suit itself, the Hindu Parties have recognised the disputed structure as a mosque.

111. It was further held that Hindus had no rights of title over the Chabutara and that their rights were at the most prescriptive rights.

d) Further, any claim to title or adverse possession was not made at any time before 1886 or even after 1886 till 1950.

V. SUBMISSION ON LAW: LIMITATION

6.1 It is submitted that the plaint of the Muslim parties who were dispossessed from the disputed structure & the inner courtyard (which they held exclusively) for the first time on December 22/23, 1949, would fall within the purview of the Article 142. On the other hand, while the Hindu parties had limited rights of access over the Ram Chabutara & Sita Rasoi, their possession of these portions became adverse to the Muslims only on December 22/23, 1949, therefore the claim *qua* the outer courtyard (which belonged to the Muslims but wherein Hindus had limited rights of access) would squarely fall within the purview of Article 144.

6.2 In view of the foregoing the following propositions are important:

Proposition 1: The Limitation Act, 1908 (and the Limitation Act, 1963) are complete codes and statutes of repose which on the determination of the period extinguish the right to property.

- Sections 3 and 28

Proposition 2: Extensions or exceptions, if any, are contained in the statute itself, including the acquisition of right by easement or in favour of reversioner of servient tenement:

- Sections 4-11 (Part II)
- Sections 12- 25 (Part III: Computation of period of Limitation)
- Section 26 (Acquisition of right of easement in 20 years)
- Section 27 (Modification of 20 years for reversion or servient tenement)

Proposition 3: Section 10 of the Act is limited to tracing and recovery of property under certain conditions.

- This has already been explained in detail in Submission No. A-83 at Page No.3.

Proposition 4: Section 23 on continuing breaches and wrongs relate to breaches of contract and continuing civil wrongs.

- A full analysis of this is given in Submission No. A-65.

Proposition 5: In case Article 47 is deemed applicable because the cause of action is the order of the Magistrate under the Criminal Procedure Code, it should be noted that the period of limitation is three years which cannot be extended on the basis of the use of the word 'final', where no order is passed but applies when an order given to any party is made by the Magistrate.

This applies only in situations where an order of possession is passed by the Magistrate in favour of one party and not when no order is passed. Where such order in favour of one party is passed, the limitation period of 3 years starts.

(With respect to the judgments cited by Mr. S. K. Jain, Senior Advocate (Submission No. AI09) these precedents:

- *Indian Trades Corporation* vs *Union of India AIR* 1957 *Cal.* 153
- *Smt. Sharat Kamini Dasi* vs *Nagendra Nath Pal AIR 1926 Cal. 65*

are misplaced and to be considered in context or otherwise do not state the correct law because each Article has to be considered as a whole and not each column independently.

Proposition 6: Under Section 146 a Receiver appointed by the Magistrate shall have the same powers as one appointed under the Civil Procedure Coder. However, when a Receiver is appointed by a Civil Court, the receivership of a Receiver appointed by the Magistrate shall come to an end and shall be superseded by the receivership appointed by the Civil Court

In the case of *Dharampal and Drs. v Ramshri and Drs.* (1993) 1 SCC 435 this Hon'ble Court, while dealing with the issue of attachment under Section 146 Cr.P.C. and appointment of Receiver, observed as follows:

> *"9. It is obvious from Sub-section* (1) of *Section* 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 provision to Sub-section* (1) *of Section* 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."*

(The ratio laid down was followed in the case of Sudhir Singh v Suresh Singh 2015 (1) ALJ 402.)

Proposition 7: Where possession is sought to be claimed Articles 142-144 will apply. Where Articles 142 and 144 are situation specific, only Article 144 will apply. Where there is dispossession, Article 142 will apply.

- *Ramiah* vs *N. Narayana Reddy (2004)* 7 *see* 541 *(Para 9)*
- *Sopanrao* & *Anr.* vs *Syed Mehbood* & *Drs. (2019)* 7 *see* 76 *(Para 9)*

Proposition 7: In order to attract the Articles on possession, the plaint must squarely plead for such relief and create a foundation for it in fact.

- *Ghewarchand* & *Drs.* vs *Mahendra Singh* & *Drs. (2018) 10 see 588 (Para 21)*

Proposition 8: In all other cases, the Residuary Article 120 will apply.

Proposition 9: Limitation applies to juristic persons, including Hindu deities and Muslim waqfs, since there is no provision excluding them.

NOTE: A NOTE ON THE FACTS OF THE CASES CITED ABOVE IS ANNEXED TO THESE SUBMISSIONS AS ANNEXURE-A.

On facts:
It is submitted:

1. In the case of the Nirmohi Akhara, the limitation commences on 29.12.1949 or as pleaded by them on 05.01.1950.

11. In the case of the deities, limitation started when there was denial of title or possession (i.e. 1949-50, 1959 or 1961) even if they were unhappy

with their shebait (which they did not express) or supplant the shebait within limitation.

111. In the case of the Sunni Waqf Board, limitation started at the time of dispossession (22/23.12.1949 or 29.12.1949 or 05.01.1950) for a period of 12 years.

An absence of prayer between 16.12.1949 to 22/23.12.1949 does not entail a loss of possession or even the right to prayer or title by adverse possession.

VI. RELEVANT ARTICLES

Article	Description of Suit	Period of Limitation	Time when period begins to run
47	By any person bound by an order respecting the possession of immovable property made under the Code of Criminal Procedure, 1898 (5 of 1898), or the Mamlatdars' Courts Act, 1906 (Bom. 2 of 1906) or by anyone claiming under such person, to recover the property comprised in such order.	Three Years	The date of the final order in the case.
120	Suit for which no period of limitation is provided elsewhere in this schedule.	Six Years	When the right to sue occurs.
142	For possession of immovable property when the plaintiff, while in possession of the property has been dispossessed or has discontinued the possession.	Twelve Years	The date of dispossession or discontinuance.
144	For possession of immovable property or any interest therein not hereby otherwise specifically provided for.	Twelve Years	When the possession of the defendant becomes adverse to the plaintiff.

VII. SUBMISSION ON LAW: ADVERSE POSSESSION

7.1 In Suit 4 the principal claim of adverse possession has been made by the Hindu parties with special emphasis by the Nirmohi Akhara (Plaintiff in Suit 3 and defendants in Suit 4 and 5) and by the Plaintiffs in suit 5 to assert that no adverse possession can be claimed against the Janma Bhumi (Plaintiff No.2).

7.2 As mentioned above, Mr. Jilani, Senior Advocate has already shown with reference to documents even without the support of witness statements to establish that the claim of adverse possession from 1934-49 is unfounded.

7.3 We submit that there are eight principles are underlying the law of adverse possession.

1. Principle No 1: Adverse possession means that someone else is the owner.

   (see P. Periasami v P. Periathambi (1995) 6 SCC 523 (Para 6))

   The dispute was about succession to self-acquired property. The Court observed: *"Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property"*

2. Principle No.2: Given that the claim and relief will result in loss of gain of title, it is necessary to show possession and animus to possess and that the possession is *nee vi, nee clam, nee preeario* (peaceful open and continuous). But as a question of fact, the claim cannot be satisfied by historical claims, but shown on foundational facts which have been explained as follows:

   > *"It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nee vi, nee clam, nee precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See: S M Karim* v. *Bibi Sakina, Parsinni* v. *Sukhi and D N Venkatarayappa* v. *State of Karnataka.) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (Mahesh Chand Sharma (Dr.)* v. *Raj Kumari Sharma."*

(This statement of principle is taken from Karnataka Board of Waqf v Government of India (2004) 10 see 779 (Para 11) relating to possession against the government in respect of an ancient monument under the Ancient Monuments Preservation Act 1904 in relation to a waqt).

3. Principle No.3: Adverse possession cannot be sustained if a valid plea for retention is made (say under Section 53A of the Transfer of Property Act 1882).

(This is discemable from Mohan Lal v Mirza Abdul Ghaffar (1996) I see 639 at Para 4)

> *"As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., upto completing the period of his title by prescription nee vi nee clam nee precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant. "*

4. Principle No 4: "The test is whether the appellants are able to show that they held lands for themselves and if they did so the mere fact that there was acquiescence or consent at the inception on the part of the respondents is of no consequence".

(Parsini v Sukhi (1993) 4 see 375 (at 379) on a family dispute)

5. Principle No.5: Even if adverse possession seems ostensibly to protect a wrong doer, it will not countenance forcible possession.

(Ravinder Kaur Grewal v Manjit Kaur (2019) 10 SeALE 473) (Para 12))

> *"In Lallu Yashwant Singh (dead) by his legal representative* v. *Rao Jagdish Singh, AIR* 1968 SC *620, this Court has observed that taking forcible possession is illegal. In India, persons are not permitted to take forcible possession. The law respect possession. The landlord has no right to re-enter by showing force of intimidation. He must have to proceed under the law and taking offorcible possession is illegal. "*

(Relying on Lallu Yashwant Singh v Rao Jagdish AIR 1968 se 620)

6. Principle 6: Once a right based on adverse possession is perfected over 12 years (period of limitation) it can be used as a shield by a defendant and a sword as plaintiff to claim title. Statutory change would be advisable to protect properties dedicated to a public cause.

(Ravinder Kaur Grewal v Manjit Kaur (2019) 10 SeALE 473 (Para 59))

7. Principle 7: Permissive possession can never result in adverse possession.

(State Bank of Travancore v AravindamAIR 1971 se 996 (Para 9))

"A permtsstve possession cannot be converted into an adverse possession unless it is proved that the person in possession asserted an adverse title to the property to the knowledge of true owners for a period of twelve years or more."

8. **Principle 8: Adverse possession against an existing title must be actual and cannot be constructive.**

(Raja Rajgan Maharaja Jagatjit Singh v Raja Partab Bahadur Singh AIR 1942 PC 47)

NOTE: A NOTE ON THE FACTS OF THE CASES CITED ABOVE IS ANNEXED TO THESE SUBMISSIONS AS ANNEXURE-B.

SUBMISSION ON CUSTODIA LEGIS: EFFECT OF ATTACHMENT UNDER SECTION 145-146 OF THE CR.P.C.

1. Section 145-6 are provisions relating to disputes 'as to immoveable property' which are likely to cause a breach of peace which deal with two connected situations:

   (i) Where the Executive Magistrate apprehends a breach of peace on a report by a police officer or any other information, calls the parties, records information, considers whether there was a forcible and wrongful dispossession in the previous 2 months, examine whether a dispute exists; and if it does restore possession to one who was forcibly and wrongly dispossessed leaving eviction to be decided by who shall be in possession unless later evicted by due course of law (Article 145)

   (ii) In cases of emergency, or if he is unable to decide who should be put in possession, he may attach the property until the subject of the dispute is decided by a competent court; and if no receiver is appointed, appoint a receiver who shall have the same powers as a receiver as in the C.P.C. Such a magisterial receivership would yield to a receiver appointed by a civil court.

2. In the present case, the relevant dates are as follows:

22/23.12.1949	On the night intervening 22.12.1949 and 23.12.1949, some members of the Hindu Community in the darkness of night surreptitiously placed idols inside the Sabri Masjid. FIR No. 167 was filed u/s 147, 295, 448 I.P.C by the Hindu Parties **[Para. 2772 at Pg. No. 1580; Para. No. 300 at Pg. No. 1668 of Vol. II and Pg. No. 2919 of Vol. III].**
29.12.1949	The City Magistrate, Faizabad started the proceedings under Section 145 Cr.P.C.
30.12.1949	The property was attached under section 145 Cr PC, **[Pg. Nos. 3776-3778 of Vol. III]**
05.01.1950	The building along with the contents thereof was delivered to the Receiver being Priya Dutt Ram. **[Page 40, Vol 1; Pg. No. 2990 and 3491 of Vol. III]. This Document is marked as Annexure 2.12 at Pg.**

Nos. 3780-3783 of Vol. III]

30.07.1953 The Learned City Magistrate, Faizabad vide Order dated July 30, 1953 passed in the matter of *State* v. *JanamBhumi&Babri Mosque* (Section 145 Cr p c Proceedings) consigned the file to the record directing that it will be taken out for further proceedings when the temporary injunction issued on March 3, 1951 by the Learned Civil Judge, Faizabad is vacated.

[Para. No. 2575, 2577 at Pg. No. 1515; Pg. No. 1664 at Vol. II] This Document is Annexure 2.12 at Pg. Nos. 3837-3838 of Vol. III]

These facts would have to be considered in the light of the Propositions of law below.

3. Propositions of Law:

I. **The provisions of Section 145 and 146 are different and to be** sequentially applied:

(i) Article 145 deals with the decision of the Executive Magistrate after hearing Section 145(6).

(ii) Article 146 deals with attachment in emergency breach of peace.

(iii) Appointing a receiver with similar functions as that of a receiver under the Civil Procedure Code which will yield to a receiver appointed by a civil court seized of the issue.

(iv) Relegating decision to a Civil court.

In Khagendra Narain Chowdhury V. *Matangini Debi I.L.R. 17 CAL.* 814 *(1890), it was held that the purposes* of *the two attachments, one under the proviso to cl.* (4) of *sec.* 145 *and the other under sec.* 146, *Cr.* PC., *are different, and the stakes are not the same. In the case* of *the former, the attachment subsists till the decision under sec.* 145, *cl.* (4), *that is to say, till it is decided which party was in possession at the date* of *the proceedings; in the latter case it lasts until* a *competent Court has determined the rights* of *the parties* or *the person entitled to possession. It may be that an attachment under sec.* 145, *cl. (4) may terminate on the proceedings being dropped* or *an*

attachment under sec. 146, *Cr.* PG., *may be withdrawn when the Magistrate is satisfied that there is no longer any likelihood of* a *breach of the peace; but that does not affect the character of the attachments. The objects of the two attachments are obviously different. The possession in the case of the one enures to the benefit of the party who was in possession at the date of the proceedings and in the case of the other to the party or to any person, either* a *party to the proceedings or not, who may be adjudged, on the basis of his rights to be entitled to possession. Proceedings under Chap. XII of the Criminal Procedure Code are of* a *quasi-civil character and the Magistrate intervenes and attaches the property much on the same lines and with* a *similar purpose* as *when* a *(Receiver is appointed* By *the Court in* a *civil action, in order to prevent* a *scramble and to preserve the property until the rights of the parties are ascertained.*

II. Where a Magistrate makes a final decision to award possession under Article 145, the party who has not been given possession, can file a civil suit against that decision within 3 years of that decision by virtue of Article 47 of the Limitation Act 1908

III. Where the Magistrate makes a temporary or transitional decision to appoint a receiver, such an appointment must yield to the appointment of a receiver by a competent court which alone shall decide the suit.

IV. Any civil suit must be within limitation beginning from the date of dispossession if declaration and possession are claimed the limitation period shall be 12 years under Article 142 or 144 of the Limitation Act 1908

V. Where what is challenged is to challenge the Magistrate's order only and to get management and charge, the suit has to be filed within 6 years of the order of receivership under Article 120 of the Limitation Act 1908

(We have already shown that Suit 3 (by Nirmohi) is not for possession or continuing wrong given the specificity of the relief after reading the plaint as a whole)

VI. Any other party claiming possession of the site in opposition to the other parties, will have to file within 12 years of the opposing defendants claim of possession and title

4. The present case has to be considered in the context of the above regime of the Magistrate's orders to protect the breach of peace and the appointment of a receiver by the Magistrate and/or civil court to treat the property as custodia legis

5. From the above, it is clear that:

a) Custodia legis will not stand in the way of the regulations of Limitation, where a suit seeks declaration, management and charge, but, lays no foundation for possession or ownership, relief under Art. 120 of the Limitation Act 1908 will apply as from the date of receivership till the lapse of six years.
(This is the case of Nirmohi Akhara where a new case of continuing wrong or possession is now sought to be made out against the pleadings)

[See Submission No. A64 on *'Belonging* to';
Submission No. A6S on *'Continuing Wrong.']*

b) Where custodia legis will not stand in the way of limitation, applying limitation for the Shia Wakf Board and Muslims where declaration and possession was sought and dispossession took place on 22/23rd December 1949 and receivership on 05.01.1950.

c) Custodia legis will also not stand in the way for the deity's Suit No.5 which was filed in 1989, well after any period of limitation.

NOTE ON ASSESSING EVIDENCE

I. Issues relating to Evidence

1.1. An issue arises on the weight to be given to the vast evidence in this case entailing 202 Exhibits and 44 Witnesses, apart from Pleadings.

1.2. The evidences can be classified as follows:

(a) Documents admitted to evidence which are part of official record;

(b) Documents recounting Travellers stories which do corroborate each other or by other verifiable facts, but which are heavily relied on.

(c) Religious texts especially Skand Purana which requires authentication due to various interpretations.

(d) Documents like Gazetteers which are statement of policy, British historiography, news and views.

(e) Oral evidence of experts which are examinable opinions subject to rebuttal.

(f) The Expert Report of the ASI which can be refuted by:

(i) Cross examination of experts [Order 26 Rule 10(2) second part].

(ii) But Order 26 Rule 10(2) does not obviate challenges or doubts of findings and conclusions on the basis of interpretation - both on method and conclusion by objections of experts and state objections being as refutable prima facie evidence subject to judicial examination.

1.3. The Hindu case seeks to prove:

(a) A temple was built centuries ago by possible Emperor Vikramaditya and rebuilt around 11th Century.

(b) This temple was destroyed by Babur in 1526 or possibly by Aurangzeb in the 17th, Century.

(c) Sanskrit texts (i.e. Skand Purana and later additions -all of indeterminate dates), hearsay from Travellers' stories and Gazettes to show people had a belief that Ayodhya was the birthplace of Lord Rama.

(d) Islamic texts on the mosque being in violation of the Koran and Hadith.

(e) Witness evidence given around the year 2000 of prayer and belief. (which cannot possibly vouch, for a period beyond 1934)

(f) Expert evidence on theology and archaeology.

(g) The ASI Report showing the possible existence of a temple and its destruction (though there is no finding on the latter)

1.4. The Muslim case relies on:

(i) The physical existence of the mosque which was attacked in 1855-7, 1934, trespass in 1949 and destruction in 1992.

(ii) Official records to show recognition by the British by giving grants and protection to the Mosque and denying title to the Hindus while accepting prescriptive prayer in the outer courtyard.

(iii) Treating Historians and Gazettes as weak pleadings as establishing the existence of the mosque and Hindu belief but not Hindu practice of praying to Janmabhumi.

(iv) Official evidence to show possession and that it was not lost after 1934.

(v) Documentary evidence to show the above.

(vi) Expert witnesses on history, archaeology and theology and to refute the conclusions of the ASI Report.

(vii) Oral evidence to show prayer till 22-23rd December 1949.

II. Interpreting the Evidence Act 1872

2.1 The relative weight of the evidence can be discussed from the scheme of the Evidence Act, 1872:

(a) Facts which need not be proved (Sections 56-58)
(b) Oral evidence which must be direct (Sections 59-60)
(c) Documentary evidence and presumptions (Sections 61-90A)
(d) Exclusion of oral by documentary evidence (Ss-91-98)

2.2 Evidentiary value of documentary evidence is higher than oral evidence.

- In *Rajasthan Housing Board v. New Pink City, (2015) 7 SCC 601,*
  Here, compensation matters, it was held by the court that best evidence was documentary and that it would prevail.

- Om *Prakash v State* of *Punjab 2016 SCC OnLine P&H 3271, at para 8*
  [The case dealt on embezzlement of government money. Lower Court relied only on oral evidence for conviction despite the availability of documentary evidence. *Held:* conviction was set aside.

2.3 **Documentary evidence is superior to oral evidence because of its permanence, and in many respects, trustworthiness.**

- The documentary evidence undoubtedly furnishes more reliable testimony being *ante litem motem* and brought into existence at a time when the plaintiff was not on the scene and when no dispute as to succession to mahantship was raging. *(See Mahant Bhagwan Bhagat v. G.N. Bhagat, (1972) 1 SCC* 486: 1972 *SCC (Cri)* 221 *at page 490J*

2.4 **Where both documentary and oral evidence are available and the later is unreliable or contradictory or incompetent the Courts must assess the documentary evidence for acceptance.**

- *Ramdhandas Jhajharia v. Ramkisondas Dalm,* 1946 *SCC OnLine* PC 32,

2.5. **Expert evidence is to be given prima facie consideration and weight but can be refuted by cross examination of experts and/or by challenge showing contradictions, veracity and conclusiveness.**

III. What is beyond reasonable doubt.

3.1. What is clearly established is:

(i) *A mosque existed from the Mughal period which was attacked in 1855-7,* 1934, *trespassed into in 1949 and destroyed in 1992.*

(ii) *The existence* of *the mosque and official documents from 1858 onwards (cross referencing to tne Nawab and Mughal era) showing acknowledging title and possession.*

(iii) *There is no proof that the mosque was 'abandoned'* as a *mosque at any point in time*

(iv) *Claims* of *adverse possession after* 1934 *are refutable by documents without relying on oral evidence which is supportive but rejected for doubtful reasons.*

(v) *The Hindus worshipped only an idol from the tangible period post 1857 and there is no proof of worship of the site* as a *janmabhumi at anytime.*

(vi) *Hindus are not able to establish that Lord Rama was born under the inner middle dome or on the inner courtyard or identify the exact place of Lord Rama's birth.*

(vii) *Hindus accepted that they had only* a *prescriptive right to pray at the Chabutra in the outer courtyard, making no other claim until 1989.*

(viii) *The 'Nyas' trust is of recent creation.*

(ix) *Apart from some reference to belief, there is no proof that the belief ever manifested itself in any structure or proof of usage* as *independent worship of* a *janmabhumi other than the idol.*

(x) *The Nyas was an invention in 1985 buttressed by claims to juristic personality in 1989 where it is specifically pleaded that the purpose of the Nyas* (a *socia-political body) was to remove and destroy the mosque.*

CONCLUSION

1.1 In view of the exhibits and witnesses discussed above, it is clear that the Muslims have been in continuous possession of the disputed site and have been regularly offering namaz thereat.

1.2 The cause of action having arisen on 22/23.12.1949, the suit is within 12 years of the same.

1.3 Having shown exclusive possession of the inner courtyard, no question of adverse possession arises. Further *qua* the outer courtyard wherein Hindus has certain prescriptive rights, the possession became adverse to the Muslims only on December 22/23,1949, and therefore there arises no question of perfecting title by adverse possession.

ANNEXURE-A

NOTE ON ON FACTUAL BASIS OF CASES CITED ON LIMITATION

1. *Ramiah v N. Narayana Reddy (2004)* 7 *SCC* 541 *(Para 9)*

The suit property (Inam land) was sold to the Respondent, who filed a suit for possession based on title and for permanent injunction against the Appellant. The Appellant contended that the suit property was purchased by him and he was in possession of the same as a khadim tenant of the Inam lands. The suit was partly decreed, holding the Respondent as the owner of only a part of the suit property and not the entire land. However, as the Respondent was found in possession of the entire land, permanent injunction was granted in his favour with a liberty to the Appellant to recover possession of of the plot in possession of the Respondent by the process of law. The Respondent preferred appeal against the said order but the same was dismissed and attained finality. Thereafter, a suit was filed by the Appellant seeking recovery of possession of the land possessed by the Respondent. The said suit was dismissed on the ground of limitation as filed after a period of 13 years which was upheld by the High Court and the Supreme Court.

The Court, while dealing with the provisions of Article 64 and 65 of the Limitation Act, observed as follows:

> "9.... *Article* 64 *of the Limitation Act,* 1963 *(Article* 142 *of the Limitation Act, 1908) is restricted to suits for possession on dispossession or discontinuance of possession. In order to bring* a *suit within the purview of that article, it must be shown that the suit is in terms* as *well* as *in substance based on the allegation of the plaintiff having been in possession and having subsequently lost the possession either by dispossession or by discontinuance. Article* 65 *of the Limitation Act, 1963 (Article* 144 *of the Limitation Act, 1908) on the other hand is* a *residuary article applying to suits for possession not otherwise provided for. Suits based on plaintiffs' title in which there is no allegation of prior possession and subsequent dispossession alone can fall within article 65. The question whether the article of limitation applicable to* a *particular suit is article* 64 *or article* 65 *has to be decided by reference to pleadings."*

2. *Sopanrao & Anr. v Syed Mehmood & Drs. (2019)* 7 *SCC 76(Para 9)*

A suit was filed by the Respondents- Plaintiffs for declaration of the suit property as inam lands with a further relief to put the Plaintiffs in possession of the said land. The Appellants contested the suit, inter alia, on the ground of limitation. Trial court dismissed the suit, inter alia, on the ground of limitation but the same was reversed in Appeal. The order was challenged in High Court but was dismissed, whereupon, appeal was preferred in Supreme Court. The Court, while delaying with the issue of limitation and the nature of relief sought for observed as follows:

> "9. ... *We have culled out the main prayers made in the suit hereinabove which clearly indicate that it is* a *suit not only for declaration but the plaintiffs also prayed for possession* of *the suit land. The limitation. for filing* a *suit for possession on the basis* of *title is 12 years and, therefore, the suit is within limitation. Merely because one* of *the reliefs sought is* of *declaration that will not mean that the outer limitation* of 12 *years is lost.* '" *In* a *suit filed for possession based on title the plaintiff is bound to prove his title and pray for* a *declaration that he is the owner* of *the suit land because his suit on the basis* of *title cannot succeed unless he is held to have some title over the land. However, the main relief is* of *possession and, therefore, the suit will be governed by Article* 65 of *the Limitation Act,* 1963. *This Article deals with* a *suit for possession* of *immovable property or any interest therein based on title and the limitation is* 12 *years from the date when possession* of *the land becomes adverse to the plaintiff."*

3. *Ghewarchand & Ors. v MIS. Mahendra Singh &Ors. (2018)* 10 *see 588 (Para 19-21)*

The Appellant-Plaintiff filed a suit for declaration of title, permanent injunction and possession of the suit property. The Respondents, inter alia, raised objection that the suit is barred by limitation. The suit was decreed by the Trial Court, however, in first appeal before the High Court, the suit was dismissed on the ground of limitation. The Appellant-Plaintiff challenged the said dismissal order by way of appeal, wherein, the Court restored the decree passed by the Trial Court.

The Court observed that when Respondent-Defendant asserted their right over the property against the right of the Appellant-Plaintiff, which culminated into passing of an attachment order under Section 145 CrPC, gave a cause of action to the Appellant-Plaintiff for filing a suit for declaration and possession. Therefore, the suit filed by the Appellant-Plaintiff was filed within the period of limitation of 12 years (as per the provisions of Article 65 of the Limitation Act). The Court also observed that in order to decide the question of limitation the court is mainly required to see the pleadings in the plaint.

ANNEXURE-B

NOTE ON ON FACTUAL BASIS OF CASES CITED
ON ADVERSE POSSESSION

1. *P. Periasami v P. Periathambi & Ors.* (1995) 6 *SCC* 523 *(Para 6)*

A suit for partition of the suit property (agricultural land) was filed between two branches of the same family. While dealing with the issue of adverse possession, it was held that whenever a plea of adverse possession is made, it has an inherent plea that someone else was the owner of the property which has been acquired by adverse possession. The Court observed as follows:

> *"6. With regard to the accreted property, there is a reference in the judgment under appeal relating to some accounting; after recording the finding that the defendants have failed to prove that that property was in their adverse possession. This is a finding of fact which need not be disturbed, as it has been sought to, in the cross appeal. Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property. ..."*

2. *Karnataka Board of Wakf v Government Of India &Ors. (2004)* 10 *SCC 779 (Para* 11)

Suits were filed by the Respondent (Government of India), inter alia, for declaration that they have perfected their right by adverse possession over the suit property. While dealing with the issue of adverse possession the Court discussed as to what is required to proved when plea of adverse possession is made by a party. It was observed that a person pleading adverse possession has no equities in his favour and since such a person is trying to defeat the rights of the true owner, it is for him to clearly plead and establish the necessary facts to establish his adverse possession. The Court observed as follows:

> *"11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, necprecario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to*

the actual owner are the most important factors that are to be accounted in cases of *this nature. Plea* of *adverse possession is not* a *pure question* of *law but* a *blended one* of *fact and law. Therefore,* a *person who claims adverse possession should show* (a) *on what date he came into possession, (b) what was the nature* of *his possession, (c) whether the factum* of *possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed.* A *person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights* of *true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."*

3. *Mohan Lal & Drs. v Mirza Abdul Gaffar & Anr.* (1996) 1 *see* 639 *(Para 4)*

The Appellant came into possession of the suit property pursuant to an agreement of sale after making part payment of the consideration amount. Meanwhile the suit property was purchased by the Respondent. The Appellant filed a suit for specific performance of the contract of sale which was dismissed and became final. Thereupon, a suit for possession was filed by the Respondent which was decreed by the trial court and upheld by the High Court. The order was challenged by way of appeal. The Appellant contended that he had perfected his title by prescription and also that he is entitled to retain his possession by operation of Section 53-A of the Transfer of Property Act, 1882.The Court observed as follows:

"4. As *regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion* of *his independent hostile adverse possession to the knowledge* of *the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period* of 12 *years, i.e., upto completing the period* of *his title by prescription nec vi nec clam necprecario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession* of *the land lawfully under the agreement and continued to remain in possession till date* of *the suit. Thereby the plea* of *adverse possession is not available to the appellant."*

4. *Parsinni & Drs. v Sukhi & Drs.* (1993) 4 *see* 375 *(Para* 5 at *Page 379)*

The Appellants had possession of the suit property for a period of 30 years to the exclusion of the Respondents. The Respondents, asserting that they were in continuous possession and enjoyment of the suit property, filed a suit for declaration of title and possession. The suit was dismissed by the Trial Court but was reversed in first and second appeal. In appeal the issue was whether the Appellants perfected their title by prescription.

The Court observed that the party claiming adverse possession must prove that his possession was peaceful, open, continuous, adequate and in continuity (in publicity and extent to show that their possession is adverse to the true owner). The party must show that their possession is overt and without any attempt of concealment. Moreover, the party must also establish that the property was in their possession for themselves and if they did so, the mere fact that there was acquiescence or consent at the inception on the part of the Respondents, will make no difference.

5. *Ravinder Kaur Grewal v Manjit Kaur 2019 (10) SCALE* 473 *(Para* 12 *and* 59)

The issue involved in the present matter was whether a person claiming title by adverse possession can maintain a suit under Article 65 of the Limitation Act for declaration of title, permanent injunction and for restoration of possession if in case he has been illegal dispossessed by a defendant or even by the original owner of the suit property.

The Court observed that taking forcible possession is illegal because it is not permitted to take forcible possession. No individual can be permitted to take the law in his own hands and to dispossess a person in actual possession without having recourse to a Court. Therefore, person in possession cannot be ousted except by due procedure of law. Moreover, once 12 years period of adverse possession is over, even owner's right to eject the person in adverse possession is lost. Therefore, the right so acquired can be used as a sword by the Plaintiff as well as a shield by the Defendant within ken of Article 65 of the Limitation Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession.

6. *State Bank* of *Travancore v Aravindan Kunju Panicker & Ors.* (1972) 4 *SCC* 274 *(Para 9)*

The original owner of the suit property had disposed of the property to a third party where upon three junior members of the original owners family obtained a decree for recovery of the said property on payment of certain amount which was paid by their relative who took delivery of the land at their instance. The property went to several more transactions and was obtained by a Bank (which later got amalgamated with the appellant Bank) through a mortgage decree. The members of the family of the original owner brought a suit for possession of the land. While dealing with the issues involved in the suit, the Court in appeal observed as follows in relation to adverse possession:

> "9. ... *A permissive possession cannot be converted into an adverse possession unless it is proved that the person in possession asserted an adverse title to the property to the knowledge* of *true owners for* a *period* of *twelve years or more."*

7. *Raja Rajgan Maharaja Jagatjit Singh v Raja Partab Bahadur Singh (1942)* see *OnLine PC* 11 : *AIR* 1942 *PC* 47 *(Internal Page 601)*

In the present case the suit property were lands located on the boundary or between the two estates owner by the parties to the suit. Suit for declaration was instituted seeking to declare the plaintiff as the rightful proprietor of the suit property. The trial court dismissed the suit (except for a small portion of land which was not contested by the opposite party). However in appeal the order passed by the trial court was reversed. The said order was challenged by the Appellant.

The Court held that when a property is attached under Section 145 CrPC but no order for possession in favour of any of the parties to the said proceedings has been passed and a suit is filed only for declaration of title without seeking possession will be governed by Article 120 and not by Article 142 or 144 or 47 of the Limitation Act. Moreover, it was observed by the Court that it is the duty of the party taking the plea of adverse possession to establish that the statutory period required for adverse possession had been completed prior to the date when possession of the suit property was taken over by the receiver under Section 145 CrPC. The Court also held that it is an established principle that adverse possession against an existing title must be actual and it cannot be constructive.

8. C. *Natrajan v Ashim Bai &Anr. (2007)* 14 see 183 *(Para 14)*

Appellant filed a suit against the respondents claiming declaration of Plaintiffs title, consequential injunction, alternatively, vacant possession. Respondent filed an application under Order VII Rule 11(d). Trial Court dismissed the application, however, the order was set aside by the High Court holding that the suit was mainly for declaring title and therefore, only Article 58 (providing for 3 years of limitation) will apply and not Article 65. The order was set aside in Appeal.

The Court held that if the Plaintiff is to be granted a relief of recovery of possession, the suit could be filed within a period of 12 years. It is one thing to say that whether such a relief can be granted or not after the evidences are led by the parties but it is another thing to say that the plaint is to be rejected on the ground that the same is barred by any law. In the suit which has been filed for possession, as a consequence of declaration of the Plaintiffs title, Article 58 will have no application.