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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 4905-4908 OF 2011

IN THE MATTER OF:

NIRMOHI AKHARA AND ANR

... APPELLANT

VERSUS

RAJENDRA SINGH AND ORS.

... RESPONDENTS

WRITTEN SUBMISSIONS

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

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## ANALYSIS OF THE ORAL EVIDENCE LED BY THE PLAINTIFF

32. Oral evidence as well as Documentary evidence has been led by the plaintiff. It is submitted that, the said evidence has to be considered from the perspective of the following issues:-
- (i) That the Idol of Ram Lalla (and other idols) as well as the Asthal Janmabhumi (Inner & Outer Courtyard) was under Shebaiti Management of Nirmohi Akhara.
  - (ii) That Possession of the Janmabhumi Temple (Inner and Outer Courtyard) was with the Nirmohi Akhara
  - (iii) After the order of attachment, charge and possession of inner courtyard as well as the *puja sangri* was taken by the Receiver on 5.7.1960 from the Mahants and priests of Nirmohi Akhara and in furtherance of the interim orders, the sadhus of the Nirmohi Akhara were performing and continuing the seva puja "as before".
  - (iv) That the property has been used and possessed exclusively by the Hindus - No namaz performed at-least since 1934.
  - (v) That no incident took place on 22nd/23rd December, 1949. No shifting of the deities took place on the said date which were already in the Main Temple.

(Please See Annexure A - for specific issue wise depositions)

(Page No 51 to 65)

## IV. NIRMOHI AKHARA HAS THE SHEBIATI RIGHT OF MANAGEMENT OF THE DEITIES

33. The said issue is covered by the following issues of Suit OOS No. 3 of 1989

- > Issue No. 2 : Does the property in suit belong to the plaintiff No.1?
- > Issue No. 4 : Are plaintiffs entitled to get management and charge of the said temple?

34. The conclusion of the issue will have impact on the findings in relation to issue no. 2 & 6 of OOS No. 5/89 relating to maintainability of the said Suit No. OOS 5 of 1989 on behalf of the Deities (plaintiff No. 1 and 2) Through Next Friend (Plaintiff No. 3) treating them to be "minors" under Order 32 Rule 1 CPC and the reasoning will also have relevance for the decision on the issue of limitation of OOS No. 5 of 1989 (i.e. Issue No. 13 in OOS No. 5).

- > Issue No. 2 : Whether the suit in the name of deities described in the plaint as plaintiffs 1 and 2 is not maintainable through plaintiff no.3 as next friend?
- > Issue No. 6 : Is the plaintiff No.3 not entitled to represent the plaintiffs 1 and 2 as their next friend and is the suit not competent on this account?
- > Issue No. 13 : Whether the suit is barred by Limitation

35. The issue of Shebait is also necessary to decide the issue of "relief" of restoration possession from the receiver. It is stated that if this court comes to a conclusion that the property vests in the deity as is being contended by the plaintiff of OOS No. No. 1, OOS No. 3 and OOS No. 5,

possession of the property of the deity cannot be handed over to persons who are merely "worshippers" such as the plaintiff in OOS No. 1 or the Next Friend (or plaintiff No. 3 in OOS No. 5). Possession on behalf of the deities, will have to be given only to the Shebait. A worshipper or a next friend merely acts as a 'disinterested person' for and on behalf of the deity but cannot receive possession of the property belonging to the deity. It is stated that Plaintiff No. 3 of OOS No. 5 - Devki Nandan Agarwal (OPW-2, Volume 17) does not even claim in the plaint that he is a worshipper and in fact in the evidence has admitted that he does not believe in idol worship.

### PLEADINGS

36. The Plaintiff - Nirmohi Akhara (OOS No. 3 of 1989) has claimed right as Shebiat/manager of the Ram Janma Asthan as well as the Idols of Lord Ram, Lakshman, Hanuman and Saligram installed in the Disputed Structure (See Para 2 and 3 of the Plaint(Page 49 Volume 72)) which is described as the "main temple" and generally also referred to as the Inner Courtyard.

37. Only written statement filed denying the claim of the plaintiff is by Defendant No. 10 - Umesh Chand Pandey (Page 63-68 Volume 72) dated 21.10.1991. The said Defendant No. 10 has not entered the witness box nor any other witnesses have been examined by him and therefore his pleading in the written statement has remained unsupported and adverse inference has to be drawn against him under section 114 evidence Act, See *Isvar Bhai C. Patel v. Harihar Behera*, (1999) 3 SCC 457 (para 19 to 29).

38. In the pleadings of Plaintiff of OOS No. 5 of 1989 (Page 234 Volume 72) (See Para 6, 7, 11 and 12):-

- i. It is not the case setup by the plaintiff that there is "no shebait" of the deities at all.
- ii. It is not the case setup that "working shebait is not looking after the deities faithfully"; or
- iii. It is also not the case that there is any person other than the Nirmohi Akhara, named either in the plaint or the written statements, who was the shebiat, managing the affairs of the deities.

Even independent of Suit No. OOS 5, no rival claimant has setup a claim to be shebait/manager of the two deities except Nirmohi Akhara.

39. So far as Plaintiff of OOS No. 4 - Sunni Central Board of Waqfs is concerned, in the statement by Shri J. Jilani (recorded on 22.4.2009) under Order X rule 2 CPC, it has been stated as under:-

"The existence of Nirmohi Akhara from the second half of nineteenth century onwards is also not disputed. It is however denied and disputed that Nirmohi Akhara was in existence and special in Ayodhya in 16th Century AD or in 1528 AD and it is also denied that any idols were there in the building of the Babri Masjid upto 22nd December, 1949" (Page 262 Para 262 Volume I - Judgment)

40. The said statement has been made in light of the fact that cases had been filed by the muslim parties against the Mahants of Nirmohi Akhara and vice versa during the second half of the Nineteenth Century".

#### EVIDENCE - ORAL AND DOCUMENTARY

41. On the issue of Shebaiti Management of the deities as well as Janmasthan, the position is virtually admitted and the Oral Evidence led by the Plaintiff on this issue has remained unrebutted in cross-examination by the Hindu Parties and in fact the witnesses of the Plaintiff in OOS No. 5 have also admitted the said fact in evidence.
42. At no point of time any other rival claimant has emerged ever claiming shebiatship or a right of management of the Deities. From the Oral evidence led by the parties, (detailed hereinbefore in Annexure A (I)), there is complete absence of any cross -examination in this aspect by any of the Hindu Parties. The said position is therefore admitted.
43. The plaintiff has also filed documentary evidence of it was exercising shebiati/managerial rights and making arrangements for looking after the affairs of the deity:-
- (i) Exhibit 8 (Suit-3) (Page 66-70 Nirmohi Akhara Volume-90) is a copy of the agreement dated 11.6.1900 permitting Jhingoo son of Gaya for providing drinking water to the pilgrimages visiting Ramjanambhumi site at Ayodhya. (This was for an area near - Sita Koop just outside the outer courtyard)
  - (i) Exhibit 9 (Suit-3) (Page 71-74 Nirmohi Akhara Volume-90) is a copy of agreement of Theka Shop of Janambhumi Ramkot Ayodhya by Gopal son of Babu in favour of Narottamdas on 13.10.1942. (This was for an area - outside the Eastern Gate or Hanumat Dwar in the outer courtyard)
  - (ii) Exhibit 10 (Suit-3) (Page 75-78 Nirmohi Akhara Volume-90) is a copy of the agreement dated 29.10.1945 regarding Theka Shop in favour of Mata Prasad by Mahant Raghunath Das. (This was for an area - outside the Eastern Gate or Hanumat Dwar in the outer courtyard)

Note:- It has also come in evidence that in the year 1982 there was a dacoity at the Nirmohi Akhara in which the documents of the plaintiff were looted apart from other precious idols and articles. FIR and Chargesheet was filed against Dharam Das. (Page 12087 Vol \_\_\_\_). As a result other evidence in the shape of Original documents of shebaiti management and other agreements entered into by the plaintiff were lost. Further a suit came to be filed in 1982 (which is still pending) relating to the outer courtyard and in that proceedings the outer courtyard was attached and placed under the same receiver who was appointed in the present suits for the Inner courtyard.



## FINDINGS OF THE HIGH COURT

44. With regard to the Shebait of Plaintiff No. 1 and 2 of OOS No. 5 of 1989, it has been noticed by Jus. Sudhir Agarwal as under:-

"2133. Now, so far as the issue No.2 and 6 ( Suit-5) are concerned, we really find it surprising that there is no averment at all in the entire plaint that plaintiff no. 3 is a worshipper of lord Ram and that of plaintiffs 1 and 2. Besides it is also not the case that there is no Shebait at all or the Shebait, if any, is not managing the affairs properly."

45. The Janma Asthan as well as the deities have been in existence from time immemorial and the High Court has also found that the plaintiff No. 1 - Nirmohi Akhara has been in existence atleast from 1734 AD (See Para 799 Page 751). It is the case of the Muslim Parties as well as the Next Friend of Plaintiff No. 1 and 2 in OOS No. 5 of 1989 that the deities were shifted from the Chabutra in the outer courtyard to under central dome of the disputed structure of 22-23.12.1949. This case of the Plaintiffs in OOS No. 4 as well as OOS No. 5 show undisputedly that the Nirmohi Akhara was managing the affairs of the Idols when they were situate on the Chabutra (Para 2038), hence the inevitable conclusion has to be that the plaintiff was managing the affairs even when the deities were placed under the Central Dome, unless anything contrary could be shown by any of the parties. In Para 2138, the High Court has observed:-

"2038 ... It is not the case of any of the parties that there is or there was any shebait appointed or working to look after or managing the plaintiffs no. 1 and 2. The idol while existing on Ram Chabutara, its worship etc. was being managed by the priest of Nirmohi Akhara as claimed by them and also not seriously disputed by other Hindu parties but after its shifting in the disputed building under the central dome, there is nothing on record to show that any person as shebait of plaintiff no. 1 continued to look after."

It is stated that first part of the aforesaid extract is factually incorrect as it is the specific case of the Plaintiff Nirmohi Akhara that it was the Shebait/Manager of the Main temple (i.e. the Inner courtyard) (See Para 2 and 3 of the Plaint (Page 49 Volume 72), known as the Janmasthan. The second part is recording of the undisputed position that the priest of the Nirmohi Akhara was managing the affairs on the Ram Chabutra. The observation thereafter, that there is no evidence that the plaintiff Nirmohi Akhara was managing the affairs of the deities after shifting is unjustified since:-

- (i) After the alleged shifting, on 22-23.12.1949 as found by the High Court, a receiver was appointed by an order dated 29.12.1949 (7 days) who took possession on 5.1.1950 (i.e. 14 Days).
- (ii) Oral Evidence has been led by the plaintiff - Nirmohi Akhara that the receiver had taken possession of the property from the plaintiff - Nirmohi Akhara. (See Annexure A (1)(c)).
- (iii) Though the Supurdagi Nama, by which the receiver took possession does not record from whom such possession was taken, but the said document clearly indicate the presence of

the plaintiff Nirmohi Akhara in the outer courtyard.

- (iv) As a result of the interim order passed in the S. 145 Proceedings as well as the interim orders passed by the Civil Court, whereby seva puja was required to be continued "as before", it was being carried out by the priests of the Nirmohi Akhara, as is evident from the Oral evidence of witnesses produced by the Plaintiff as Mentioned in Annexure A(III).
- (v) The witnesses of Plaintiff of Suit No. OOS 5 of 1989 have admitted the fact that the priests of Nirmohi Akhara were managing the affairs in Garbha Griha before and after attachment in their evidence.

See:

- (i) OPW-1 - Sri Mahant Paramhans Ram C. Das (Volume 16 Page 58)

*"... Before attachment, Hindus had been going to Garbha Griha without any restrictions for having Darshan. Idols of Lord Saligram, Hanumanji and Ramlalla were installed there. People Belonging to the Nirmohi Akhara never obstructed any Hindu from going to the Garbha Griha. Members of the Nirmohi Akhara used to manage Garbha Griha before attachment..."*

- (ii) OPW-2 - Shri Devki Nandan Agarwal (Volume 17)

*"... Bairagis of Nirmohi Akhara who used to worship at the Ram Chabutra did not allow muslims to enter inside. Therefore Namaz could never be performed in this place inspite of efforts made constantly" Page 363*

*"... Worship of idols which existed earlier on Ram Chabutra and of the idol installed after 1949 was got done only by the people of the Nirmohi Akhara till a quarrel arose with Dharamdasji" Page 408*

- (iii) OPW-5 - Shri Ram Nath Panda @ Bansari Panda (Volume 19 Page 861)

*"11. In the Barred wall, there were two doors which used to remain locked and those doors were opened and closed by the Pujaris of the Nirmohi Akhara. The same very pujari used to offer prayers and perform Arti at Ram Chabutra and Sita Rasoi Etc. We used to arrange Darshan of the Garbh Griha for the pilgrims from the railing itself. A Donation box was also kept there. On the main gates were the shops of Batasha and flowered/garlands. One of those shops belong to Sehdev mali.*

*"... The key of the lock used to be in the possession of the people of Nirmohi Akhara and whose pujari would open the lock, close the lock, and perform Arti puja and sounded bells and bugles..." Page 869*

*"... from 1949 to 1970, I used to go to Ram Janm Bhumi Temple regularly. After the attachment of 1949, the receiver of Garbh Griha - Babu Priya Dutt Ram became the chairman of the Municipality Faizabad and at places like Ram Chabutra Temple, Chhati Puja Sthal, Bhandar Sthal and Shiv Darbar Puja continued to be performed in the same way as before and was performed by the same people who used to perform it before...." Page 873*

46. Thus it cannot be disputed that the Nirmohi Akhara has been managing the affairs of the deities - Idol of Ram Lalla and other deities as well as the Janmasthan. It is stated that apart from the other intrinsic material showing presence of the Nirmohi Akhara, it is the only institution in the immediately nearby vicinity in the outer courtyard itself which land-locks the Inner

courtyard where there is presence of the Akhara and the Akhara alone. However it is also the stated case of the plaintiff - Nirmohi Akhara that it had never objected to or stopped any Hindu from visiting the said place and hence the fact that the property has been found to be used by other Hindus is really of no consequence.

47. Therefore, once the position regarding the shebiati rights of the Plaintiff have remained un rebutted and undisputed as noticed in Para 2138, there was no justification for the Court to observe in the same para that there was "no shebiat" of the deities "after" the alleged shifting especially when that was not even a case setup in the plaint as also rightly noticed in Para 2133 itself and in any case the conclusion is erroneous based on the evidence available.
48. Thus, Issue No. 2 and 4 of the OOS No. 3 are required to be decided in favour of the Appellant - Nirmohi Akhara.

#### ISSUE NO. 2 AND 6 OF OOS NO. 5

49. Issue no. 2 & Issue No. 6 of OOS No.5 is relating to maintainability of the said suit purportedly filed under Order 32 Rule 1 CPC through Plaintiff No. 3 - Devki Nandan Agarwal (the Next Friend).

- **ISSUE NO.2:** *Whether the suit in the name of deities described in the plaint as plaintiffs 1 and 2 is not maintainable through plaintiff no.3 as next friend?*
- **ISSUE NO.6:** *Is the plaintiff No.3 not entitled to represent the plaintiffs 1 and 2 as their next friend and is the suit not competent on this account?*

50. The argument of the plaintiff - Nirmohi Akhara against maintainability of Suit OOS No. 5 has been noticed in Para 1705 (page 1114 Volume I). It was the specific case of the Plaintiff Nirmohi Akhara that the suit OOS No.5 of 1989 cannot be maintained on behalf of the deities by Plaintiff No.3 - Shri D.N. Agarwal as a 'next friend' under Order XXXII, Rule 1, which was wholly inapplicable. Written objections were also filed (which are annexed herewith as Annexure B for convenience) against entertaining of the suit on their behalf. Sharan  
affixes  
(Page 1066 to 68)

*"1705. Sri R.L. Verma, learned counsel appearing on behalf of Nirmohi Akhara defendant No.3 raised objection about the maintainability of suits through next friend and contended that there is no averment in the entire plaint (Suit-5) as to why the plaintiff no.3 be allowed to file suit on behalf of plaintiffs no. 1 and 2 as their next friend. He submits that neither there is any averment that the already working Shebait is not looking after the Deity faithfully and religiously nor there is any averment that there is no Shebait at all of the Deities, plaintiffs no.1 and 2, nor there is any averment that plaintiff no.3 himself is a worshipper of the Deities (plaintiffs no.1 and 2) and therefore, is interested in the welfare and proper management of the property and daily care of Deities themselves. Sri Verma submits that Order XXXII, Rule 1 in terms has no application to Suit-5. The suit, as framed, is not maintainable through the next friend, hence, is liable to be rejected on this ground alone."*

In order to answer the aforesaid objection the Hon'ble High Court framed points of determination in Para 1710 and Para 1711 (Page 1124).

"1710. The pleadings, argument etc. over these issues require us to consider the matter from two different angles:

The case of defendant no.3 (Suit-4), i.e., Nirmohi

- (i) Whether plaintiff no.1 is a Deity in terms of Hindu Law. Its effect,
- (ii) Plaintiff no.2 is a place and therefore, first of all it has to be seen whether a place by itself can be a Deity and be conferred status of legal person in the light of principles of Hindu Law.

1711. If both these aspects are decided in affirmance only then we will have to consider whether there was any Shebait of the said two plaintiffs and whether the plaintiff no.3 has rightly filed the suit in question as their next friend."

The questions framed in Para 1710 (Page 1124, Vol.1) have been answered in affirmative in Para 1918 (Page 1206, Vol.1) and it has been held that the Plaintiff No.1 & 2 are juridical persons for which the Plaintiff - Nirmohi Akhara raises no grievance.

51. A suit under Order XXXII, Rule 1 CPC is in respect of suits to be filed by a minor. Minor for the purposes of the said Order XXXII Rule 1 has been defined in the explanation appended to the said Rule 1 itself (inserted by Act No. 104 of 1976 and hence applicable to Suit OOS 5 of 1989 filed in 1989). Order XXXII Rule 1 has been reproduced hereunder:

#### "ORDER XXXII

#### SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

1. **Minor to sue by next friend.** - Every suit by a minor shall be instituted in his name by a person who in such suit be called the next friend of the minor.

Explanation - In this Order, "minor" means a person who has not attained his majority within the meaning of section 3 of the Indian Majority Act, 1875 where suits relates to any of the matters mentioned in clauses (a) and (b) of the section 2 of that Act or any other matter."

52. As is evident, Order XXXII does not deal specifically with suits by or on behalf of idols/deities but only an "**inference**" is being drawn on a premise that deities are in the nature of "minor or infant" and therefore suits can be maintained on their behalf by their 'next friend'. It is submitted that minor for the purposes of Section 3 of the Indian Majority Act would apply only to 'natural persons' i.e., a person capable of attaining age of majority as specified and who has not yet attained the said age. An idol is incapable of attaining the age of majority and hence, not covered by definition of Section 3. In *Doongarsee Shyamji vs. Tribhuvan Das*, AIR 1947 All 375 it was observed:-

"... the analogy of a deity being treated as a minor is a very imperfect analogy and we cannot carry it far enough to make O. 32, Civil P.C. applicable..."

53. **SUIT BY SHEBAIT** - Assuming such an inference can be drawn or on the principle of locus to maintain a suit on behalf of the deity, a suit for and on behalf of the deity can be filed only by the shebiat or the manager and no other. In 1904 (31) IA 203, 210 - *Maharaja Jaghdhindra Nath Roy Bahadur Vs Rani Hemlata Kumari Debi*, Privy Council has held that right to sue in

respect of the property of the idol vests in the shebiat and not in the Idol. In *Kalimata Debi v. Narendra Nath*, 99 Ind Cas 917: (AIR 1927 Cal 244) The Calcutta High Court was of the opinion that the Shebait alone can maintain a suit on behalf of an idol.

See also:-

- AIR 1961 All 73, 77 – Gyan Singh Vs Nagar Palika of the City of Agra (Para 13,14)
- AIR 1978 All 1 - Kishore Joo Vs Guman Bihari Joo (Para 9)

54. **IDOL/DEITIES NOT NECESSARY PARTIES** - It is now a settled principle that deity is a necessary party in all suits relating to Debuttar and the suit can be maintained by the Shebait in his own name. Under the Hindu law, the property vests in the deity only in the ideal sense and for all practical purposes it is the shebait, who looks after the deity and the deity's property. It is also accepted that in a shebait the office of a manager as well as property are blended together<sup>1</sup> and hence the Shebait can maintain a suit on behalf of the deity in his own name and need not implead the deity as a party in every case.

See:

- Para 6.16, 6.28 - The Hindu Law of Religious and Charitable Trusts (Fifth Edition) (Annexure C) (Page No 69 to 84)

#### WHO IS A SHEBAIT? - A HUMAN AGENCY TO REPRESENT A DEITY

55. The concept of Shebait was explained by the Privy Council in *Pramatha Nath Mullick Vs Pradumna Kumar Mullick* (1925) 52 IA 245 at p. 250-2

"... One of the questions emerging at this point, is as to the nature of such an idol, and the services due thereto. A Hindu Idol is, according to long established authority, founded upon religious customs of Hindus and the recognition thereof by courts of law as "Juristic entity". It has a Juridical Status with the power of suing and be sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all powers which would, in such circumstances, on analogy, be given to the Manager of the estate of an infant heir. It is unnecessary to quote authorities, for this doctrine thus simply stated is firmly established.

"... The person founding a deity and becoming responsible for those duties is defacto and in common parlance called shebait. This responsibility is, of course, maintained by a pious Hindu either by personal performance of the religious rites or - as in case of sudras, .... By employment of brahmin priest to do so on his behalf..."

"... The position and rights of the deity must, in order to work this out both in regard to its preservation, its maintenance and the services to be performed be in charge of a Human Being. Accordingly he is the Shebiat Custodian of the Idol and manager of its estate.

In *Prafulla Chorone Requitte Vs Satya Chorone Requitte* (1979) 3 SCC 409 (page 417 Para 20):-

<sup>1</sup> Angurbala Mullick Vs Debabrata Mullick, 1951 SCR 1125, 1132-1134, The Commissioner Hindu Religious Endowments Vs Shri Lakshmindra Thirtha Swamiar of Sri Sirur Mutt 1954 SCR 1005, 1018-1019.

"20. Before dealing with these contention, it will be appropriate to have a clear idea of the concept, the legal character and the incident of shebiatship. Property Dedicated to an idol vests in it in an ideal sense only; ex necessitas, the possession and management has to be entrusted to some human agent. Such an agent of the idol is known as Shebait in Northern India. The legal character cannot be defined with precision and exactitude. Broadly described, he is the human ministrant and custodian of the idol, its earthly spokesman, its authorised representative entitled to deal with all its temporal affairs and to manage its property. As regards administration of the debutter, his position is analogous to that of a trustee; yet he is not precisely in the position of a trustee in an English sense, because under Hindu law, property absolutely dedicated to an idol, vests in the idol and not in the shebait. Although the debutter never vests in the she bait, yet, peculiarly enough, almost in every case the shebait has a right to be part of the usufruct, the mode of enjoyment, and the amount of the usufruct depending again on usage and custom, if not devised by the founder."

56. Thus "ordinarily" it is the shebait which is entitled to initiate action on behalf of the deities either in his own name or in the name of the deities. There is however a recognised exception to the rule as noticed in *Bishwanath vs. Sri Thakur Radha Ballabhji* AIR 1967 SC 1044 - when a "worshipper" can also be clothed with "an adhoc power of representation to protect the interest of the deity" when the person ordinarily representation him i.e. the shebait "leaves it in the lurch". The judgment does not deal with or hold that a deity is a "minor" for all purposes or that he is a "perpetual minor". The judgment only holds a deity to be a minor "under certain circumstances", the underlying principle being cases where the shebiat leaves the deity in lurch. Thus exceptions being:-

- (ii) Where the shebait "refuses" to act to protect the interest of the deity, or
- (iii) Where the shebait has a conflict of interest i.e., where the suit seeks to challenge the Act of the shebait himself.

See also:-

- > AIR 1961 Allahabad 206 - *Sri Thakur Kirshna Chandramajju vs. Kanhayalal and others* the Hon'ble High Court of Allahabad observed that where the acts of the alleged Shebait are being impugned, then the idol may sue through a next friend who has beneficial interest in the property.
  - > AIR 1941 Cal 272 - *Sri Sri Sridhar Jew v. Manindra K. Mitter*, the Hon'ble High Court observed that when the interests of the Shebait are adverse to that of the idol then the idol should be represented through a disinterested next friend.
57. Thus whether or not a suit can be maintained by a next friend would depend of the nature of the suit and the nature of the reliefs claimed and hence only in exceptional circumstances, a de-facto right can be vested in a "worshipper" or any person who is able to show some beneficial interest in the endowed property, to bring a suit in the name of the deities.
58. In the facts of the present case, the Plaintiff Nirmohi Akhara has been acting as the shebait of the deities and had already instituted a suit admittedly in 1959 i.e., 30 years prior to the institution of OOS No. 5 of 1989. Further the "reliefs" claimed in OOS No. 5 are not questioning any act of the Nirmohi Akhara or its Mahants and hence, in view of the nature of the relief claimed, it

cannot be said that the Nirmohi Akhara has a conflict of interest with the two deities so as to enable a "next friend" to sue on their behalf.

59. **SH. DEVKI NANDAN AGARWAL, THE NEXT FRIEND, NOT A "WORSHIPPER"** - Even in terms of *Bishwanath (Supra)*, the right to file a suit on behalf of the deity, under the aforesaid exceptional circumstances, has been reserved with the "worshipper" who may have beneficial interest in the endowment or in the deity. It is stated that in the Suit - OOS No.5, there is no statement, as a matter of fact, to the effect that Shri DN Agarwal (Plaintiff No. 3) was a worshipper of the two deities. Further in evidence, he has admitted that he does not believe in idols and he is the follower of 'Arvind Ashram' established by Maharishi Arvind who does not believe in idol worship. So far as worshipping Plaintiff No. 2, it has been admitted by him that he had only once visited the place. Thus, a suit instituted at the instance of Shri Devki Nandan Agarwal who was not even a worshipper of the two idols was not maintainable even otherwise.

See:-

- (i) OPW-2 - Shri Devki Nandan Agarwal (Volume 17)

"During the period between 1940-1952, I did business of Brick Kiln and also worked as a Contractor. I did this work till 1954. During the period from 1940-1954, when I was doing business I had no time to take interest in religion. I never did Idol worship. Then volunteer : that his mother used to worship idols. My wife also used to do idol worship..." (Page 371)

"... After 1955 and since 1960, I came under the influence of Shri Arvind Ji..... As I was living with them, I was influenced with the writing of Shri Arvind. .... Meetings used to be held in my house regarding the thoughts of Shri Arvind after 1965. After 1965 till 1971 meetings were being held in my house, but it did not have any special impact on me. .... This has also been a main component of his philosophy that this world is not an illusion but an expression of divine. About Ishwar he said that bhagwan, Allah, god are all concept of non being i.e. concept of god without form and attributes and who is in the world in every form, which means that he exists in every living being, in every insect and in every thing. In other words we can say that god exists in each and every particle of the universe. It is cause of it and also the end of it. It has no particular form and it has innumerable forms." (page 371-372)

"During the year 1965 - 66, Shri Maa had established a Centre of Shri Arvind Society in My House after seeing the photograph of my wife. At that time, Preeti Adawal was secretary and Shri Sumitra Nandan pant was president of the above centre. After the death of Shri Sumityra Nandan pant, I was appointed as the president of that centre." (Page 373-374)

"After the establishment of the centre of Shri Arvind Society in my home in 1968, my faith in the society of Shri Arvind went on increasing. By 1974-75, I had complete faith in it. I still have complete faith in the philosophy of Shri Arvind." (Page 375)

Regarding visit to the Ram Janma Bhumi it was stated by him that:-

"... I never visited Ayodhya from 1934 till 1955, but during the period from 1955 to 1977, I had been going to Faizabad but I do not remember whether I ever went to Ayodhya. Then he said that he remembered that he had once gone to Ayodhya; then I was the standing advocate. Either I went during 1977 to 1983, I do not remember. But once when I was going from Lucknow to Gorakhpur then on the way I had stopped at Ayodhya and took bath in the Saryu River. This visit took place between 1977 and 1983 but I do not remember the exact date. During that visit, I took bath in Saryu and perhaps went to hanuman Garhi but did not go to Ram Janmabhumi." (page 382)

60. In Para 17 of the Complaint, it has however projected "Shri Ram Janmabhumi Nyas" as a person



"interested" in the seva, puja and other affairs of the plaintiff deities. It is therefor evident that the Plaintiff No. 3 was merely a "proxy" on behalf of "Shri Ram Janma Bhumi Nyas" and hence cannot be said to be a "disinterested person" to qualify as a next friend.

61. Shri Ram Janma Bhumi Nyas was created in 1.5.1987 and hence cannot at all "claim" to be the shebait or Manager of the deities for which the Nirmohi Akhara has been fighting for more than 200 Years. In any case the an application filed by the Ram Janma Bhumi Nyas for transposition as a plaintiff was dismissed by High Court by an order dated 19.3.1996. No Appeal has been preferred by the Nyas before this Court.
62. In any case, the constitution of the Ram Janmabhumi Nyas is under challenge and is Pending consideration in Regular Suit No. 426/1989 filed by the Nirmohi Akhara (Ex C-5 (Suit-5) Volume 92).

**CAN "POSSESSION" OF THE PROPERTY FOUND TO BE OF THE DEITY  
BE DELIVERED TO THE NEXT FRIEND?**

63. It is stated that in a suit filed in the name of the deity by a next friend in his capacity as a worshipper, a decree for possession cannot be granted to it. In fact neither Plaintiff of OOS No. 1 - Sh Gopal Visharad nor Plaintiff No. 3 of OOS No. 5 have intact claimed a relief of possession. The next friend necessarily is a person who does not seek relief for himself but only for the deities whom he represents. A decree for possession or recovery of possession cannot also be granted in favour of a worshipper. In *Veruareddy Ramaraghava Reddy Vs Konduru Sheshu Reddy* (1966) Supp SCR 270, 277 it has been held:-

"... The legal position is also well established that the worshipper of a Hindu temple is entitled, in certain circumstances, to bring a suit for declaration that the alienation of the temple properties by the de jure Shebait is invalid and not binding upon the temple. If a Shebait has improperly alienated trust property a suit can be brought by any person interested for a declaration that such alienation is not binding upon the deity but no decree for recovery of possession can be made in such a suit unless the plaintiff in the suit has the present right to the possession. Worshippers of temples are in the position of cestui que trust or beneficiaries in a spiritual sense (See *Vidhyapurna Thirthaswami v. Vidhyanidhi Thirthaswami* [ILR 27 Mad 435 at 351]. Since the worshippers do not exercise the deity's power of suing to protect its own interests, they are not entitled to recover possession of the property improperly alienated by the Shebait, but they can be granted a declaratory decree that the alienation is not binding on the deity (See for example, *Kalyana Venkataramana Ayyanagar v. Kasturiranga Ayyangar* [ILR 40 Mad 212] and *Chidambaranatha Thambiran v. Nallasiva Mudaliar* [ILR 41 Mad 124] ..."

64. In *Doongarsee Shyamji vs. Tribhuvan Das*, AIR 1947 All 375 : 1946 SCC OnLine All 120 (Para 12) the legal position has been aptly stated as under:-

"12. In the case before us there are no allegations that it is in the interest of plaintiff 4, the deity, that the defendant should be removed and plaintiffs 1 to 3 put in charge of its property, nor are there allegations of any waste or mismanagement. There are no allegations in the plaint that defendant 1 is not a fit person to look after the deity or that he is not looking after the deity and its property properly. Neither the defendant nor plaintiffs 1 to 3 can claim to be the properly appointed sebaits of the deity and Saraswati Bai, who was the last sebaite, was as great a well wisher of the deity as plaintiffs 1 to 3 and



it cannot be said that when she selected defendant 1 and put him in charge, though strictly speaking she may not have had the legal authority, she did not act in the best interest of the deity. The result of accepting the argument of learned counsel would be that any person can constitute himself as the next friend of a deity and file a suit in the name of the deity for possession of the property by the dispossession of a de facto shebiat who may be managing the property and looking after the deity to the satisfaction of everybody and get hold of the property in the name of the idol till such time as he is dispossessed again by somebody else. We are not prepared to hold that such is the law that any third person can constitute himself as next friend and file a suit and claim an absolute right to possession of the property simply because he has filed the suit in the name of the deity."

See also:-

- (i) AIR 1947 Nagpur 233 - Kisan Bhagwan Marathe Vs Shree Maroti Saunsthari (Para 3-10)
- (ii) AIR 1956 ALL 207 - Shivaji Maharaj Vs Lala Barati Lal (Para 9,10, 14-16, 21)

65. It is stated that the factual situation noticed in Para 12 in *Doongarsee Shyamji (supra)* is identical to the facts of the present case. The defendant Nirmohi Akhara has been made a defendant in the suit OOS No. 5 of 1989. In the plaint of (OOS No. 5 - Filed by the deities), the litigation initiated by Nirmohi Akhara (i.e. OOS No. 3 of 1989) has been referred to and therefore it cannot be disputed that the plaintiff is fully aware about the claim of Nirmohi Akhara as the Shebiat of the deities. Despite this, the plaint is silent about the role of Defendant No. 3 and there is no challenge to the claim of Nirmohi Akhara to act as the shebiat of the deities. The Plaint is also silent on the aspect that Nirmohi Akhara is acting adversely to the interest of the deity. There is also no assertion that the Plaintiff No. 3 himself is the shebiat or any other person, impleaded in the plaint is the shebiat. Thus even if title to the properties is held to vest in the deities - Plaintiff No. 1 and 2 of OOS No. 5, the possession thereof, even in Suit No. OOS No. 5 must be directed to be delivered only to Defendant No. 3 - Nirmohi Akhara.
66. The relief granted to the Plaintiff No. 3 (by referring to the plaintiffs of Suit OOS No. 5 of 1989 by the word "Plaintiffs") is therefore unjustified. Plaintiff No. 3 claims only as the "Next Friend" who cannot himself become a "Plaintiff" and claim a right of possession of the property on behalf of the Deities upon a declaration that the properties vest in the Deities.
67. It is also stated that grant of the said relief - enabling recovery of possession from the receiver to the Next Friend or any other worshipper, in fact runs counter to the conclusion reached by the High Court itself while deciding issue No. 20(b) of OOS No. 4 of 1989 filed by the Sunni Central Board of Waqfs. (See Page 2855 Para 4501-4505). In Para 4504 it has been held that "... the management being the responsibility of a Muttawali, the possession of a waqf can also be claimed by him since a worshipper is not entitled for possession of a waqf property though he may be allowed to file a suit for protection of the property of waqf but possession of such waqf cannot be granted to such worshipper.". It is submitted that a similar conclusion has however not been applied while granting relief in suit OOS No. 5 of 1989. The Judgment, to that extent is self contradictory.

SUIT OOS NO. 5 OF 1989 - NOT A SUIT UNDER SECTION 92 CPC

68. A suit under section 92 CPC, must satisfy the following essential ingredients as is apparent from the said section:-

1. Cause of action - (i) in case of any alleged breach of any express or implied trust created for public purpose or (ii) where the direction of the court is deemed necessary for the administration of such trust.
2. Party Plaintiffs - The Advocate General, or two or more persons having an interest in the trust.
3. Condition precedent - The plaintiffs need to obtain leave of the court
4. The reliefs - as stated in clause (a) to (h) of subsection (1).

69. It is stated that OOS No. 5 of 1989 does not satisfy any of the conditions. There is no allegation of any breach of a any express or implied trust and further in the reliefs no directions for "administration" of the trust has been sought for by the plaintiffs. No allegation has been made against the Nirmohi Akhara and, no direction has been sought for removal of any trustee, for appointment of any new trustee or for settling a scheme as provided under clauses (a), (b) and (g) of sub-section (1). Even the suit has not been instituted by "two persons having an interest in the trust" and no leave has been obtained from the court as mandated. The present suit is by only one person and he also does not even claim to have any interest in the trust or to be a worshipper of the deities.

70. In *Bishwanath (Supra)* it has been observed:-

"... It is settled law that to invoke Section 92 of the Code of Civil Procedure, 3 conditions have to be satisfied, namely, (i) the trust is created for public purposes of a charitable or religious nature; (ii) there was a breach of trust or a direction of court is necessary in the administration of such a trust; and (iii) the relief claimed is one or other of the reliefs enumerated therein. If any of the 3 conditions is not satisfied, the suit falls outside the scope of the said section. A suit by an idol for a declaration of its title to property and for possession of the same from the defendant, who is in possession thereof under a void alienation, is not one of the reliefs found in Section 92 of the Code of Civil Procedure. That a suit for declaration that a property belongs to a trust is held to fall outside the scope of Section 92 of the Code of Civil Procedure by the Privy Council in *Abdur Rahim v. Barkat Ali* [(1928) LP 55 IA 96], and by this Court in *Mahant Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhai Narsibhai* [(1952) SCR 513] on the ground that a relief for declaration is not one of the reliefs enumerated in Section 92 of the Code of Civil Procedure. So too, for the same reason a suit for a declaration that certain properties belong to a trust and for possession thereof from the alienee has also been held to be not covered by the provisions of Section 92 of the Code of Civil Procedure: See *Mukhda Mannudas Bairagi v. Chagan Kisan Bhawasar* [ILR 1957 Bom, 809].

71. Thus, the plaintiffs for OOS No. 5 of 1989 cannot (and in fact have not) claimed any relief for removal of the Nirmohi Akhara as the shebait or for a direction to "frame a scheme" or appoint any other person (such as the Ram Janmbhumi Nyas or any other person) as a trustee or a shebait. Thus no such direction can be issued in the said suit - OOS No. 5 of 1989.

ISSUE OF LIMITATION (ISSUE NO. 14) IN OOS NO. 5 OF 1989

72. Suit No. OOS 5 of 1989 has been held to be within limitation (See Page 1516 Para 2581 to 1565 Para 2738) by applying inter-alia the theory of perpetual minor (See Page 1522 Para 2599).
73. It is stated that the said reasoning of the High Court to decide the issue of limitation in favour of the plaintiffs of Suit No. OOS 5 cannot be sustained. It is submitted that the said suit - OOS No. 5 of 1989 can however be sustained on the point of limitation, for the reasons already set out in Part I of the submission on Limitation already made, but not on the ground that the deity is a "perpetual minor" and hence no period of limitation can run against it.

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## EXISTENCE OF NIRMOHI AKHARA AT RAM JANMABHUMI

74. In order to trace the existence and possession of the Nirmohi Akhara, historical facts chronologically are discernible from the following documents which are on record:-

1734 AD      The High Court has found the presence of Nirmohi Akhara at Ayodhya from 1734 AD after Mahant Govind Dasji came to Ayodhya from Jaipur. (See Para 799 Page 751 - Jus. Sudhir Agarwal and Page 3496 - Jus. D.V Sharma)

1770 AD      Joseph Tieffentheller - Historique Et Géographique De L Inde

"... But a place more particularly famous is that which is called the Sitha Rasooe, the table of Sitha (seeta), wife of Ram; situated on an eminence to the south of the city. The emperor Aurangzeb, demolished the fortress called Ramcote, and erected on the site, a Mohammedan temple with a triple dome. According to others, it was erected by Babar. There are to be seen fourteen columns of black stone, five spans in height, which occupied the site of the fortress. Twelve of these columns support the interior arcades of the Mosque: the two other form part of the tomb of certain Moor. They tell us, or rather these remains of skilfully wrought columns, were brought from isle of Lanca or Selendip (Ceylon) by Hanuman, King of the monkeys. On the left is seen a chest raised five inches from the ground covered with lime, about 5 ells in length and not more than four in breadth. The hindus call it Bedi, the cradle and the reason is that there formerly stood here the house in which Beshan (Vishnoo) was born in the form of Ram and were also, they say, his three brothers were born. Afterwards, Aurangzeb, or, according to others Babar, caused the place to be destroyed, in order to deprive the heathen of the opportunity to practice their superstitions. Nevertheless, they still pay a superstitious reverence to both these places, namely to that on which the natal dwelling of Ram stood by going three times round it prostrate on the earth. The two places are surrounded with a Low wall adorned with battlements..." (Ex. 133 (Suit 5) Volume \_\_\_\_ Page \_\_\_\_ ) (Page 3089 Volume III - Judgment)

3/28/23-24  
ORW  
Bachchan et  
Nam Chaitre

From the aforesaid account the following facts emerge clearly:-

- (a) That there was a place which continued to be identified as the Sita Rasoi
- (b) That there was a "bedi" or cradle - raised five inches from the ground covered with lime, about 5 ells in length and not more than four in breadth.
- (c) Both the said places were in existence in 1770 AD and which were revered to by the Hindus.
- (d) The hindus also used to do Parikrama. The entire structure was considered sacred and Parikrama was performed around the building.
- (e) The two places (i.e. the Sita Rasoi and the Cradle/Bedi) are surrounded with a Low wall adorned with battlements (which is the outer wall of the disputed structure)

1828 AD

"East India Gazetteer of Hindustan" by Walter Hamilton

"... The modern town extends a considerable way along the banks of the Goggra, adjoining Fyzabad, and is tolerable well peopled but inland is a mass of rubbish and jungle among which are the reputed sites of temples dedicated to Rama, Seeta, his wife, Lakshman, his general, and Hanumaun (a large monkey), his prime minister. The religious mendicants, who perform the pilgrimage to Oude are chiefly of the Ramata sect, who walk round the temples and idols, bathe in the holy pools, and performed the customary ceremonies" (Ex. \_\_\_\_ Volume \_\_\_\_ Page \_\_\_\_) (Page 3091 Volume III - Judgment)

- (a) The Ramata Sect has been noticed and explained in the B.K. Mukharjea - Hindu Law and Religious and Charitable trusts (fifth edition) Para 1.28. as follows:-

"1.28. Ramananda. - Ramananda, reputed, though not correctly, to be one of the followers of Ramanuja, founded a different school of Vaishnavism. His followers worshipped Ramchandra as an incarnation of Vishnu and are known by the name of Ramaths. They abound in the northern India and there are several Mutts of celebrity belonging to this order at Benaras"

1855 AD

A fight took place between the Hindus and the Muslims, in which Muslims took over the Janmasthan and tried to capture Hanumangarhi also. The Hindus first repulsed an attempt by the Muslims to capture Hanumangarhi and thereafter recaptured Janmasthan. In this fight, 75 Muslims died and 11 hindus also lost their lives. Thus after 1855 AD, the entire Janmasthan came back in possession of the Hindus.

Several attempts have been made thereafter to somehow take over the sites which was never allowed. Even the British Government also did not favourably decide in favour of the Muslims despite several complaints made in that regard.

1854 AD

"The Gazetteer of the Territories under the Government of East India Company", by Edward Thornton

"Here, in a large building a mile from the river, is an extensive establishment, called Hanumangurb, or Fort of Hanuman, in honour of the fabled monkey-god the auxillary of Rama. It has an annual revenue of 50,000 rupees, settled onit by Shuja-ud-daulah, formerly Nawaub Vizier. It is manage by a malik or abbot, the spiritual superior; and the revenues are dispensed to about 500 bairagis or religious ascetics, and other Hindoo mendicants of various descriptions. No Musalmans being allowed within the walls...

... Close to the town on the East, and on the right bank of the Ghogra, are extensive ruins, said to be those of the forts of Rama, king of Oude, hero of the Ramayana, and otherwise highly celebrated in the mythological and romantic legends of India. Buchanan observes, "that the heaps of bricks, although much seems to have been carried away by the river, extend a great way; that is, more than a mile in length, and more than half a mile in

width; and that, although vast quantities of materials have been removed to build the Mahomedan Ayodha or Fyzabad, yet, the ruins in many parts retain a very considerable elevation; nor is there any reason to doubt that the structure to which they belonged has been very great, when we consider that it has been ruined for about 2000 years." The ruins still bear the name of Ramgurdh, "or of fort of Rama"...

"... Not the smallest traces of these temples, however, now remain; and according to native tradition they were demolished by Aurangzebe, who built a mosque on part of the site, the falsehood of the tradition is however, proved by an inscription on the wall of the mosque, an attributing work to the conqueror Baber, from whom Aurangzebe was 5th in descent. The mosque is embellished with 14 columns of only 5 or 6 feet in height, but of very elaborate and tasteful workmanship, said to have been taken from the ruins of the Hindoo fanes, to which they had been given by the monkey general Hanuman, who had brought them from Lanka or Ceylon.

A quadrangular coffer of stone, whitewashed five ells long, 4 broad, and protruding 5 or 6 inches above ground, is pointed out as the cradle in which Rama was born as the 7th Avatar of Vishnoo; and is accordingly abundantly honoured by the pilgrimages and devotions of the Hindoos ..." (Ex. 5 (Suit-5) Volume 73 Page 33-37) (Page 3092 Volume III - Judgment)

- (a) The "cradle" noticed by Joseph Tieffentheller in 1770 was also noticed by Edward Thornton.

25.9.1866

**EX - A-13 (Volume 3 Page 36)** (Translation appears to be defective and correct translation is at Page 1396-97 Vol- II) – A complaint was made by Meer Rajab Ali Khateeb regarding the "Kothri" constructed by Tulsidas etc. Bairagis. In the said complaint it has been stated:-

"... about a month back, Tulsidas etc. Bairagis, Janmasthan, with an intention of placing an idol etc. in it have constructed a kothari in an illegal manner within a few hours inside the compound of the mosque. The applicant informed the police vide, Roznamcha Thana but till now no orders regarding demolition of the Kothri has been issued by the Government..."

"... Mr. Goldane Commissioner did not find even the chabutra built near the Kothri in the past. At the time of Gadar, within two days, Bairagian got the Chabutra Constructed overnight...."

Note:-

- (a) The complaint was made against Tulsidas, who was a Mahant of the Nirmohi Akhara (See Para 40 of Statement of DW-3/1 - Mahant Bhaskar Das (reproduced at Page 709) and Para 48 of the Statement of DW-3/20 - Mahant Raja Ramchandracharya (reproduced at Page 729))
- (b) Possession by the Bairagis is admitted w.r.t. Chabutra as well as the Kothri.

12.10.1866

**Ex 29 (Suit OOS-1) (Volume 87, Page 135)** - The aforesaid complaint was consigned to record. (thus no relief was granted to the Muslims).

1870

Historical Sketch of Faizabad, by P. Carnegi (Page 4054 Vol. III - judgment, at 4062) (Ex. 49 (Suit-5) Volume 74 Page 469)

"Hindu Muslim differences - The Janmasthan is within a few hundred paces of the Hanomangarhi in 1855, when a great rapture took place between the Hindus and the Muhammadans, the former occupied the Hanomangarhi in force, while the Musalmans took possession of the Janmasthan. The Mohammadans on that occasion actually charged up the steps of the Hanomangarhi, but were driven back with considerable loss. The Hindus then followed up this success, and at the third attempt took the Janmasthan at the gate of which 75 Muhammadan were buried in the 'martyr's grave' (ganjshahid). Several of the King's regiment were looking on all the time but their order were not to interfere. It is said that up to that time the Hindus and Mohammadans alike use to worship in the mosque-temple. Since British rule a railing has been put up to prevent the disputes within which, in the mosque, the Mohammadans pray; while outside the fence the Hindus have raised a platform on which they make their offerings.

Note:- From the aforesaid historical sketch, it is evident that prior to 1855, the Janmasthan was in possession of the Hindus, which was only temporarily taken over by the Muslims but thereafter the Hindus regained it.

Note:- In para 2314 (page 1361 Vol II) of the judgment by Jus. Sudhir Agarwal, it has been noted as under:-

"2134 Be that as it may, even if for the purpose of the issues in question we assume that the building in question was so constructed in 1528AD, there is no evidence whatsoever that after its construction, it was ever used as a mosque by muslims till at least 1856-57. Sri Jilani fairly admitted during the course of arguments that historical or other evidence is not available to show the position of possession or offering of namaz in the disputed building at least till 1855. He has also disputed seriously the alleged riots of 1855. For the time being we do not intend to concentrate on this aspect whether this denial of Sri Jilani and Siddiqui and other Muslim Counsels about 1855 riot is correct or not and proceed to consider further material and other aspects."

13.4.1877

Permission was granted to Mahant Khem Das for construction of a New Gate on the Northern Side.

13.12.1877

Ex 30 (OOS -1) (Volume 87 Page 136-144) - Appeal filed against the order dated 13.4.1877 for construction of a new gate on the northern side by Mahant Khem Das. (English Translation - Pg 143-144) It was claimed that the building was a Mosque and therefore permission for construction of a Gate in the wall of the Mosque could not be given to a Hindu Party (para 1). A reference is made to some order dated 7.11.1873 in - Mohd Asghar Vs Mahant Baldeo Das in which it is claimed that some order was passed for removal of "Charan Paduka". In Para 6 it is accepted that the order dated 7.11.1873 could not be served upon Baldeo Das and as such it is accepted that the Idols have not been removed. It is also accepted that a Chulha has been made, which was earlier a small Chula for for Puja.

Note:-

- (a) The complaint was made against Khem Das, who was a Mahant of the Nirmohi Akhara. See Cause Title - " *Khemdas Mahant Janmasthan va Nirmohi Akhara*" (at page 140 - not appearing in Translation at Page 143).
- (b) Mahant Baldeo Das is also a Mahant of Nirmohi Akhara (See Para 40 of Statement of DW-3/1 - Mahant Bhaskar Das (reproduced at Page 709) and Para 48 of the Statement of DW-3/20 - Mahant Raja Ramchandracharya (reproduced at Page 729)).
- (c) Possession by Mahant Baldeo Das and Khem Das is admitted. It is also admitted that there are "Charan Paduka", Chulha and Puja was going on. Permission for construction of Gate to Mahant of Nirmohi Akhara is a recognition of possession of the petitioner.

-- Ex 15 (OOS-1) (Volume 87 Page 61-65)- Report made by the Dy Commissioner upon an order of the Commissioner in view of the appeal (Ex 30). The report was against the Muslims and it was stated that the appeal was made with a view to annoy the Hindus by making them dependent on the Mohammedans.

13.12.1877 Ex 16 (OOS-1) (Volume 87 Page 66-68)- Order of the Commissioner, by which the appeal (Ex 30) was dismissed.

1877-78 AD Gazetteer of the Province of Oudh (Vol I A-G

"Nirmohi sect. It is said that one Gobind das came from Jaipur some two hundred years ago, and having acquired a few bighas of revenue-free land, he built a shrine and settled himself at Ram Ghat. Mahant Tulsi Diis is the sixth in succession. There are now two branches of this order, one at Ram Ghat, and the other occupying the temples at Guptar Ghat. They have rent-free holdings in Basii, Mankapur, and Klmrdabad.

"Hindu and Musalman - The Janmasthan is within a few hundred paces of the Hanomangarhi in 1855, when a great rapture took place between the Hindus and the Muhammadans, the former occupied the Hanomangarhi in force, while the Musalmans took possession of the Janmasthan. The Mohammadans on that occasion actually charged up the steps of the Hanomangarhi, but were driven back with considerable loss. The Hindus then followed up this success, and at the third attempt took the Janmasthan at the gate of which seventy-five Muhammadan were buried in the 'martyr's grave' (ganj-i-shahidan). Eleven Hindus were killed. Several of the King's regiment were looking on all the time but their order were not to interfere. It is said that up to that time the Hindus and Mohammadans alike use to worship in the mosque- temple. Since British rule a railing has been put up to prevent the disputes within which, in the mosque, the Mohammadans pray; while outside the fence the Hindus have raised a platform on which they make their offerings. A second attempt was made shortly afterwards by Molvi Amir Ali of Amethi; the object was to seize the alleged site of an old mosque on the Hanoman Garhi". (Gazetteer of the Province of Oudh 1877-78 p.7) (Annexure D) (Page No 85 to 91)



Note:- Similar account is reflected in:-

- (I) THE HISTORICAL SKETCH OF FAIZABAD BY P. CARNEGIE (published in 1870)
- (II) REPORT OF THE SETTLEMENT OF LAND REVENUE OF FAIZABAD DISTRICT BY A.F. MILLETT

Note:- As to what happened on the Second Attempt made by Molvi Amir Ali of Amethi is noticed in the Fyzabad Gazetteer, Volume XLIII of the District Gazetteers of the United provinces of Agra and Oudh by H.R. Nevill (Page 4070 Vol III - Judgment, at page 4072) and it is stated that he was stopped at the Barabanki District.

8.11.1882 Ex 24 (OOS-1) (Volume 87 Page 110) - A copy of the Plaint in a suit filed by the Syed Mohd. Asghar against "Mahant Raghubar Das Chela and Nirmohi Akhara" seeking rent of Rs 30/- for user of the Chabutra and half of the rent and profits of the in respect of the Fair conducted at the Janmasthan.

Note:-

- (a) Mahant Raghubar Das was a Mahant of Nirmohi Akhara (See Para 40 of Statement of DW-3/1 - Mahant Bhaskar Das (reproduced at Page 709) and Para 48 of the Statement of DW-3/20 - Mahant Raja Ramchandracharya (reproduced at Page 729))

18.6.1883 Ex 17 (OOS-1) (Volume 87 Page 69-79) - Order by Sub-judge, Faizabad in the suit Ex -24 filed by the Syed Mohd. Asghar against Mahant Raghubar Das. The suit of the plaintiff was dismissed with costs.

2.11.1883 Ex 18 (OOS-1) (Volume 87 Page 82) - Application filed by Syed Mohd Asghar against Mahant Raghubar Das claiming that he was the owner of the Masjid and that he was entitled to carry out the repair and whitewash of the Masjid. In the said suit it has been admitted to the extent that the Chabutra and the Seeta Rasoi belong to the defendant. It has been stated:-

"... The Birth Place Chabutra (platform) within wall of the Ahata of the Babri Masjid belongs to the Defendant..."

"... Defendant has no other place there except Chabutra (platform) and Rashoi (Kitchen)..."

12.1.1884 Ex 34 (OOS-1) (Volume 87 Page 162) - The Deputy Commissioner, without deciding the rights of any of the parties directed Raghubar Das not to carry out repairs or whitewash and also directed Mohd Asghar not to put locks on the gates. (It is to be noted that the Deputy Commissioner also did not permit

Mohd Asghar to carry out the repairs/whitewash as was requested by him).

22.1.1884 Ex 27 (OOS-1) (Volume 87 Page 124-125) - The Assistant Commissioner notices in his order the order dated 12.1.884 passed by the Deputy Commissioner. The parties were asked to comply with the old existing orders and there should not be any interference with it. The case was however consigned to record without deciding the rights.

27.6.1884 Ex 28 (OOS-1) (Volume 87 Page 126 @130)- Mahant Raghubar Das made a complaint to the Assistant Commissioner seeking a spot inspection since despite the orders passed, syed Mohd Asghar was carrying out white wash.

#### THE 1885 SUIT

19.1.1885 Ex A-22 (OOS-1) (Volume 3 Page 51)- Mahant Raghubar Das filed a suit seeking permission for construction of a temple on the Chabutra.

24.12.1885 Ex A-26 (OOS-1) (Volume 3 Page 63) - The Sub-judge, Faizabad found that the area occupied on the Chabutra was in possession of the plaintiff however permission of construction was refused on the basis that grant of such permission would not be in public interest as it would lay seeds of disputes between the Hindus and the Muslims.

18/26.3.1886 Ex A-27 (OOS-1) (Volume 3 Page 71) (Also at Page 4200 Vol III - Judgment) - An appeal was preferred against the order of the Sub-Judge before the District Judge, Faizabad by Mahant Raghubar Das. The said appeal was dismissed and while dismissing the appeal, the finding recorded regarding ownership was expunged as "Redundant" observing that *"The only question decided in this case is that the position of the parties will be maintained"*

Note:- The Respondent Sunni Central Waqf Board and the muslim parties have relied upon the said suit and the decision therein to to operate as "Res-Judicata". It is stated that there is no issue of "Res-judicata" framed in Suit OOS No. 3 of 1989.

Note:- The said suit of 1885 was filed by Mahant Raghubar das in his personal capacity without even mentioning the name of Nirmohi Akhara and in any case the subject property in the said suit - (Chabutra in the Outer Courtyard) was different from the suit-property (Inner Courtyard) which is the subject matter of OOS No. 3. The issue of Res-judicata would be dealt with separately in Reply since the said issue has been decided in favour of Nirmohi Akhara.

Note:- The said suit is being relied upon to show presence of the Mahant of the Nirmohi Akhara at the Chabutra in the Outer Courtyard.

11.6.1900 Ex 8 (OOS-3) (Volume 90 Page 66) - Agreement permitting Jhingoo son of Gaya for providing Drinking water to the Pilgrims.

1903 A case was filed by Syed Mohd Rizvi against Mahant Narottamdas for removal of Stone name slate removed from the Janmasthan. The Photograph of Janmasthan Name Slate (Photo No. 25 in Black & White Photo Album given by Mr. C. S Vadyanathan). The said case was dismissed and it was recorded that such stones were being placed at 143 Hindu Places all around Ayodhya. The Janmasthan was inside the outer wall and it was being placed at the right place.

Note:-The document is not on record of the file of the High Court. The document a copy of a judicial order which is also more than 30 years old and hence admissible under section 90 Evidence Act:

1905 The Gazetteer of the United Provinces of Agra and Oudh. Volume XLII By H.R. Nevill

"... The Nirmohi sect claim spiritual descent from one Gobind Das of Jaipur. They formerly held the Janamasthan temple in Ramkot, the remains of which still belong to them; but on its destruction by the Musalmans they moved to Ramghat. Subsequently a quarrel arose among them on a question of succession and a split occurred, a branch leaving Ramghat and settling at Guptarghat. The mahant of the Ramghat branch is the ninth in succession from the founder. The Nirmohis of Guptarghat have some revenue-free lands in Basti, Mankapur and Khurdabad, but the others are wholly dependent on the temple offerings..." (Annexure E) (Page No 92 to 98)

1934 The fact that another set of riots took place in 1934 is a historical fact which is not in dispute. In fact the Muslims parties have filed documents suggesting repairs etc. were carried out after damage was caused to the structure (Ex A-49 (Suit-1) etc.)

1931AD/26.2.41 Ex 49 (OOS-4) (Volume 3 Page 71) (Also at Page 1435 Vol II - Judgment) - It is Nakal Khasra of Arazi No. 583, Abadi, Kot Ram Chandra, Pargana Haveli Awadh, Tehsil and District Faizabad, of 1931 AD. (Plot No. 583 is the plot where the mosque was situated is admitted in the statement of Shri J. Jilani Advocate under Order X rule 2 CPC dated 11.1.1996 Page 261 Volume I - Judgment). In the said document it has been inter-alia stated:-

Name of building (1)	:	Masjid	Ahad-e-Shahi
Number Aarazi (2/1)	:		583
Raqba Aarazi (Area of Plot) (2/2)	:	305/9 B. 15 Biswansi 4	
Kach. Number Sabiq (Old) (3/1)	:	Abadi 444	
Raqba Sabiq (Area old) 3/2)	:	7 B. 11 Biswansi 14 Kach.	
Name Malik Aarazi (Owner) (4)	:	Masjid Waqf Ahde Shahi	
Name Matahaddar (Subordinate), if any (5):			
Name Kabiz Haal (Presently occupied by) (6) :		Masjid	
Kism (Nature) (7)	:		
(9) Raqba (Area)	:	9 B. 15 Biswansi 4 Kachh.	

(1) Baadaye Lagan  
Kandhal (10)

: (2) Bila Lagan (Without Rent)  
: Bajariye Missil Numbari 427 No.  
6/47 Raiganj, Munfasla 26  
February San 41 Indraz  
Raghunath Das Janambhumi Ke  
Mahant Mukarrar Kiye Gave, Ke  
Bajaye Mahant Ram Sharan Das."

14.6.1941

Dastandazi (11)

(12)

Raqba (13)

Lagan (14)

Khet numbari (15)

Kaifiyat (Details) (16)

; No. of plot

: Masjid Pokhta Waqf Ahde  
Shahiandar Sahan Masjid Ek  
Chabutara Jo Janambhumi Ke  
naam Se Mashhoor Hai,  
Darakhtan Goolar Ek Imli Ek  
Mulsiri Ek, Pipal Ek, Bel Ek.  
Masjid Mausma Shah Babur Shar  
Marhoom.

Note:-

(a) The Revenue Record Ex 49 of Abadi land is a proof for possession.

(b) The Building is indicated and identified as a Masjid but is shown to be in possession of Mahant Raghunath Das, who is a Mahant of Nirmohi Akhara. It was previously entered in the Name of Mahant Ram Sharan Das (See Para 40 of Statement of DW-3/1 - Mahant Bhaskar Das (reproduced at Page 709) and Para 48 of the Statement of DW-3/20 - Mahant Raja Ramchandracharya (reproduced at Page 729))

13.10.1942

Exhibit 9 (Suit-3) (Page 71-74 Nirmohi Akhara Volume - 90) is a copy of agreement of Theka Shop of Janambhumi Ramkot Ayodhya by Gopal son of Babu in favour of Narottamdas on 13.10.1942. (This was for an area - outside the Eastern Gate or Hanumat Dwar in the outer courtyard)

29.10.1945

Exhibit 10 (Suit-3) (Page 75-78 Nirmohi Akhara Volume - 90) - is a copy of the agreement dated 29.10.1945 regarding Theka Shop in favour of Mata Prasad by Mahant Raghunath Das. (This was for an area - outside the Eastern Gate or Hanumat Dwar in the outer courtyard)

10.12.1949

Exhibit A-63 (Suit-1) (Page 1738 Volume II - Judgment) - Report by Mohd. Ibrahim (Waqf Inspector) wherein it is admitted:-

"... On investigation in Faizabad City it was revealed that because of the fear of Hindus and Sikhs no one goes into the masjid to pray Namaz Isha". If by chance any passenger stays in the Masjid he is being put in trouble by the Hindus. Out of the Sahan of Masjid there is a Temple where Many pandas reside and they harass the Muslims whoever visit inside the mosque..."

23.12.1949

Exhibit A-64 (Suit-1) (Page 1742 Volume II - Judgment) - Report by Mohd. Ibrahim (Waqf Inspector). The report would reveal the following:-

## Note:-

- (a) That he visited the Disputed place on 22.12.1949 and stayed at Ayodhya overnight i.e. the intervening night between 22.12.1949 and 23.12.1949.
- (b) He noticed that there were two tents outside the Disputed place, one of the tents were occupied by Police Personnel and in the other tent about 8 to 9 sepoy of battalion were living. Since there was already police deployment, it is unbelievable that any incident could take place in their presence.
- (c) He accepts that no Namaz is held which he claims remains locked and the police does not allow them to open. It is however claimed that the locks are opened only on Friday for 3-4 hours.
- (d) He mentions the name of Mahant Raghubar Das along with others who invited the Muslims for talks. Mahant Raghubar Das is the Mahant of Nirmohi Akhara.
- (e) He claims to have come to the site in the morning of 23.12.1949 and states "...I did stayed at Ayodhya in the night. In the morning I came to know that Bairagis are trying to take possession over the masjid forcefully. Today is Friday, I visited the spot when I saw that 10-15 Bairagis armed with Dandas and spears had assembled in front of the door of the mosque...". He does not state that idols had been placed inside the structure in the intervening night.

5.1.1950

Ex A-3 (Suit-4) (Volume 91 Page 9-10) - The receiver took possession of the Inner Courtyard. The articles recovered and taken possession of as part of the inventory were Hindu articles of worship. Description of the property of which possession was taken indicates:-

North :	<u>Hata Chatti Pujan and Nirmohi Akhara</u>
South :	Land Parti and Parikrama
East:	<u>Chabutra Temple Ramji ka in possession of Nirmohi Akhara with Sahan of Temple</u>
West :	Parikrama

EVENTS AFTER THE ATTACHMENT AND FIRST SUIT OOS 1 of 1989

4.7.1950

Ex. C-2 (Suit-5 By Def. 3 Volume 92 Page 5-14 Translation 15-24) - Order of Additional Sessions Judge, Faizabad dated 3.8.1957 in Cr. Appeal No. 50 of 1951. Mahant Bhaskar Das of Nirmohi Akhara was accused for offence under section 294 of defacing the Muslim Graves by putting Hindu names on them on 4.7.1950. It was claimed by him that those were not muslim graves but samadhis of Hindu saints who were buried there. He was ultimately acquitted by the Additional Sessions Judge holding that the prosecution had failed to prove that the graves were muslim or Hindu Samadhis.

27.9.1950

Ex No. 6 - (OOS-3) (Volume 90 Page 53-56) - Objections were filed by Mahant Baldeo Das in the proceedings under section 145 Cr. P.C. In Para 1 and 6 thereof, it was specifically pleaded that the Nirmohi Akhara was the owner and in possession of the Janmabhumi Temple. In Para 7 it was also stated that the management of the deities was being performed by the Nirmohi Akhara.

- 1961 Ex. 3, 4 (Suit-3) (Volume-90 - Page 47-48 and 49-50) Permissions was sought and granted for construction to be made in the outer courtyard from the Nagar Palika.
- 6.2.1961 Ex 5 (Suit-3) (Volume-90 - Page 51-52) - Application to City Magistrate for clarification by Mahant Raja Ramchandracharya that despite permission for construction, the police was stopping carrying out of the construction.
- 9.2.1961 Ex 2 (Suit-3) (Volume-90 - Page 47-48 and 49-50) - Clarification issued by the City Magistrate :-  
 "... There is no objection to the replacement of the Canvas or sirki cover by the sheets if it made on applicants own land which may not be under attachment, and if the alteration is made according to municipal bylaws"
- 13.10.1973 Ex C-8 (Suit -5) (Volume 92 Page 70-82) - A suit was filed by Nirmohi Akhara for cancellation of license given to Ram Lakhan Saran Das for conducting the Akhand Kirtan at Kirtan Chabutra. Ex C-8 is the Report and Spot map was prepared by Pateshwari Dutt Pandey (Examined as DW 3/10) indicating possession of Nirmohi Akhara. (Since during the pendency of the said suit Ram Lakhan Saran died and hence the suit became infructuous)
- 18.2.1982 (Page 12086-7 Volume 65 Statement DW3/20 - Mahant Raja Ramchandracharya) - A dacoity was committed at the Nirmohi Akhara by Dharam Das and Ram Balak Sharan some other persons. FIR was filed. Shri Dharam Das remained in Jail for a period of 2 months and thereafter based on a compromise, the case was quashed. However the documents destroyed by him could not be recovered.

**(ANNEXURE-A)****I. ORAL EVIDENCE WITH RESPECT TO NIRMŌHI AKHARA****(1) PLEADING -**

- In suit No.1, no challenge to shebait rights as well as possession of Nirmohi Akhara (Page 1 to 7, Vol-72). This suit is based on right of worship. In this suit (page 5), declaration of right of worship is sought.
- In Nirmohi Akhara's Written Statement, title, possession and shebait rights have been claimed for the entire premises
- In Written Statement filed by other defendants except newly impleaded Umesh Chand (Defendant No.10), plaintiff in Suit No.5 and other muslim parties (Defendant No. 6 to 9, and Defendant No.10), none claim title, possession. Even in W.S. by Muslims, except bare denial of plaintiff averments, shebait rights of Nirmohi Akhara haven't been challenged. Shebait rights have been challenged by Umesh Pandey (Defendant No.10) but he neither appeared as witness nor has cross-examined plaintiff and his witness.

**1. DW-3/1 - MAHANT BHASKAR DAS (VOLUME 50 PAGE 8697-9700, VOLUME 51 PAGE 8701-8911) (SARPANCH, NIRMŌHI AKHARA)**

- 75 years of age (as per affidavit dated 29.08.2003)
- Cross examination : 29.08.2003 to 22.08.2003
- High Court consideration : Para 355, Para 342 - Volume I.

**a. Shebaiti Management of the Idols and the Janmabhumi Temple (Inner & Outer Courtyard)**

Page 8699 Para 3 and 5, Page 8701 Para 7, Page 8702 Para 9-10, Page 8708 Para 27, Page 8709 Para 29, Page 8711 Para 35, 36, 37, Page 8719 Para 57, 58, Page 8722 Para 63, 64, 65, Page 8725 Para 73, Page 8726, Para 77,78.

**Cross Examination**

- (i) No cross examination by Plaintiff of OOS No. 1 (Page 8730)
- (ii) Cross examination by Def No. 17 and 22 (Page 8731-8735) at Page 8732, 8733.
- (iii) Cross examination on this point by Plaintiff of OOS Mo. 5 (Page 8736-8743) at Page 8741, 8744.
- (iv) No cross examination on this point by Defendant No. 20 of OOS No. 4 (page 8473-8474)
- (v) No Cross Examination by Defendant No. 11 of OOS 3 (Md. Farooq Ahmed) on this point.
- (vi) Cross Examination by Defendant No. 9 of OOS 3 (U.P. Sunni Central Waqf Board) (page 8753 - 8884) - At Page 8756, 8759, 8760 8763, 8765, 8777, 8782 8795-8798, 8807

**b. Possession of the the Janmabhumi Temple (Inner and Outer Courtyard) of the Nirmohi Akhara**

Page 8701 Para 6 to 7, 9, Page 8704 Para 11, 8710 Para 31, 34, Page 8717 Para 54, Page 8723 Para 67, Page 8724 Para 70, Page 8726 Para 77, 78, Page 8727 Para 80, 81.

**Cross Examination**

- (i) No cross examination by Plaintiff of OOS No. 1 (Page 8730)
- (ii) No cross examination on this point by Def No. 17 and 22 (Page 8731-8735)
- (iii) No cross examination on this point by Plaintiff of OOS Mo. 5 (Page 8736-8743)
- (iv) No cross examination on this point by Defendant No. 20 of OOS No. 4 (page 8473-8474)
- (v) No Cross Examination by Defendant No. 11 of OOS 3 (Md. Farooq Ahmed) on this point.
- (vi) Cross Examination by Defendant No. 9 of OOS 3 (U.P. Sunni Central Waqf Board) (page 8753 - 8884) - At Page 8754, 8764, 8766, 8767, 8768 8876.

**c. Possession was taken by the Receiver from the Nirmohi Akhara**

- The pleadings itself show that on the date of taking possession, Hindus had already entered into possession and shifted deities.

Page 8709 Para 31, Page 8715 Para 48, Page 8725 Para 74 and Page 9, Volume 91 (documents of suit no.4 of 1989)

**Cross Examination**

- (i) No cross examination by Plaintiff of OOS No. 1 (Page 8730)

- (ii) Cross Examination by Def No. 17 and 22 (Page 8731-8735)  
Page 8733
- (iii) No cross examination on this point by Plaintiff of OOS Mo. 5, (Page 8736-8743)
- (iv) No cross examination on this point by Defendant No. 20 of OOS No. 4 (page 8473-8474)
- (v) No Cross Examination by Defendant No. 11 of OOS 3 (Md. Farooq Ahmed) on this point.
- (vi) Cross Examination by Defendant No. 9 of OOS 3 (U.P. Sunni Central Waqf Board) (page 8753 - 8884) - At page 8842-8844

**d. Exclusive Possession - No namaz**

Page 8703 Para 11, Page 8704-05 Para 16, Page 8720 Para 60,

**Cross Examination**

- (i) No cross examination by Plaintiff of OOS No. 1 (Page 8730)
- (ii) No. Cross Examination on this point by Def No. 17 and 22 (Page 8731-8735)
- (iii) No cross examination on this point by Plaintiff of OOS Mo. 5 (Page 8736-8743)
- (iv) No cross examination on this point by Defendant No. 20 of OOS No. 4 (page 8473-8474)
- (v) Cross Examination by Defendant No. 11 of OOS 3 (Md. Farooq Ahmed) (Page 8745-8753) At Page 8745, 8749, 8753,
- (vi) Cross Examination by Defendant No. 9 of OOS 3 (U.P. Sunni Central Waqf Board) (page 8753 - 8884) - At Page 8772, 8777, 8790, 8852-8855
- (vii) Cross Examination by Defendant No. 5 of OOS 5 and Plaintiff no. 7 in OOS no. 4 (page 8884-8911) - At page 8894, 8907

**e. Incident of 22/23 December, 1949**

Page 8715 para 48, Page 8721 Para 62, Page 8727 Para 81

**Cross Examination**

- (i) No cross examination by Plaintiff of OOS No. 1 (Page 8730)
- (ii) No. Cross Examination on this point by Def No. 17 and 22 (Page 8731-8735)
- (iii) No cross examination on this point by Plaintiff of OOS Mo. 5 (Page 8736-8743)
- (iv) No cross examination on this point by Defendant No. 20 of OOS No. 4 (page 8473-8474)
- (v) Cross Examination by Defendant No. 11 of OOS 3 (Md. Farooq Ahmed) (page 8475-8753)  
At Page 8745-46
- (vi) Cross Examination by Defendant No. 9 of OOS 3 (U.P. Sunni Central Waqf Board) (page 8753 - 8884) - At page 8766, 8767, 8770, 8772, 8780, 8787, 8843-44

**2. DW-3/2 Pt. RAJA RAM PANDEY (VOLUME-51-52, PAGE 8932-9093)**

- Age 87 years (as per affidavit dated 22.09.2003)
- Cross examination : 29.09.2003 to 13.11.2003
- High Court consideration : Para 360, Para 348 - Volume 1.

**a. Shebiati Management of the Idols and the Janmabhumi Temple (Inner & Outer Courtyard)**

Para 9 (Page 8915), Para 13 (Page 8916), Para 14 (Page 8916), Para 15 (Page 8917), Para 26 (Page 8921), Para 29 (Page 8928), Para 31 (Page 8992)

**Cross Examination**

- (i) Cross by Jilani - Witness not shaken.
- (ii) No Cross by Defendant No. 22/17.

**b. Exclusive Possession - No namaz, possession, etc.**

Para 23 (Page 8920).

**Cross Examination**



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- (i) Cross by Abdul Manner – Defendant No.11 (Page 8391)
- (ii) No Cross on behalf of Gopal Singh Visharad
- (iii) No Cross by Defendant No.22/17.
- (iv) Cross by Plaintiff in Suit No.5 (Page 8926 – 8928)
- (v) Cross by Defendant No.20 - No harm in 1934 (Page 8928-30)  
- Ram Janam Samiti.

3. DW-3/3 SATYANARAYAN TRIPATHY (VOLUME-52 PG. 8951- 9200)

- 72 years old (vide affidavit dated 30.10.2003)
- Cross examination : 30.10.2003 to 12.11.2003
- High Court consideration : Para 364, Page 362 - Volume 1.

a. **Shebiati Management of the Idols and the Janmabhumi Temple (Inner & Outer Courtyard)**

Para 10,11, at page 9098, Para 12 page 9099, Para 15 at 9100

Cross Examination-

- (i) Defendant No.17, 22 in O.O.S. No.4/89 at Pg. 9105
- (ii) Defendant No.9 O.S. No.3/89 at Page. 9155, 9156
- (iii) Plaintiff No.7 in O.O.S.4/89 ant Defendant No.5 in O.O.S. No.5/89 at Page 9172
- (iv) No Cross examination by plaintiff in O.O.S. 1/89 at Page 9108
- (v) No cross examination on this point by plaintiff in O.O.S. No.5/89 at page 9108-9111 at Page 9110 states that he had never seen namaz being performed.
- (vi) No cross examination by Defendant No.20 of O.O.S. 4/89 at page 9111
- (vii) No cross examination on this point by defendant No.3 in O.O.S. 3/89 at page 9111-9117
- (viii) Defendant No.6,26 in O.O.S. 5/89 adopted the cross examination of (i) & (ii)

b. **Possession of the the Janmabhumi Temple (Inner and Outer Courtyard) of the Nirmohi Akhara**

Para 10,11 at 9098, para 12 at 9099, para 15 at 9100, para 13 at 9099

Cross examination:-

- (i) Defendant No.17, 22 in O.O.S No.4/89 at page 9099
- (ii) Defendant No.9 in O.O.S. 3/89 at page 9154
- (iii) Defendant No.9 in O.O.S. No.3/89 at page 9155, 9156.
- (iv) No cross examination by plaintiff in O.O.S. 1/89 at page 9108.
- (v) No cross examination on this point by plaintiff in O.O.S. 5/89 at page 9108-9111.
- (vi) No cross examination by defendant No.20 in O.O.S. 4/89 page 9111.
- (vii) No cross examination on this point by defendant No.3 in O.O.S. 3/89 page 9111-9117.
- (viii) No cross examination on this point by plaintiff No.7 in O.O.S. 4/89 and defendant 5 in O.O.S. 5/89 at page 9161-9180.
- (ix) Defendant No.6,26 in O.O.S. 5/89 adopted cross examination at page 9181.

c. **Exclusive Possession - No namaz**

Para 16 at page 9100

Cross Examination:-

- (i) Defendant No.17,22 in O.O.S. 4/89 at page 9105-9106.
- (ii) Plaintiff in O.O.S. 5/89 at page 9110.
- (iii) Defendant No.3 in O.O.S. 3/89 at page 9114-9115.
- (iv) Defendant No.9 in O.O.S. 3/89 in O.O.S. No.3/89 at page 9156, 9157 and 9160.
- (v) No cross examination by plaintiff in O.O.S. 1/89 at page 9108.
- (vi) No cross examination by defendant No.20 in O.O.S. 4/89 at page 9111.

- (vii) No cross examination on this point by plaintiff No.7 in O.O.s. 4/89 and defendant No.5 in O.O.S. 5/89 at page 9161-9180.

d. Incident of 22/23 December, 1949

Cross examination:-

- (i) Defendant No.9 in O.O.S. 3/89 at page 9160.
- (ii) Defendant No.5 in O.O.S. 5/89 at page 9180.

4. DW-3/4 MAHANT SHIVSARAN DAS VOLUME-52 PAGE 9182 - VOLUME 53 PAGE 9279

- 83 years of Age (Date of Affidavit - 22.09.2003)
- High Court Consideration : Para 368, Page 357 - Volume 1.

a. Shebiati Management of the Idols and the Janmabhumi Temple (Inner & Outer Courtyard)

Para 12-13 at 9185, Para 15 at Page 9186, Para 18 at 9186, para 23 at 9188 and para 15 at 9186

Cross Examination:-

- (i) Defendant 17, 22 in O.O.S. No.4/89 at page 9190- 9191, 9194
- (ii) Defendant No.9 in O.O.S. No.3/89 at page 9270-9271
- (iii) Plaintiff No.7 in O.O.S. No.4/89 and defendant No.5 in O.O.S. No.5/89 at page 9275.
- (iv) No cross examination by plaintiff in O.O.S. No.1/89 at page 9195
- (v) No cross examination on this point by plaintiff in O.O.S. No.5/89 (page 9196-9201)
- (vi) No cross examination on this point by defendant No.20 in O.O.S. No.4/89 (Page 9201-9204)
- (vii) No cross on this point by defendant No.11 in O.O.S. No.3/89 page 9204-9217.
- (viii) Defendant No.6, 26 in O.O.S. 5/89 adopted the cross examination by (ii)

b. Possession of the the Janmabhumi Temple (Inner and Outer Courtyard) of the Nirmohi Akhara

Para 12 at 9185, para 20,22 at 9187,9188

Cross Examination:-

- (i) Defendant No.9 in O.O.S. 3/89 at page 9244
- (ii) Plaintiff in O.O.S. 5/89 at page 9199
- (iii) No cross examination by defendant No.17,22 in O.O.S. 4/89 on this point at page 9190-9195
- (iv) No cross examination by plaintiff in O.O.S. 1/89 page 9195.
- (v) No cross examination by defendant No.20 in O.O.S. 4/89 on this point page 9201-9204.
- (vi) No cross examination on this point by defendant No.11 O.O.s. 3/89 at 9204-9217.
- (vii) No cross examination on this point by plaintiff No.7 in O.O.S. 4/89 and defendant No.5 in O.O.S. 5/89 at page 9273-9277.
- (viii) Defendant 6,26 in O.O.S. 5/89 adopted cross examination page 9277

c. Exclusive Possession - No namaz

Para 26 at page 9188

Cross examination:-

- (i) Defendant No.17,22 in O.O.S. 4/89 at pge 9194.
- (ii) Plaintiff in O.O.S. 5/89 at page 9198.
- (iii) Plaintiff No.7 in O.O.S. 4/89 and defnedna tNo. 5 in O.O.S. 5/89 at page 9277.
- (iv) No cross examination by plaintiff in O.O.S. 1/89 at page 9195.
- (v) No cross examination on this point by defendant No.20 in O.O.S. 4/89 at page 9201-9204.
- (vi) Defendant 6,26 in O.O.S. 5/89 adopted cross examination at page 9279.

## d. Incident of 22/23 December, 1949

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Para 12 at page 9185

Cross examination:-

- (i) Defendant No.11 in O.O.S. 3/89 at page 9208.
- (ii) Plaintiff No.7 in O.O.S. 4/89 and defendant No.5 in O.O.S. 5/89 at page 9272, 9277.

5. DW-3/5 - RAGHUNATH PAL PANDEY (VOLUME 53 PAGE 9279-9444)

- 73 years of Age (Date of Affidavit - 18.11.2003)
- High Court Consideration : Para 371, Page 358 - Volume 1.

Born in 1930. He Was 19 years old at the time of incident.

Page 9282 (Para 9)- Seeing Lord Ram Lalla....

## a. Shebiati Management of the Idols and the Janmabhumi Temple (Inner &amp; Outer Courtyard)

Page 9284 Para 12, Page 9285 Para 13 - 14, Page 9296 Para 15 and 18

## b. No use as Masjid

Page 9186 (Para 17).

Cross- Examination:

- (i) Cross by Defendant No.17 and 22 (Ramesh Chandra Tripathi and Defendant No. 22 Shri V. Pandey) at Page 9288 to 9891 (at page 9290)
- (ii) No cross by Plaintiff in Suit No.1/89
- (iii) Cross by plaintiff in Suit No.5 (page 9291 to 9299)
  - a. No cross on shebait rights, possession of Nirmohi Akhara, reading Namaz.
  - b. No muslim brother came (Page 9298)
- (iv) Cross by Defendant No.2 in Suit 5.
  - a. Shebait - Page 9300
  - b. No Muslim brother (Page 9301)
- (v) No one prayed to cross on behalf of Defendant No 4, 5, 6, and 26 (Page 9425)
- (vi) Cross by Abdul Mannan on behalf of Farooq Ahmad (Page 9301 to 9305)
- (vii) Cross by Z Zilani (Page 9305 onwards)
  - a. Worship 1937 (Page 9306, 9307)
  - b. No namaz (Page 9415, 9416, 9427, 9428, 9429, 9440)

6. DW-3/6 - SITA RAM YADAV (VOLUME 53 PAGE 9446)

- Born in 1943. 61. (Date of Affidavit - 06.01.2004)
- High Court Consideration : Para 373, Page 364 - Volume 1.

## a. Shebiati Management of the Idols and the Janmabhumi Temple (Inner &amp; Outer Courtyard)

Page 9447 Para 5, Page 9447-9448 Para 8, Page 9449 Para 15.

Cross- Examination

- (i) No cross- examination on this point by Def. No. 17,22 in O.O.S. 4/89 (Page 9452-9456)
- (ii) No cross examination by Plaintiff of OOS No. 1 (Page 9456)
- (iii) No cross examination by Plaintiff of OOS 5/89 on this point. (Page 9457-9460)
- (iv) No cross examination by Def No. 20 in OOS 4/89 on this point. (Page 9461)
- (v) No Cross Examination by Defendant No. 11 of OOS 3 (Md. Farooq Ahmed) on this point. (Page 9461-9471)
- (vi) Def 6, 26 adopted cross examination of (iii, iv)
- (vii) Cross examination by Def No. 11 in OOS No. 3/89 (Page 9463)

b. Possession of the the Janmabhumi Temple (Inner and Outer Courtyard) of the Nirmohi Akhara

Page 9446 Para 3, Page 9448-9449 Para 13

Cross-Examination

- (i) No cross- examination on this point by Def. No. 17,22 in O.O.S. 4/89 (Page 9452-9456)
- (ii) No cross examination by Plaintiff of OOS No. 1 (Page 9456)
- (iii) No cross examination by Plaintiff of OOS 5/89 on this point. (Page 9457-9460)
- (iv) No Cross Examination by Defendant No. 11 of OOS 3 (Md. Farooq Ahmed) on this point. (Page 9461-9471)
- (v) No cross examination by Def No. 20 in OOS 4/89 on this point. (Page 9461)
- (vi) Cross examination by Plaintiff in OOS 4/89 at Page 9509-9511.

c. Exclusive Possession - No namaz

Page 9450 Para 18, Page 9460

Cross Examination

- (i) Cross Examination by Plaintiff in OOS No. 5/89 (Page 9457-9460) at 9460.
- (ii) Cross examination by Def 11 in OOS No. 3/89 (page 9461-9471) at 9462
- (iii) Cross examination by Plaintiff No. 7 in OOS 4/89 and Def 5 in OOS 5/89 (Page 9519-9538) at Page 9538.
- (iv) No cross examination on this point by Def 20 in OOS 4/89 (Page 9461)
- (v) No cross examination by Plaintiff of OOS 1/89 (Page 9456)
- (vi) No cross examination on this point by Def 17, 22 in OOS 4/89 (Page 9452-9456)

7. DW-3/8 SHYAM SUNDAR MISHRA VOLUME-54-55, PAGE 8669 TO 9762.

90 years old (Date of Affidavit 30.01:2004)

High Court consideration : Para 378, Page 374 – Volume 1.

In 1934 he was 18-19 years old.

Resident of Ayodhya for 7 generations.

*Relevant Paras in Chief – Para 3, 6, 7, 10, 11.*

a. Shebiati Management of the Idols and the Janmabhumi Temple (Inner & Outer Courtyard)

Para 3 at 9673, Para 14 at page 9670.

Cross examination:-

- (i) Defendant No.2/1 in OOS 4/89 at (Pg. 9676 - 9685) at Page 9678

b. Possession of the the Janmabhumi Temple (Inner and Outer Courtyard) of the Nirmohi Akhara

Para 12, page 9672.

(Also ref - Landlord, page 9673)

c. Exclusive Possession - No namaz

Para 7, page 9670 and Para 10, Page 9671.

8. DW-3/10 PATTESHARI DATT (ADVOCATE, COMMISSIONER) VOLUME 55 - PAGE 9808 ONWARDS.

- Local Commissioner.

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9. DW-3/11 BHANU PRATAP SINGH (VOLUME-55 PAGE 9914 TO VOLUME-56 PAGE 10005)

- Going to Ram Janambhoomi from the age of 10 years.
- Aged 70 (date of affidavit - 28.04.2004)
- High Court consideration : Para 385, Page 385 - Volume.1

a. **Shebiati Management of the Idols and the Janmabhumi Temple (Inner & Outer Courtyard)**

Para 12,14 at 9918

Cross Examination:-

- (i) Defendant No.9 in O.O.S. 3/89 at 9988 and 9989
- (ii) No cross examination on this point by defendant 17, 22 in O.O.S. No.4/89 at page 9920-9923.
- (iii) No cross examination on this point by defendant No.2 in O.O.S. 4/89 at page 9923-9928
- (iv) No cross examination by plaintiff in O.O.S. No.1/89 at page 9928
- (v) No cross examination on this point by plaintiff O.O.S. 5/89 at page 9928 to 9931
- (vi) No cross examination on this point by defendant 20 in O.O.S. 4/89 at page 9932-9934
- (vii) No cross examination on this point by defendant 11 in O.O.S. 3/89 page 9934-9942
- (viii) No cross examination on this point by plaintiff No.7 in O.O.S. 4/89, defendant No.5 in O.S. No.5/89 at page 9989-10005.
- (ix) Defendant No.6 in O.O.S. 3/89 adopted cross examination at page 10005.

b. **Possession of the the Janmabhumi Temple (Inner and Outer Courtyard) of the Nirmohi Akhara**

Para 12 at 9918,

Cross examination

- (i) No cross examination on this point by defendant No.9 in O.O.S. 3/89 at page 9987.
- (ii) Plaintiff in O.O.S No.4/89 and defendant No.5 in O.O.S. 5/89 at page 9992.
- (iii) No cross examination on this point by defendant No.17,22 in O.O.S. 4/89 page 9920-9923.
- (iv) No cross examination on this point by defendant No.2 in O.O.S. 4/89 page 9923-9928.
- (v) No cross examination by plaintiff in O.O.S. 1/89 at page 9928.
- (vi) No cross examination on this point by plaintiff in O.O.S. 5/89 at 9928-9931.
- (vii) No cross examination on this point by defendant No.20 in O.O.s. 4/89 at 9932-9934.
- (viii) No cross examination on this point by defendant No.11 in O.O.S. 3/89 at page 9934-9942.
- (ix) Defendant No.6 in O.O.s. 3/89 adopted cross examination at page 10005.

c. **Exclusive Possession - No namaz**

Para 16 at page 9918-9919

Cross examination:-

- (i) Defendant No.2 in O.O.S. 4/89 at page 9924.
- (ii) Plaintiff in O.O.S. 5/89 at page 9931
- (iii) Defendant No.11 in O.O.S. 3/89 at page 9939.
- (iv) Defendant No.9 in O.O.S. 3/89 at page 9965, 9989.
- (v) Plaintiff No.7 in O.O.S. 4/89, defendant No.5 in O.O.S. 5/89 at page 10004.
- (vi) No cross examination on this point by defendant No.17,22 in O.O.S. 4/89 at page 9920-9923.
- (vii) No cross examination by plaintiff in O.O.s. 1/89 at page 9928.
- (viii) No cross examination on this point by defendant No.20 in O.O.S. 4/89 at page 9932-9934.

d. **Incident of 22/23 December, 1949**

Para 14 at page 9918

Cross examination:-

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- (i) Defendant No.11 in O.O.S. 3/89 at page 9939.
- (ii) Defendant No.9 in O.O.s. 3/89 at page 9946, 9989.
- (iii) Plaintiff No.7 in O.O.s. 4/89, defendant No.5 in O.O.S. 5/89 at page 10000, 10004.

10. DW-3/12 RAM AKSHAYAVAR PANDEY (VOLUME 56 PAGE 10006-100074)

- Aged 70 (date of affidavit - 24.05.2004)
- High Court consideration : Para 389, Page 388 - Volume 1.

a. **Shebiati Management of the Idols and the Janmabhumi Temple (Inner & Outer Courtyard)**

Para 8 at page 10008, 10009, para 12 at page 10012, para 10 page 10009, para 16 page 10010-11,

Cross examination:-

- (i) Plaintiff in O.O.S. 5/89 at page 10019
- (ii) Defendant No.9 in O.O.S. 3/89 at page 10044, 10050, 10058.
- (iii) No cross on this point by defendant No.17 of O.O.S. 4/89, defendant No.22 of O.O.S. 4/89 at page 10013-10017.
- (iv) Defendant No.21 O.O.S. 4/89 adopted (iii) page 10017.
- (v) Plaintiff of O.O.S. 1/89 adopted cross of (i) page 10022.
- (vi) No cross examination on this point by Defendant No.20 in O.O.S. 4/89 page 10022-10024.
- (vii) No cross on this point by defendant No.11 in O.O.s. No.3/89 at page 10024-10034.
- (viii) No cross examination on this point by defendant No.7 in O.O.s. 4/89, defendant No.5 of O.O.S. 5/89 at page 10061-10074.
- (ix) Defendant No.6 O.O.S. 5/89 adopted cross of (ii) at page 10074.

b. **Possession of the the Janmabhumi Temple (Inner and Outer Courtyard) of the Nirmohi Akhara**

Para 12 at 10010, para 16 at 10010-11,

Cross examination:-

- (i) Defendant No.7 in O.O.S. 4/89 and defendant No.15 in O.O.S. 5/89 at page 10069.
- (ii) No cross examination on this point by defendant No.17 in O.O.S. 4/89 and defendant No.22 in O.O.S. 5/89 at page 10013-10017.
- (iii) Defendant No.21 in O.O.S. 4/89 adopted (ii) page 100017.
- (iv) No cross examination on this point by plaintiff in O.O.S. 5/89 page 10018-10022.
- (v) Plaintiff in O.O.S. 1/89 adopted cross examination (iv) at page 100022.
- (vi) No cross examination on this point by defendant No.20 in O.O.S. 4/89 at 10022-10025.
- (vii) No cross examination on this point by defendant No.11 in O.O.s. 3/89 at page 10024-10034.
- (viii) No cross examination on this point by defendant No.9 in O.O.S. 3/89 at page 10034-10061.
- (ix) Defendant No.6 in O.O.S. 5/89 adopted cross examination page 10074.

c. **Exclusive Possession - No namaz**

Para 17 at page 10011

Cross examination:-

- (i) Defendant No.11 in O.O.S. 3/89 at page 10026-10028.
- (ii) Defendant No.9 in O.O.S. 3/89 at page 10060.
- (iii) Defendant No.7 in O.O.S. 4/89 at page 10074.
- (iv) No cross examination on this point by defendant No.17 in O.O.S. 4/89, defendant No.22 in O.O.S. 5/89 at page 10013-10017.
- (v) Defendant No.21 in O.O.S. 4/89 adopted cross examination of (iv) at page 10017.
- (vi) No cross examination on this point by plaintiff in O.O.S. 5/89 at page 10018-10022.
- (vii) Plaintiff in O.O.S. 1/89 adopted cross examination of (vi) at page 10022.
- (viii) No cross examination on this point by defendant No.20 in O.O.S. 4/89 at page 10022-10024.

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## d. Incident of 22/23 December, 1949

Para 7, 8 at page 10008, Para 12 at page 10010.

Cross examination:-

- (i) Defendant No.17 in O.O.S. 4/89, defendant No.22 in O.O.S. 5/89 at page 10016, 10029, 10030.
- (ii) Defendant No.9 in O.O.S. 3/89 at page 10057, 10061.
- (iii) Defendant No.7 in O.O.S. 4/89 at page 10074.

11. DW-3/13 MAHANT RAM SUBHAG DAS SHASTRI (VOLUME 56 PAGE 10076 ONWARDS)

- Accused No.6 in the 1949 idol shifting case.
  - Aged 86 years on date of examination.
  - Came to Ayodhya in 1933
  - Was the Mahant of Ram Mahal Mandir Mohalla Katra, Ayodhya (constructed by Janki Das Ji Guru Maharaj in 1927)
  - High Court Consideration : Para 392, Page 391- Volume 1.
- para 12 & 14 at Page 10080,

## a. Shebiati Management of the Idols and the Janmabhumi Temple (Inner &amp; Outer Courtyard)

Para 5 at page 10077, Para 11 at Page 10079, Para 12 & 13 at Page 10079, Para 16 - Page 10082, Para 17 & 18 at Page 10082, Para 19 at page 10083.

Cross examination:-

- (i) Cross by Defendant No.9 0 Shri Zaffaryar Jilani at Pages 10160, 10161 and 10164.
- (ii) Defendant No.9 in O.O.S. 3/89 at page 10044, 10050, 10058.
- (iii) No cross on this point by defendant No.17 of O.O.S. 4/89, defendant No.22 of O.O.S. 4/89 at page 10013-10017.
- (iv) Defendant No.21 O.O.S. 4/89 adopted (iii) page 10017.
- (v) Plaintiff of O.O.S. 1/89 adopted cross of (i) page 10022.
- (vi) No cross examination on this point by Defendant No.20 in O.O.S. 4/89 page 10022-10024.
- (vii) No cross on this point by defendant No.11 in O.O.s. No.3/89 at page 10024-10034.
- (viii) No cross examination on this point by defendant No.7 in O.O.s. 4/89, defendant No.5 of O.O.S. 5/89 at page 10061-10074.
- (ix) Defendant No.6 O.O.S. 5/89 adopted cross of (ii) at page 10074.

## b. Possession of the the Janmabhumi Temple (Inner and Outer Courtyard) of the Nirmohi Akhara

Para 12 at 10010, para 16 at 10010-11,

Cross examination:-

- (x) Defendant No.7 in O.O.S. 4/89 and defendant No.15 in O.O.S. 5/89 at page 10069.
- (xi) No cross examination on this point by defendant No.17 in O.O.S. 4/89 and defendant No.22 in O.O.S. 5/89 at page 10013-10017.
- (xii) Defendant No.21 in O.O.S. 4/89 adopted (ii) page 10017.
- (xiii) No cross examination on this point by plaintiff in O.O.S. 5/89 page 10018-10022.
- (xiv) Plaintiff in O.O.S. 1/89 adopted cross examination (iv) at page 100022.
- (xv) No cross examination on this point by defendant No.20 in O.O.S. 4/89 at 10022-10025.
- (xvi) No cross examination on this point by defendant No.11 in O.O.s. 3/89 at page 10024-10034.
- (xvii) No cross examination on this point by defendant No.9 in O.O.S. 3/89 at page 10034-10061.
- (xviii) Defendant No.6 in O.O.S. 5/89 adopted cross examination page 10074.

## c. Exclusive Possession - No namaz

Para 17 at page 10011

Cross examination:-

- (ix) Defendant No.11 in O.O.S. 3/89 at page 10026-10028.
- (x) Defendant No.9 in O.O.S. 3/89 at page 10060.
- (xi) Defendant No.7 in O.O.S. 4/89 at page 10074.
- (xii) No cross examination on this point by defendant No.17 in O.O.S. 4/89, defendant No.22 in O.O.S. 5/89 at page 10013-10017.
- (xiii) Defendant No.21 in O.O.S. 4/89 adopted cross examination of (iv) at page 10017.
- (xiv) No cross examination on this point by plaintiff in O.O.S. 5/89 at page 10018-10022.
- (xv) Plaintiff in O.O.S. 1/89 adopted cross examination of (vi) at page 10022.
- (xvi) No cross examination on this point by defendant No.20 in O.O.S. 4/89 at page 10022-10024.

## d. Incident of 22/23 December, 1949

Para 7, 8 at page 10008, Para 12 at page 10010.

Cross examination:-

- (iv) Defendant No.17 in O.O.S. 4/89, defendant No.22 in O.O.S. 5/89 at page 10016, 10029, 10030.
- (v) Defendant No.9 in O.O.S. 3/89 at page 10057, 10061.
- (vi) Defendant No.7 in O.O.S. 4/89 at page 10074.

## 12. DW-3/15 SHRI NARENDRA BAHADUR SINGH (VOLUME-58 PAGE 10466-10512)

- Aged 72 (date of affidavit - 17.08.2004)
- High Court consideration : Para 404, Page 404 - Volume.1

## e. Shebiati Management of the Idols and the Janmabhumi Temple (Inner &amp; Outer Courtyard)

Para 9, 10 at page 10469, para 18 page 10470

Cross examination:-

- (i) Defendant No.17,22 of O.O.S. 4/89 at page 10474, 10476
- (ii) No cross examination by plaintiff in O.O.S. 5/89 page 10476-10478.
- (iii) Defendant No.2 of O.O.S. 4/89 adopted cross examination of (ii) at page 10478.
- (iv) Defendant No.20 in O.O.S. 4/89 adopted cross examination of (i) & (ii) at page 10478.
- (v) No cross examination on this point by defendant No.12 O.O.S. 3/89 page 10478-10488.
- (vi) No cross examination on this point by defendant No.9 in O.O.S. 3/89 at page 10488-10504.
- (vii) No cross examination on this point by plaintiff No.7 of O.O.S.4/89 and defendant No.5 in O.O.S. 5/89 at page 10504-10511.
- (viii) Defendant No.26 in O.O.S. 5/89 adopted cross examination page 10511.
- (ix) Defendant No.6 in O.O.S. 3/89 adopted cross examination at page 10512.

f. Possession of the the Janmabhumi Temple (Inner and Outer Courtyard) of the Nirmohi Akhara  
Page 10468-69 para 8,9 and Page 10470 para 18.

Cross examination:-

- (i) No cross examination on this point by Defendant No.17,22 in O.O.S. 4/89 at page 10471-10475.
- (ii) No cross examination on this point by plaintiff in O.O.S 5/89 at page 10476-10478.
- (iii) Defendant No.2 in O.O.S. 4/89 adopted cross examination page 10478.
- (iv) No cross examination on this point by defendant No.11 in O.O.s. 3/89 at page 10478-10488.
- (v) No cross examination on this point by defendant No.9 in O.O.S. 3/89 at 10488-10504.
- (vi) No cross examination on this point by plaintiff No.7 in O.O.S. 4/89 and defendant No.5 in O.O.S. 5/89 at page 10504-10511.



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- (vii) Defendant No.26 in O.O.S. 5/89 adopted cross examination at page 10511.
- (viii) Defendant No.6 in O.O.S. 3/89 adopted cross examination at page 10512.

**g. Exclusive Possession - No namaz**

Para 16, 17 at page 10470.

Cross examination:-

- (i) Defendant No.17,22 in O.O.S. 4/89 at page 10477.
- (ii) Defendant No.11 in O.O.S. 3/89 at page 10485-10487.
- (iii) Defendant NO.9 in O.O.S. 3/89 at page 10501, 10502.
- (iv) Plaintiff in O.O.S. 4/89, defendant No.5 in O.O.S. 5/89 at page 10511.
- (v) No cross examination on this point by plaintiff in O.O.S. 5/89 at page 10406-10478.
- (vi) Defendant No.20 in O.O.S. 4/89 adopted cross examination at 10478.
- (vii) Defendant No.26 in O.O.S. 5/89 adopted cross examination at 10511.

**h. Incident of 22/23 December, 1949**

Cross examination:-

- (i) Defendant No.11 in O.O.S. 3/89 at page 10485, 10587.
- (ii) Defendant No.9 in O.O.S. No.3/89 at page 10503, 10504.

**13. DW-3/16 SHIV BHEEK SINGH (VOLUME-58 PAGE 10514-10556)**

- Aged 79 (date of affidavit - 24.08.2004)
- High Court consideration : Para 408, Page 407 - Volume.1

**a. Shebiati Management of the Idols and the Janmabhumi Temple (Inner & Outer Courtyard)**

Para 19, 20, 23 at page 10516, Para 28 at 10517

Cross Examination:-

- (i) Defendant No.17,22 of O.O.S. 4/89 at page 10519.
- (ii) No cross examination on this point by defendant No.9 in O.O.s. No.3/89 at page 10543.
- (iii) No cross examination on this point by plaintiff in O.O.S. 5/89 at page 10519-10520.
- (iv) Defendant No.2 in O.O.S. 4/89 adopted cross examination of (iii) at page 10520
- (v) Defendant No.20 in O.O.s. 4/89 adopted cross examination at page 10520.
- (vi) No cross examination by plaintiff in O.O.S. 1/89 page 10520.
- (vii) No cross examination on this point by defendant No.11 in O.O.s. 3/89 at page 10520-10529.
- (viii) No cross examination on this point by plaintiff No.7 in O.O.s. 4/89, defendant No.5 in O.O.S. 5/89 at page 10548-10556.
- (ix) Defendant No.5 O.O.S. 5/89 adopted cross examination (vii) & (ii) at page 10556.

**b. Possession of the the Janmabhumi Temple (Inner and Outer Courtyard) of the Nirmohi Akhara**

Para19 at page 10516,

Cross examination:-

- (i) Defendant No.17,22 of O.O.S. 4/89 at page 10519.
- (ii) No cross examination on this point by defendant No.9 in O.O.s. No.3/89 at page 10543.
- (iii) No cross examination on this point by plaintiff in O.O.S. 5/89 at page 10519-10520.
- (iv) Defendant No.2 in O.O.S. 4/89 adopted cross examination of (iii) at page 10520
- (v) Defendant No.20 in O.O.s. 4/89 adopted cross examination at page 10520.
- (vi) No cross examination by plaintiff in O.O.S. 1/89 page 10520.
- (vii) No cross examination on this point by defendant No.11 in O.O.s. 3/89 at page 10520-10529.
- (viii) No cross examination on this point by plaintiff No.7 in O.O.s. 4/89, defendant No.5 in O.O.S. 5/89 at page 10548-10556.
- (ix) Defendant No.5 O.O.S. 5/89 adopted cross examination (vii) & (ii) at page 10556.

## c. Exclusive Possession - No namaz

Para 27 at page 10517

Cross examination:-

- (i) Defendant No.17,22 in O.O.S. 4/89 at page 10519.
- (ii) Plaintiff in O.O.S. No.5/89 at page 10520.
- (iii) Defendant No.11 in O.O.S. 3/89 at page 10523, 10524, 10526.
- (iv) Defendant No.9 in O.O.S. 3/89 at page 10544, 10545 and 10548.
- (v) Plaintiff No.7 in O.O.S. 4/89, defendant No.5 in O.O.S. 4/89 at page 10556.
- (vi) Defendant No.20 in O.O.S. 4/89 adopted at 10520
- (vii) No cross examination by plaintiff in O.O.S. 1/89 at page 10520.

## d. Incident of 22/23 December, 1949

Cross examination:-

- (i) Defendant No.11 in O.O.S. 3/89 at page 10524-10526.
- (ii) Defendant No.9 in O.O.S. 3/89 at page 10548.
- (iii) Plaintiff No.7 in O.O.S. 4/89, Defendant No.5 in O.O.S. 5/89 at page 10556

14. DW-3/17 MATA BADAL TIWARI (VOLUME-58 PAGE 10557-10608)

- Aged 84 (date of affidavit - 31.08.2004)
- High Court consideration : Para 411, Page 411 - Volume.1

## a. Shebiati Management of the Idols and the Janmabhumi Temple (Inner &amp; Outer Courtyard)

Para 17 at 10560, para 21 at 10561

Cross examination:-

- (i) Defendant No.2 in O.O.S. 4/89 at 10574.
- (ii) Defendant No.9 in O.O.S. 3/89 at page 10600, 10601.
- (iii) No cross examination on this point by defendant No.20 in O.O.S. 4/89 at page 10562-10565.
- (iv) No cross examination on this point by plaintiff in O.O.S. 5/89 at page 10565-10572.
- (v) No cross examination by plaintiff in O.O.S. 1/89 at page 10575.
- (vi) No cross examination on this point by defendant No.11 in O.O.S. 3/89 at page 10575-10590.
- (vii) No cross examination on this point by plaintiff No.7 in O.O.S. 4/89 and defendant No.5 in O.O.S. 5/89 at page 10602-10608.
- (viii) Defendant No.6 adopted the cross examination of (ii), (vi), (vii) at page 10608.

## b. Possession of the the Janmabhumi Temple (Inner and Outer Courtyard) of the Nirmohi Akhara

Para 3 at page 10559, Para 20, 21 at 10561

Cross examination:-

- (i) Defendant No.20 in O.O.S. 4/89 at page 10565.
- (ii) Defendant No.11 in O.O.S. 3/89 at page 10586.
- (iii) No cross examination on this point by Defendant No.9 in O.O.S. No.3/89 at page 10601.
- (iv) No cross examination on this point by plaintiff in O.O.S. 5/89 at page 10565-10572.
- (v) No cross examination on this point by defendant No.2 in O.O.S. 4/89 at 10572-10575.
- (vi) No cross examination by plaintiff in O.O.S. 1/89 at page 10575.
- (vii) No cross examination on this point by plaintiff No.7 in O.O.S. 4/89, defendant No.5 in O.O.S. 5/89 at page 10602-10608.
- (viii) Defendant No.6 adopted cross examination of (iii), (ii) and (vii)

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## c. Exclusive Possession - No namaz

Para 22 at page 10561

## Cross examination:-

- (i) Defendant No.11 in O.O.S. 3/89 at page 10585,10588
- (ii) Defendant No.9 in O.O.S. 3/89 at page 10601
- (iii) Plaintiff No.7 in O.O.S. 4/89, defendant No.5 in O.O.s. 5/89 at page 10606, 10608.
- (iv) No cross examination on this point by defendant No.20 in O.O.s. 4/89 at page 10562-10565.
- (v) No cross examination on this point by plaintiff in O.O.S. 5/89 at page 10565-10572.
- (vi) No cross examination by plaintiff in O.O.S. 1/89 at page 10575.

15. DW- 3/18 ACHARYA MAHANT BANSHIDHAR DAS @ URIYA BABA (VOL. 58- PG. 10609- VOL. 59- PG. 10742)

- Aged 99 (date of affidavit - 15.09.2004)
- High Court consideration : Para 414, Page 414 - Volume.1

## a. Shebiati Management of the Idols and the Janmabhumi Temple (Inner &amp; Outer Courtyard)

Page 10611- Para 6, Page 10612- Para 9, 11, 14.

## Cross Examination:-

- i) Defendant No. 17,22 in OOS No. 4/89 at Pg. 10617, 10622, 10623
- ii) Defendant No. 9 in OOS No. 3/89 at Pg. 10683, 10684, 10687.
- iii) Defendant No. 7 in OOS No. 4/89, Defendant No. 5 in OOS No. 5/89 at Pg. 10692, 10695.
- iv) No cross examination by Plaintiff in OOS No. 1/89 at Pg 10623.

## b. Possession of the the Janmabhumi Temple (Inner and Outer Courtyard) of the Nirmohi Akhara

Page 10611- Para 6, Page 10612- Para 9,11,14.

## Cross Examination:-

- i) Defendant No. 9 in OOS No. 3/89 at Pg 10671.
- ii) Defendant No. 7 in OOS No. 4/89, defendant No. 5 in OOS No. 5/89 at Pg 10714.
- iii) Defendant No. 17,22 in OOS No. 4/89 at Pg 10617, 10622, 10623.
- iv) No cross examination by Plaintiff in OOS No. 1/89 at Pg 10623.

## c. Exclusive Possession - No namaz

Para 16 at Pg 10613

## Cross Examination:-

- i) Defendant No. 17,22 in OOS No. 4/89 at Pg 10621.
- ii) Defendant No. 11 in OOS No. 3/89 at Pg 10638.
- iii) Defendant No. 9 in OOS No. 3/89 at Pg 10688,10689.
- iv) Defendant No. 7 in OOS No. 4/89, Defendant No. 5 in OOS No. 5/89 at Pg. 10741.

## d. Incident of 22/23 December, 1949

Para 6,7 at Pg. 10611.

## Cross Examination:-

- i) Defendant No. 17,22 in OOS No. 4/89 at Pg. 10623.
- ii) Plaintiff in OOS No. 5/89 at Pg. 10627
- iii) Defendant No. 11 in OOS No. 3/89 at Pg. 10636.
- iv) Defendant No. 9 in OOS No. 3/89 at Pg. 10661, 10669, 10672, 10689
- v) Defendant No. 7 in OOS No. 4/89, Defendant No. 5 in OOS No. 5/89 at Pg 10735.
- vi) No cross examination by Plaintiff in OOS No. 1/89.

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16. DW-3/20 - MAHANT RAJA RAM CHANDRACHARYA (VOLUME 60 PAGE 12030)

- Aged 76 (date of affidavit - 31.08.2004)
- High Court consideration : Para 420, Page 421 - Volume.1

a. Shebiati Management of the Idols and the Janmabhumi Temple (Inner & Outer Courtyard)

Page 12033 Para 9, Page 12041 Para 31 Page 12044 Para 36, Page 12047 Para 40, Page 12049 Para 44)

## Cross Examination

- i) Cross examination by Plaintiff of OOS No. 5 (Page 12138-12157) At page 12153, 12154
- ii) No Cross Examination by Def No. 17 and 22 of OOS 4 On this Point (Page 12157- 12170)
- iii) No Cross examination by Defendant No. 2/1 in OOS 4 on this point (Page 12170 - 12175)
- iv) Defendant No. 20 adopted cross examination by (i)(ii) and (iii) above) (page 12176)
- v) No cross examination by Plaintiff of OOS No. 1 (Page 12176)
- vi) No Cross Examination by Defendant No. 11 of OOS 3 (Md. Farooq Ahmed) (page 12177-12197)
- vii) Cross Examination by Defendant No. 9 of OOS 3 (U.P. Sunni Central Waqf Board) (page12198) - At page 12315

b. Possession of the the Janmabhumi Temple (Inner and Outer Courtyard) of the Nirmohi Akhara

Page 12037-12038 Para17-21, Page 12038-39 Para 22-24, Page 12040 Para 30, Page 12042 Para 33, Page 12045 Para 37, Page 12069 Para 70

## Cross Examination

- (i) No Cross examination by Plaintiff of OOS No. 5 on this point (Page 12138-12157)
- (ii) No Cross Examination by Def No. 17 and 22 OOS 4 On this Point (Page 12157- 12170)
- (iii) No Cross examination by Defendant No. 2/1 in OOS 4 on this point (Page 12170 - 12175)
- (iv) Defendant No. 20 adopted cross examination by (i)(ii) and (iii) above) (page 12176)
- (v) No cross examination by Plaintiff of OOS No. 1 (Page 12176)
- (vi) No Cross Examination by Defendant No. 11 of OOS 3 (Md. Farooq Ahmed) (page 12177-12197)
- (viii) Cross Examination by Defendant No. 9 of OOS 3 (U.P. Sunni Central Waqf Board) (page12198) - At page 12228

c. Possession was taken by the Receiver from the Nirmohi Akhara

Page 12033-34 Para 10, 13,

## Cross Examination

- (i) No Cross examination by Plaintiff of OOS No. 5 on this point (Page 12138-12157)
- (ii) No Cross Examination by Def No. 17 and 22 OOS 4 On this Point (Page 12157- 12170)
- (iii) No Cross examination by Defendant No. 2/1 in OOS 4 on this point (Page 12170 - 12175)
- (iv) Defendant No. 20 adopted cross examination by (i)(ii) and (iii) above) (page 12176)
- (v) No cross examination by Plaintiff of OOS No. 1 (Page 12176)
- (vi) No Cross Examination by Defendant No. 11 of OOS 3 (Md. Farooq Ahmed) (page 12177-12197)
- (vii) Cross Examination by Defendant No. 9 of OOS 3 (U.P. Sunni Central Waqf Board) (page12198) - At page 12199

d. Exclusive Possession - No namaz

Page 12050 Para 45, Page 12070 Para 72

## Cross Examination

- (i) No. Cross examination by Plaintiff of OOS No. 5 in this point (Page 12138-12157)
- (ii) No Cross Examination by Def No. 17 and 22 OOS 4 On this Point (Page 12157- 12170)
- (iii) No Cross examination by Defendant No. 2/1 in OOS 4 on this point (Page 12170 - 12175)
- (iv) Defendant No. 20 adopted cross examination by (i)(ii) and (iii) above) (page 12176)

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- (v) No cross examination by Plaintiff of OOS No. 1 (Page 12176)
- (vi) Cross Examination by Defendant No. 11 of OOS 3 (Md. Farooq Ahmed) (page 12177-12197) At Page 12184, 12188, 12191, 12197

e. Incident of 22/23 December, 1949

Page 12045 Para 39

Cross Examination

- (i) No Cross examination by Plaintiff of OOS No. 5 on this point (Page 12138-12157)
- (ii) No Cross Examination by Def No. 17 and 22 On this Point (Page 12157- 12170)
- (iii) No Cross examination by Defendant No. 2/1 in OOS 4 on this point (Page 12170 - 12175)
- (iv) Defendant No. 20 adopted cross examination by (i)(ii) and (iii) above) (page 12176)
- (v) No cross examination by Plaintiff of OOS No. 1 (Page 12176)
- (vi) Cross Examination by Defendant No. 11 of OOS 3 (Md. Farooq Ahmed) (page 12177-12197) At Page 12188-12189

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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW BENCH, LUCKNOW

Civil No. (O) 1996

Objection Agreement 10(O) 1996

NirmohiAkhara

...Defendant No.3 objector

In

O.O.S. No.5/89

Bhagwan Sri Ram etc.

...Plaintiff.

Versus

Sri Rajendra Singh etc.

...Defendants

Objection on behalf of Defendant No.3 NirmohiAkhara against  
application of Sri DeokiNandan Agarwal dated 17.4.96.

Your Lordships,

The objector defendant No.3 is submitting the following objection:-

1. That the present application by Sri DeokiNandan Agarwal has been moved on 17.4.96 when dates for recording evidence in cases was going to fixed. Thus the attempt is distinct vivid and self-revealing and can very well be said that a device just to prolong the matter.
2. That previous to it also envisages adoption of lingering device by moving repeated recall and review application by Mr. DeokiNandan application moved by Mr. Ashok Singhal etc. for transposition. So conduct of plaintiff No.3 for progress of suits for recording of evidence is blameworthy.
3. That on legal merit also the proposed application of Mr. DeokiNandan Agarwal is not maintainable and liable to be dismissed.
4. That so far the question of deciding pre issues are conceived, this full bench has decided the matter in O.O.S. No.4/89 as well as in this case also.

5. That if narration of facts attached to application by Mr. DeokiNandan Agarwal is accepted as gospel truth then every thing can be decided according to his choice, but the law of commuting does not permit so. It is necessary here to point out that factual statement made and attached with application is basis upon lies. On falsehood breeds hundred one. Therefore it is submitted the suit of Mr. DeokiNandan is based on bundle of lies. For instance (1) Mr. DeokiNandan Agarwal admits as follows:-

"I may in this context also refer to one very significant fact. The sews of Bhagwan Sri Ram LallaVirajman at Sri Ram JanambhoomiAyodhya whom I represent as a Next friend, had been in the post looked after by the NirmohiAkhara which is one of Akhara of the Vairagis of Ram NandSampradaya founded by Rama Nand who has the first great figure of medieval mystiasm (1370-1440)."

Now he says at page 35 in otherwise. He also assets that Govind Das came 200 years ago at Guptarghat and Ram GhatAyodhya.

The other important statement consists in his statement under order X C.P.C. dated 30.4.92, the correct words were not used in written submission at page 35. More ever it is stated that it is undisputed fact and accepted by Hon'ble Supreme Court of India. Mr. DeokiNandan Agarwal stated under order X Rule 2 C.P.C. as below:-

At the instance of Sri R.L. Verma, Sri DeokiNandan Agarwal makes the following clarification under Order 10 Rule 2 C.P.C.

In the early hours of December 23, 1949 the idol of Bhagwan Sri Ram Lal, which was already on Ram Chabutara was transferred to the place where he presently sits, that is, under the central done of the disputed building. I was not personally present at that time at the place. This information was conveyed to me by Paramhans Ram Chandra Das of DigambarAkhara. This transfer of the idol was done by Paramhans Ram Chandra Das and Baba Abhi Ram Das and certain other persons whose names I do not remember at the moment. I will have to look into the record to give their names.

The idol is ChalVigraha (Moveable idol).

Paramhans Ram Chandra Das had informed me that all the due ceremonies were performed when the idol was transferred.

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Paramhans Ram Chandra Das makes statement under Order 10 Cr.P.C. or 6, 13.1.60 "Sri Paramhans instructs that the idol were there forms before 1934 whenever he saw it was temple cannot say who got is constructed and dedicated."

And Abhiram Das says in his W.S. filed in O.O.S. 4/89 that idol is coming down since 1934 and from to it.

So who speaks he would be a quashi of evidence and cross examination. One thing may be permitted to mention that Hon'ble Supreme Court has not recorded any finding on facts vide para '3' of its judgment. These question are answered on this basis eslearing facts which are in the area of controversy and have get to be adjudicated.'

The fact of deity there being at 1949 or prior to human memory as asserted by defendant No.3 is a matter under controversy and reques adjudication.

6. The conception of Math regarding NirmohiAkhara has also been narrated with confused outlook. All the seven Akharas are 'Panchayati Math' as acts on democratic pattern Mahant is only a formal head and is appointed on selection. He has to act on resolution. Ram Kewal has never accepted any trust ship and has always challenged it. Even Sri Shiv Ramacharya, Head of Rama NandiyaSampraday of Barragies had delinked him vide Annexure-O, an extract of daily news paper dated 5<sup>th</sup> June 1988, so called Nyas is totally illegal.

7. That other matters regarding preliminary issues is to be try or not in a mix question of land and fact therefore the contents of application on this ground is misconveived and it argumentative only as his previous application para 5 at page 3 annexed as Annexure-2 shows his motive in this case.

It is therefore prayed that application of Shri DeokiNandan Agarwal may kindly be rejected.

Applicant  
Defendant No.3

Dated 01.5.1996  
(Nirmohi Akhara)

Through Counsel

S/d-  
(R.L. Verma)  
Advocate



B.K. Mukherjea  
The  
**Hindu Law**  
of  
**Religious and Charitable**  
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TAGORE LAW LECTURES

Fifth Edition

BY

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hundred *mutts* of which a few only remain at the present day. One of them is at Melkottai, which is called the Badarikasarm of the south.

**1.28. Ramananda.**—Ramananda, reputed, though not correctly, to be one of the followers of Ramanuja, founded a different school of Vaishnavism. His followers worshipped Ramchandra as an incarnation of Vishnu and are known by the name of Ramaths. They abound in northern India and there are several *Mutts* of celebrity belonging to this order at Benaras.

**1.29. Madhwa.**—Madhwa was another religious teacher who founded the sect named after him. This is a purely dualistic school which recognises an eternal distinction between man and his creator. The eight *mutts* at Udupi where Madhwa lived, which are all centres of Dwaita system of thought, were admittedly established by him.

**1.30. Nimbarka, Ballavacharya and Srichaitanya.**—Among other important Vaishnava sects we might mention those founded by Nimbarka, Ballavacharya and Srichaitanya Mahaprovu of Bengal. Each one of these sects has its religious institutions on the model of the *mutts*<sup>10b</sup> founded by Sankara, though there are differences in the matter of initiation of disciples, succession to headship and other allied matters which I shall discuss later on.<sup>10c</sup>

**1.31. Sudra ascetics of South India.**—The Sudra ascetics of Southern India also followed the example of the Brahmans, and the pious and learned amongst them, actuated by a "desire to disseminate religious knowledge and promote religious charity, established *mutts* in Tinnevely, Madura, Trichinopoly, Tanjore and elsewhere."<sup>11</sup> The practice of establishing *mutts* spread to other dissenting sects like Kabir Panthis, Jangamas and Lingayets of southern India, and they also constructed *mutts* or *asthals* for the propagation of their particular tenets.

A detailed discussion of the characteristics and legal incidents of the different types of Maths I will reserve for a future chapter.<sup>11a</sup> At this stage, I will pass on to say a few words regarding the other important kinds of Hindu religious institutions, viz., temples and idols.

#### X. WORSHIP OF IDOLS AMONGST HINDUS

**1.32. Idol worship in India.**—It is difficult to say at what period of time idol worship was introduced among the Hindus. There is no mention of

<sup>10b</sup> Para 1.26, *supra*.

<sup>10c</sup> Chapter 7, *infra*.

<sup>11</sup> *Vide Gityana Sambandha v Kandusami*, (1887) ILR 10 Mad 375.

<sup>11a</sup> Chapter 6, *infra*.

In *Tarit Bhusan v. Sridhar Salgram*.<sup>49</sup> The reason that weighed strongly with the learned Judge was that if a suit could be instituted on behalf of the idol by any person as its next friend, it would really be an invitation to all sorts of persons to come and meddle in the affairs of the idol and if the idol is to be bound by the result of such suit or proceeding, it would be disastrous to its interests. In the opinion of the learned Judge the provisions of Order 32, Civil Procedure Code could not be applied to the case of a deity as the deity is not a minor in law and moreover, these provisions would not safeguard the interest of the idol at all. If anybody has any interest in the endowment and purports to institute a suit as by the court, the suit could be regarded as his own suit and not the suit of the idol. The view was accepted and followed by Gentle, J. in *Sri Sri Sreedhar Jew v. Kanto Mohan*.<sup>50</sup> On the other hand, Sen, J. held in *Thakur Sri Sri Annapurna v. Shiva Sundari Dasi*<sup>1</sup> that appointment by the court could not be an essential prerequisite to enable the next friend to institute a suit on behalf of the idol. If the defendant contested the fitness of the next friend to act for the deity, it would be open to the court to investigate the matter and decide the question one way or the other. All these decisions were reviewed by Das, J. in *Gopal Jew v. Baldeo*,<sup>2</sup> and it was held by the learned Judge that as on the authorities already well established it is competent to a Shebait to act as a next friend of an idol without appointment by the court, there was no reason why the same right of suing as the next friend of the deity without any appointment by court should not be allowed to other persons interested in the endowment like the worshippers and prospective Shebaites. In the opinion of Das, J. there being no definite procedure laid down by law relating to suits of idols, the provisions of Order 32 of the Civil Procedure Code should be applied as far as possible, and these provisions, according to him, would safeguard the interest of the idol, at least not less effectively than an *ex parte* order of appointment made by the court. In *Sushama Roy v. Atul Krishna*<sup>3</sup> a Bench of the Calcutta High Court dissented from the above view and held that it was not in the interest of an idol that any person other than the Shebait should have the right to file a suit on its behalf constituting himself as its next friend, on the analogy of the provisions in Order 32 relating to suits on behalf of infants, that as the decision in a suit brought on behalf of the idol would be binding on it, it was necessary for the purpose of protecting its interests that such a suit should be permitted to be instituted only with the permission of the court and that in proper cases the court might issue notice to all persons interested before granting permission. In *Sri Iswar v. Gopinath Das*<sup>4</sup> it was again laid

49. 45 CWN 932.

50. 50 CWN 14.

1. H.R. (1944) 2 Cal 144.

2. 51 CWN 383.

3. AIR 1955 Cal 624.

4. AIR 1960 Cal 741.

down on a review of the authorities that though a suit could be instituted on behalf of an idol by a person other than the Shebait, that could be done only when that person is appointed to act as next friend by an order of the court.

6.26. The question does not seem to have been raised in this form in any of the other High Courts in India. In *Dashan Lal v Shibji Maharaj*,<sup>5</sup> the idol filed a suit through a next friend who was a priest of the temple and looked after the management of the temple affairs. He was not in the position of a manager or trustee or even of a worshipper in the proper sense of the word. It was held by the learned Judges of the Allahabad High Court that they were not prepared to accept as a correct proposition of law that any person claiming benevolent interest in the affairs of the idol would be permitted to maintain a suit in the name and as the next friend of the injured idol. If the provisions of Order 32, Civil Procedure Code, are taken to apply to suits of idols, the difficulty would certainly arise in cases where the next friend is not a party interested in the endowment at all, but is a perfect stranger and takes what the Judges of the Allahabad High Court have said, a mere benevolent interest in the affairs of the deity. In a later case the same High Court has held that the analogy of a deity being treated as a minor is very imperfect analogy and cannot be carried far enough to make Order 32, Civil Procedure Code, applicable.<sup>6</sup> As the position of an idol is admittedly different from that of an infant, there is no particular reason why the procedure laid down in Order 32, Civil Procedure Code, should be made applicable to an idol's suit. When the Privy Council suggested the idea of having the deity represented by a disinterested person in the case of *Mallik v Mallick*,<sup>7</sup> they were not thinking certainly of the provisions of Order 32 or of any other provision in the Civil Procedure Code. The rule was laid down as a matter of expediency and for safeguarding the interest of the idol. The rules of the procedure after all are only means to serve the ends of justice, and if the appointment of a next friend by the court is calculated to safeguard the interest of the deity, there could be no real objection to the procedure suggested by Mr. Justice Pal in *Tarit Bhusan's* case. If a new procedure has got to be invented, it is not safe to rely upon mere analogy and invoke the provisions of Order 32 of the Civil Procedure Code when the principle well recognised is that an idol does not occupy the position of an infant in law. Anyway, these questions ought to be settled finally, as otherwise the lower courts would experience considerable difficulties in dealing with such matters with regard to which different Judges of the High Courts have taken different views.

<sup>5</sup> ILR 45 All 215.

<sup>6</sup> *Doogar Sen v Tir Bhawan*, ILR (1947) All 263.

<sup>7</sup> LR 52 IA 245.

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**6.27. Receivers.**—In a Calcutta case,<sup>7a</sup> the question of appointing a receiver was considered, and the following propositions were enunciated:<sup>7b</sup>

(i) Where the deity's interest is not likely to be affected by the litigation, where the parties claim only the benevolent interest in the affairs of the idol and do not claim against the interest of the deity, and where the suit is not really the suit by the deity and the court does not feel the necessity of the presence of the deity before it, the court is not precluded by the absence of the deity from appointing a Receiver, in respect of the properties covered by a Hindu Religious Endowment, be it public or private. Of course, a receiver is appointed only when the provisions of Order 40 of the Code of Civil Procedure, 1908, are satisfied, and if the facts of a particular case otherwise justify, in the interest of justice, the appointment of a Receiver.

(ii) However, the court has to consider whether interference with possession of the property is required, and whether there is a well-founded fear that the property in question will be dissipated or wasted or that irreparable mischief to the same may be caused unless the court gives protection in the shape of appointment of a Receiver.

(iii) The submission that no order for appointment of a Receiver in respect of a Hindu Religious Endowment can at all be made does not appear to be correct.

(iv) In deciding whether a member of the settlor's family is an interloper or a trespasser in relation to the endowed property, the court should bear in hand the basic principle that there is a distinction between one who is an absolute stranger to a Debutter estate and one who is not a stranger but claims adversely to the deity.

**6.28. Deity not a necessary party in all suits relating to Debutter.**—It would be clear from what has been stated above that the deity is not a necessary party in all suits relating to Debutter. The case of *Jagadindra v Hemanta Kumari*<sup>8</sup> is itself an authority for the proposition that it is open to a Shebait to institute a suit in his own name to recover property belonging to the deity, and the deity need not be made a party to such a suit. If a worshipper brings a suit in his own name for declaring certain properties as Debutter, he need not make the deity a party to such suit apart from the Shebait.<sup>9</sup> If the deity is vitally interested in the result of a suit or its wishes have to be expressed through a disinterested person or if the Shebait has any interest adverse to that of the deity, it is necessary that the deity should be made a party to such litigation. It was so held in a Patna case,<sup>10</sup> where it was observed that where the Shebait denied the right

7a *Ashim v Warandra*, AIR 1972 Cal 213.

7b The paragraph as to receivers has been added in the 4th Edition.

8 *Jagadindra v Hemanta Kumari*, LR 31 IA 203.

9 *Sashi v Dhirendra*, 45 CWN 699.

10 *Sri Ram v Chandeshwar Prasad*, ILR 31 Pat 417; AIR 1952 Pat 438.

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of the idol to the dedicated properties, it was desirable that the idol should file the suit through a disinterested next friend appointed by the court; and where the suit was for altering certain provisions in respect of the *sheba* of a deity contained in a will under which the endowment was made, it was held<sup>11</sup> that the deity had a right to be heard, and would not be bound by any alteration made behind its back.

In a suit brought for framing a scheme of a private Debutter, the deity is not always a necessary party, but it should be made a party if its interests are likely to be affected in any way.<sup>12</sup> In *Upendra Nath v Nilmony*,<sup>12a</sup> that the deity was not a necessary party in a suit for the framing of a scheme unless its interests were likely to be affected by the scheme proposed.

When the only question in controversy is as to whether the plaintiff has established his rights as Shebait of the suit properties and neither the plaintiff nor the defendant denies the title of the deity to the properties, the idol is not a necessary party;<sup>13</sup> and, thus, when the suit was for the removal of a trustee on the ground that he was guilty of breach of trust and has misappropriated the funds of the endowment and the trust was admitted, the deity was held to be not a necessary party.<sup>14</sup>

**6.29. Points summed up.**—The result of the foregoing discussion may be summed up as follows:

(1) An idol is a juristic person in whom the title to the properties of the endowment vests; but it is only in an ideal sense that the idol is the owner. It has to act through human agency and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might, therefore, in one sense, be said to be merged in that of the Shebait.<sup>14a</sup>

(2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol, then there must be some other agency which must have the right to act for the idol. In such cases, the law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol.<sup>14b</sup>

(3) Where the endowment is a private one, the members of the family are the persons primarily interested in its upkeep and maintenance, and they are, therefore, entitled to act on behalf of the deity; but where the endowment

11 *Shri Mahadeo Jew v Balkrishna*, AIR 1952 Cal 763.

12 *Bimal Chandra v Gunendra*, 41 CWN 728; *Upendra v Baikuntha*, 33 CWN 96.

12a *Upendra Nath v Nilmony*, AIR 1957 Cal 342; *Bimal Chandra v Gunendra*, 41 CWN 728.

13 *Haripada v Elokeshi*, AIR 1940 Cal 254.

14 *Hangi Mul v Panna Lal*, AIR 1957 All 743.

14a Paras 6.14 to 6.16, *supra*.

14b Para 6.18, *supra*.

is a public one, section 92 of the Civil Procedure Code prescribes a special procedure when the suit is against the trustee, and the reliefs claimed fall within that section. Such a suit can be brought only in conformity with that section, and the rights of the members of the public, who are interested in the endowment as worshippers or otherwise, to institute proceedings on behalf of the idol are to that extent abridged. Where, however, the suit does not fall within the ambit of section 92, the right of the worshippers or persons interested in the endowment to vindicate the rights of the idol under the general law remains unaffected.<sup>14c</sup>

(4) Once it is found that the plaintiffs, whether they be Shebait or the founder or the members of his family, or the worshippers and members of the public interested in the endowment, are entitled to maintain the suit—and that is a matter of substantive law—the further question whether an idol should be impleaded as a party to it or whether the action should be brought in its name is one purely of procedure. Such a suit is really the suit of the idol, instituted by person whom the law recognises as competent to act for it, and the joinder of the idol is unnecessary. Indeed, it may even result in embarrassment. But where the matters in controversy in a suit would affect the interests of the deity, as for example when the trust is denied or is sought to be altered, it is desirable that it should also be impleaded as a party.<sup>14d</sup>

(5) Where the joinder of the idol is necessary or desirable, there is a difference of opinion as to whether the provisions of Order 32 of the Civil Procedure Code could, by analogy, be applied to such a suit, and whether it is open to a person to constitute himself as the next friend of the idol and institute the suit on its behalf. The better opinion seems to be that the provisions of Order 32 cannot be extended to a suit on behalf of the idol, as there is no real analogy between an infant and an idol, that a suit by a person other than the Shebait could be instituted on behalf of the idol only when the court grants permission therefor, and that such permission should, as a rule, be given only after hearing the persons interested.<sup>14e</sup>

**6.30. Rights of a 'de facto' Shebait.**—Before I close this topic, it may be pertinent to say a few words as regards the position of a *de facto* Shebait<sup>14f</sup> in the matter of instituting suits on behalf of the deity. A *de facto* Shebait may be described as one who is in possession of the endowed property and exercises all the functions of a Shebait though the legal title is lacking.<sup>15</sup>

The statement of law in *Jagadindra's* case that the right to sue in respect of the deity's property is vested in the Shebait cannot possibly be extended

<sup>14c</sup> Para 6.19, *supra*.

<sup>14d</sup> Para 6.21, *supra*.

<sup>14e</sup> Paras 6.22 and 6.23, *supra*.

<sup>14f</sup> As to *de facto* Mohunts, see para 7.57, *supra*.

<sup>15</sup> Vide the observations of Mukherjea, J. in *Panchkori v Amoda*, 41 CWN 1349.

to the case of a *de facto* Shebait who has no lawful title to shebaitship. Nevertheless as the deity is a juristic person and various persons other than the Shebait can institute suits on behalf of the deity, there could be nothing wrong in allowing a *de facto* Shebait to file suits not for his own benefit but for the benefit of the endowment. The Privy Council in *Mahdeo Prosad v Karia*<sup>16</sup> laid down, following an earlier pronouncement of theirs in *Ram Chandra v Nawrang*,<sup>17</sup> that a person in actual possession of a *Math* is entitled to maintain a suit to recover property appertaining to it not for his own benefit but for the benefit of the *Math*. These were cases which related to a *Math* and not to a *Debutter*, but the same reasoning, it seems, would apply to a *Debutter* endowment as well and it has been so held in several decided cases. The Allahabad High Court held in *Gopal Dutt v Baburam*<sup>18</sup> that a suit can be brought in the name of the idol by a person who is the *de facto* manager of a temple and the same view was taken by the Chief Court of Oudh in *Sri Radha Krishna v Maharaj Kumar*<sup>19</sup> and by a Full Bench of the Madras High Court in *Sankaranarayanan v Shri Poovananatha*.<sup>20</sup>

In the Madras Full Bench case, the learned Judges quoted with approval the observations of Wadsworth, J. in an earlier case<sup>21</sup> which stated the true rationale of the rule permitting a *de facto* trustee in possession and management of a temple or *mutt* to bring a suit for the recovery of properties belonging to the institution or to take such action as may be necessary in the interests of the trust. The observations are as follows: "It is the duty of the court to protect the trust property from misappropriation and diversion from the objects to which it was dedicated. When the trust property is without a legal guardian, owing to any defects in the machinery for the appointment of a trustee or owing to unwillingness of the legal trustee to act, it would be a monstrous thing if any honest person recognised as being in charge of the institution and actually controlling its affairs in the interest of the trust should be entitled, in the absence of any one with a better title, to take these actions which are necessary to safeguard the interests of the trust."

6.31. The view that a *de facto* trustee is entitled to maintain an action on behalf of the trust has since been laid down in a number of decisions.<sup>22</sup>

16 LR 62 IA 47; 39 CWN 433.

17 LR 60 IA 124; 37 CWN 541.

18 (1936) ALJR 515.

19 ILR 12 Luck 331.

20 AIR 1949 Mad 721.

21 *Subramannaiya v Abbinava*, AIR 1940 Mad 617.

22 *Jaganath v Thirthananda*, AIR 1952 Orissa 312; *Sri Ram v Chandeshwar Prasad*, ILR 31 Pat 417; *Lalta Prasad v Brahmanand*, AIR 1953 All 449; *Kanakulamada Nadar v Pichakkannu Ariyar*, AIR 1954 Trav.-Cochin 254; *Sapta Koteswar v R. V. Kuttur*, AIR 1956 Bom 615.



In *Sapta Koteswar v R. V. Kuttur*,<sup>23</sup> it was observed that the fact that the *de facto* trustee was also seeking to advance his own interests was not a ground for non-suiting him but that the court might make appropriate directions for protecting the interests of the deity. The question has since been considered by the Supreme Court in *Vikramadas v Daulat Ram*.<sup>24</sup> Therein it was held that a *de facto* trustee in possession and management of the *asthan* and its properties had a right to take proceedings for protecting the rights of the institution. In *Somanath Dani v Shri Gopal Jew*,<sup>25</sup> it was held that before a *de facto* trustee could maintain a suit on behalf of the institution, it must be shown that he was in exclusive possession and exercising full control over the institution and that there was no *de jure* trustee or, if there was one, he had disqualified himself from bringing a suit in which case he also should be made a party. The decree passed in a suit in which the deity was not properly represented could be ignored.

But the right of a *de facto* trustee to sue on behalf of and for the benefit of the institution does not involve the recognition of any right to continue in management. It was accordingly held in *Gopal v Mahomed Jaffar*<sup>26</sup> that a *de facto* trustee is not entitled to a declaration of his right to manage indefinitely and without any right.

6.32. It was laid down in the judgment of the Madras Full Bench that in order to entitle a person to maintain a suit on behalf of the endowment, it must be proved that he is in exclusive possession of the office of manager or head of the institution, though he may not be able to establish his legal title to it. In the words of Biswanath Sastri, J.: "If a man forcibly, violently or dishonestly takes possession of a trust property under a false claim to be a trustee, or if there is a scramble for possession between rival contestants, the claim of *de facto* trusteeship is untenable. A fugitive or isolated act of a person with regard to property of a religious endowment would not make him a *de facto* trustee..... There must be a continuous course of conduct, the length of the same depending upon the facts and circumstances of the case."<sup>27</sup>

The mere fact that a man secures somehow or other the custody of an idol and begins to worship it would not by itself make him a *de facto* Shebait.<sup>28</sup>

6.33. Effect of a decree against the Shebait and Shebait's power to compromise.—A decree or judgment properly obtained against the Shebait

23 AIR 1956 Bom 615.

24 1956 SCR 826.

25 *Somanath Dani v Shri Gopal Jew*, AIR 1961 Orissa 105.

26 AIR 1954 SC 5.

27 Vide *Kanakulamada Nadar v Pichakannu Ariyar*, ILR 1954 TC 81, where these observations were approved and followed.

28 Vide, Mukherjea, J. in *Panchkari v Amode*, 41 CWN 1349.

of a deity is binding on his successors. It was laid down by the Judicial Committee as early as in the case of *Prosunna v Golab*<sup>29</sup> that Shebait as such form a continuing representation of the idol's property, and a decree passed against one Shebait binds the successive Shebait. One Shebait may not, strictly speaking, be said to claim under his predecessor, yet as the Shebait for the time being completely represents the Debutter estate, a decision against one Shebait binds successive Shebait by reason of the juridical relation between the office and the property. The principle is analogous to that upon which the reversioners have been held to be bound by a decision obtained against a Hindu widow in possession of her husband's estate.<sup>30</sup> Of course, the decree must be untainted by fraud or collusion, and necessary and proper issues must have been raised, tried and decided in the suit which led to it.<sup>31</sup> It has been held by the Madras High Court that a decree passed against a *de facto* trustee of a temple binds the temple or the *de jure* trustee in the absence of fraud or any other vitiating element.<sup>32</sup>

6.34. The binding nature of the decree is not affected by the fact that it is based on compromise.<sup>33</sup> It is always within the competence of a Shebait to enter into a *bona fide* compromise for the benefit and preservation of the Debutter estate.<sup>34</sup> As the Indian Trusts Act does not apply to a Hindu religious endowment, it is not necessary to bring into aid the provisions of section 43 of the Trusts Act for such purposes. The power to compromise is inherent in the right of management which the Shebait possesses. As has been said already, the deity cannot be treated as a perpetual minor, and the provisions of Order XXXII of the Code of Civil Procedure are not applicable to a suit brought on behalf of the deity. In such cases, it is not necessary for the Shebait to take the permission of the court for the purpose of validating the compromise of a suit. The conditions of a valid compromise are the same which determine the validity of a compromise entered into by a Hindu widow as representing the estate of her husband. If it is a *bona fide* transaction entered into for the benefit of the estate and not for the personal advantage of the manager himself it is to be held binding.

#### IV. DELEGATION

6.35. **Shebait cannot delegate his authority.**—A Shebait, like a trustee in English law, cannot delegate his duties to another, no matter whether

29 LR 2 IA 145.

30 See, *Gora Chand v Makhanlal*, 6 CLJ 404; *Lilabati v Bishnu Chobey*, 6 CLJ 621; *Upendra Nath v Kusum Kumari*, ILR 42 Cal 440.

31 Vide, *Prosunna v Golab*, LR 2 IA 145.

32 Vide, *Sri Vedapureswar v Sudarsana*, AIR 1946 Mad 74.

33 Vide, *Kamkhya Vasaka v Balagopal*, ILR 29 Mad 553.

34 Vide, *Hosenali v Bhagawan Das*, ILR 34 Cal 249.

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such other is a stranger or a co-trustee. The rule is founded on the maxim "*Delegatus non potest delegare*." The meaning and implication of this rule were thus explained by Bowen, L.J. in *Re, Speight, Speight v Gaunt*<sup>35</sup>: "The proposition as to trustees or agents that they cannot delegate means this simply that a man employed to do a thing himself has not the right to get somebody else to do it, but when he is employed to get it done through others, he may do so." In cases, therefore, where a trustee is entrusted to do a particular thing himself, he cannot authorise somebody else to exercise judgment on his behalf. It is open to a trust to appoint a sub-agent or avail himself of the services of others, whenever such employment is according to the normal course of business, but such appointment must only be as a means of carrying out his own duties himself and not for the purpose of delegating those duties by means of such appointment.<sup>36</sup> In *Bonnerji v Sitanath*,<sup>37</sup> a lease was executed by an attorney of a trustee who himself did not negotiate or consider the lease or never knew of it until after execution. The Judicial Committee held the lease to be invalid. "The duties of Protap," thus observed Their Lordships, "were in their nature fiduciary and fiduciary duties cannot be the subject of delegation. If, therefore, the document had been before Their Lordships it would have been impossible to support the contention that it conferred the power to negotiate and execute the document upon which the whole of the defendant's case rests." In *Shree Shree Gopal v Shoshee Bhusan*<sup>38</sup> the defendant No. 3 as the son of defendant No. 2, the Shebait of certain deities, entered into a contract for lease of certain Debutter properties with the plaintiff. In a suit for specific performance of the contract, the defence *inter alia* was that defendant No. 3 had no authority to enter into the contract on behalf of the Shebait and even if he had, the Shebait herself being incompetent in law to delegate her duties, such authority could not assist the plaintiff. Both these contentions were accepted by the High Court and the plaintiff's suit for specific performance of the contract was dismissed. In course of their judgment the learned Judge observed as follows: "It cannot be denied that the granting of a lease of this character was a matter with regard to which the defendant No. 2, as Shebait, was bound to exercise her judgment; and when it is found that the defendant No. 3, under a supposed authority, which must have purported to delegate that exercise of judgment to him, made the contract, and when the defendant No. 2 repudiates the contract at the earliest opportunity available to her, it is impossible to uphold this delegation, which is a good deal more than the mere employment of a machinery for carrying out the duties which attach to the defendant No. 2 in the fiduciary character she occupies: it is impossible to hold that specific performance should be granted in respect of it."

35 22 Ch.D. 727, 763.

36 Vide, *Shree Shree Gopal v Shoshee Bhusan*, ILR 60 Cal 111.

37 LR 49 IA 46.

38 ILR 60 Cal 111.

6.36. It was held by Kekewich, J. in *Re, Weall, Andrews v Weall*<sup>39</sup> that when a trustee is entitled to appoint agents under the express terms of his appointment or because the usual course of business sanctions such procedure, "he is bound to exercise his own discretion in the matter of appointing agents; and so long as he selects persons properly qualified, he cannot be made responsible for their intelligence or honesty. He does not in any sense guarantee the performance of the duties. It does not follow however that he can entrust his agents with any duties which they are willing to undertake or pay them any remuneration which they think fit to demand. The trustee must consider these matters for himself and the court would be disposed to support any conclusion at which he arrives, however erroneous, provided it really is his conclusion—that is the outcome of such consideration as might reasonably be expected to be given to a like matter by a man of ordinary prudence guided by such rules and arguments as generally guide such a man in his own affairs." These principles have been held to be applicable in their entirety to the case of a Shebait by the High Court of Calcutta in the case referred to above.<sup>40</sup> It is to be noted that under the express provisions of the English Trust Act of 1925 the liability of a trustee for acts of the agent in regard to transactions which are covered by the act is much more limited than what it was before. He cannot be made personally liable for a loss due to the employment of the agent unless he is guilty of wilful default.<sup>41</sup>

6.37. A Shebait cannot delegate his authority even to a co-Shebait. As has been said in the previous chapter,<sup>41a</sup> it is permissible to Shebait for the purpose of convenience to make arrangements or schemes for separate management; but they cannot while retaining their office abdicate altogether their duties and functions and delegate their authority including that of sale, gift or mortgage to a co-Shebait. These arrangements amongst the Shebait can authorise the doing of routine administration work but cannot authorise an alienation of the Debutter property without the concurrence of all the Shebait.<sup>42</sup>

#### V. ALIENATION OF PROPERTY—GENERAL

6.38. **Shebait's power of alienation of Debutter property.**—Property dedicated to the services of an idol is, as a rule, inalienable but exceptions to this rule have been recognised in the interest of the deity itself. Exceptional

39 42 Ch. D. 674.

40 *Shree Shree Gopal v Shoshee Bhusan*, II R 60 Cal 111.

41 *Vide* the observation of Maughan, J. in *Re, Vickery, Vickery v Stephens*, (1931) 1 Ch. 572.

41a Chapter 5, *supra*.

42 *Official Receiver v Jogmaya*, 50 CWN 272.

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circumstances do happen when the Shebait as a manager of the endowment finds it difficult, nay impossible, to carry on the worship of the idol without securing money from other sources, and it may be necessary to raise money for repairing the temple and other possessions of the deity, for defending hostile litigious attacks and for similar other purposes. It is true that the Shebait is a mere manager and not the owner of the Debutter properties; but as has been said over and over again, the idol is the owner only in an ideal sense. There is always a human personality linked up with this ideal personality and the Shebait or manager of the deity must of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property, at least to as great a degree as the manager of an infant heir.<sup>43</sup> It is on this principle that a Shebait has been held entitled to alienate Debutter property in case of need or benefit to the estate. An interesting question was raised in *Ramchandraj v Lalji Singh*<sup>44</sup> whether a condition in a deed of endowment that the Shebait shall not alienate or encumber the properties was valid. It was observed that it would not be in the interest of the institution to deprive the Shebait of the power of alienation in case of necessity or benefit, and the condition was accordingly held to be bad on the principle underlying section 10 of the Transfer of Property Act.

The rights of a Shebait in this respect are analogous to those of a manager of an infant heir,<sup>45</sup> as laid down in *Hunooman Pershad Panday's case*.<sup>46</sup> In *Hunooman Pershad's case*<sup>47</sup> the Privy Council laid down the principle of Hindu law which will determine the validity of a transaction entered into by the *de facto* manager of an infant's estate by which the property of the infant was charged with payment of money. "The power of the manager for an infant heir to charge an estate not his own," so runs the judgment of Knight Bruce, L.J., "is under the Hindu Law a limited and a qualified power. It can only be exercised rightly in the case of need or for the benefit of the estate. But where in the particular instance the charge is one that a prudent owner would make in order to benefit the estate the *bona fide* lender is not affected by the precedent, mismanagement of the estate. The actual pressure on the estate, the danger to be averted or the benefit to be conferred on it in the particular instance is the thing to be regarded..... Their Lordships think that the lender is bound to enquire into the necessities for the loan and to satisfy himself as well as he can with reference to the parties with whom he is dealing that the manager is acting in the particular instance for the benefit of the estate. But they think that if he does so enquire and acts honestly, the real existence of an alleged sufficient and

43 Vide *Prosonna Kumari v Gulab Chand*, LR 2 IA 145.

44 AIR 1959 Pat 305.

45 Vide *Prosonna Kumari v Gulab Chand*, LR 2 IA 145; *Konwar Doorganath v Ram Chandra*, LR 4 IA 52.

46 6 Moore's IA 393.

47 6 Moore's IA 393.

reasonably credited necessity is not a condition precedent to the validity of the charge, and they do not think that under such circumstances he is bound to see to the application of the money."<sup>48</sup>

6.39. The transaction in *Hunoomian Pershad's* case was one by way of mortgage or charge for money received as loan, but the same principle applies to other forms of alienation like sale or permanent lease. No sale or mortgage of the Debutter property by the Shebait would be binding on the deity unless it is supported by legal necessity or benefit to the idol. A Shebait certainly can create proper derivative tenures and estates which are conformable to ordinary usage, but he cannot create, without unavoidable necessity, a lease on a fixed rental for all the time to come, however adequate that rent may be at the time of granting the lease. The reason is that by these means "the Debutter estate would be deprived of the chance it would have, if the rent were variable, of deriving benefit from the enhancement in value in the future of the lands leased." This proposition of law was laid down by the Privy Council as early as in 1869 in the well-known case of *Maharane Shihessourée v Mothoora Nath*,<sup>49</sup> and it has been reiterated by them in a large number of cases since then. See *Seena Peena Reena v Chokklingam*,<sup>50</sup> *Abhiram Goswami v Syama Charan*,<sup>1</sup> *Palaniappa v Devasikamony*.<sup>2</sup>

There is quite a large number of decided cases where questions of necessity or benefit to the Debutter estate have been raised in connection with different kinds of alienation made by the Shebait and I would have to take you to some of them presently. But before I do so, there are a few matters of general importance and very much pertinent to the present enquiry which I would like you to bear in mind when you pursue this subject.

6.40. **Shebait can alienate income as well as corpus.**—In the first place I would make it clear to you that the Shebait's powers of alienation in case of necessity or benefit to the deity are not confined only to the income of the Debutter estate but extend to the corpus as well. The observations of Chief Justice Westropp of the Bombay High Court in certain Bombay cases<sup>3</sup> and also those of Sir Subramania Ayyer in *Nallayappa v Ambalavana*<sup>4</sup> would seem to suggest that a Hindu religious endowment cannot be sold or permanently alienated at all; and that only its income could be temporarily pledged for necessary purposes such as repairs of the temple etc.,

<sup>48</sup> 6 MIA 423.

<sup>49</sup> 13 MIA 270.

<sup>50</sup> LR 31 IA 83.

<sup>1</sup> LR 36 IA 148.

<sup>2</sup> LR 44 IA 147.

<sup>3</sup> *Narayan v Chintamani*, ILR 5 Bom 393; *Collector of Thana v Hari Sitaram*, ILR 6 Bom 546.

<sup>4</sup> ILR 27 Mad 465.

"According to the Indian Common Law relating to Hindu religious institutions," thus observed Subramania Ayyer, J. in the Madras case referred to above, "the landed endowments thereof are inalienable. Though proper derivative tenures conformable to custom may be created with reference to such endowments, they cannot be transferred by way of a permanent lease at a fixed rent nor can they be sold or mortgaged. The revenues thereof may alone be pledged for the necessities of the institution." However much these observations might be in harmony with orthodox Hindu ideas, it must be said that the statement of law made therein is contrary to what the Privy Council laid down in *Prosonna Kumari v Gulab Chand*<sup>5</sup> and in all other subsequent cases and consequently cannot be accepted as correct.<sup>6</sup> In fact, none of the High Courts in India has followed the principle that only the income of the Debutter property could be pledged.

**6.41. Shebait's alienation without legal necessity may hold good so long as he holds office.**—In the second place I would ask you to bear in mind that even though a particular alienation by the Shebait is not supported by legal necessity, still it would not be void altogether and may enure so long as the Shebait is alive or holds his office. A Shebait, therefore, can even without any legal necessity create an estate or tenure commensurate with his term of office and between the grantor and the grantee such an estate would be valid, though it would not be binding on the succeeding Shebait.

In *Mahant Ram Sarup Dass v Lakshmi Ojha*,<sup>7</sup> the plaintiff who was in possession and management of the properties of a *mutt* sued to recover possession of properties which had been alienated by the *de jure* Mohant who continued to hold the office. It was found that the alienation was not binding on the trust. On a question as to the relief to which the plaintiff was entitled, it was held that he could get a declaration that the alienation was not binding on the *mutt* but that he was not entitled to a decree for possession as an alienation by a Mohant was only voidable and was good so long as the Mohant who made the alienation held the office. [See *Abhiram Goswami v Syama Charan*,<sup>8</sup> *Vidyavaruthi v Balusami*.<sup>9</sup>]

It goes without saying that a Shebait can alienate a Debutter property only by transfer *inter vivos*. No disposition by a will is possible or legal. A transfer by way of gift can scarcely be supported by legal necessity unless the purpose of the endowment itself makes such gift compulsory on the part of the Shebait. But on the principles stated above, a gift can be held to be operative during the lifetime of the grantor, though it would have no effect after the donor ceases to be in office.

<sup>5</sup> LR 2 IA 145.

<sup>6</sup> See in this connection *Devasikumony v Palaniappa*, ILR 34 Mad 535.

<sup>7</sup> ILR 36 Pat 1022.

<sup>8</sup> LR 36 IA 148.

<sup>9</sup> LR 48 IA 302.



**6.42. • Transfer of the entire endowment void altogether.**—The third thing I would desire to impress upon you is that the alienation by the Shebait can only be made of certain items of endowed property. A transfer of the endowment as a whole is wholly void and the transferee would acquire no title by such alienation even as against the transferor so long as he is alive. This was the decision of the Privy Council in the case of a *Math* in *Gnanasambanda v Valu Pandaram*<sup>10</sup> and *Damodar Das v Lakhan Das*.<sup>11</sup> The same principle would apply to a Debutter also.<sup>12</sup>

#### VI. ALIENATION FOR NECESSITY OR BENEFIT

**6.43. Necessity and benefit to the idol—what they mean.**—Alienation of Debutter property by the Shebait can be justified only on grounds of necessity or benefit to the idol. It is not possible to define exhaustively as to what circumstances would constitute necessity or benefit to the Debutter estate. Each case would have to be decided on its own facts. Obviously necessity and benefit are to different ideas and there is a distinction between them, though in each individual case it is difficult to put them into water-tight compartments, as in the majority of cases the same facts upon which necessity could be pleaded would support the case of benefit as well. An attempt was made by Sundara Aiyer, J. in *Vembu v Srinivasa*<sup>13</sup> to frame a definition of necessity and it was said by the learned Judge that “necessity connotes the idea of warding off an evil or the doing of something that cannot be avoided or something which it is one’s legal duty to do.” On the other hand, in *Palaniappa Chetti v Devasikamony*<sup>14</sup> Their Lordships of the Judicial Committee while discussing the meaning of the expression “benefit to the estate” observed as follows: “It is impossible, Their Lordships think, to give a precise definition of it applicable to all cases and they do not attempt to do so. The preservation, however, of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portions from injury or deterioration by inundation, these and such like things would obviously be benefits. The difficulty is to draw the line as to what are, in this connection, to be taken as benefits and what not.”

When there is a risk of the Debutter property being sold for non-payment of Government revenue or in execution of a decree lawfully obtained against the Debutter estate, or when there is a threat of flood or inundation which might damage the properties, the Shebait, if he alienates a portion of the property for the purpose of raising money to avoid these evils would

10 LR 27 IA 69.

11 LR 37 IA 147.

12 Vide *Hemanta Kumari v Sri Sri Iswar Sridhar Jew*, 50 CWN 629.

13 23 MLJ 638 at p. 642.

14 LR 44 IA 147.



ANNEXURE 'D'

GAZETTEER

85

OF THE

PROVINCE OF OUDH.

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1877.

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Brahma, the creator. The population is 2,365, of whom 85 are Musalmans. There are 10 masonry houses and 529 of mud.

**AJGAON—Pargana MOHAN AURAS—Tahsil MOHAN—District UNAO.—**

This is merely a large village, situated at the north-west end of the pargana, on the banks of the Sai, and about three miles to the south of Aurás. It belongs to a family of Rajputs, of the Janwár tribe, who are said to have founded it on their way from Sultanpur to Nimsár-Misrikh to bathe. The same story is current about all the Rajput colonizations in this part of the country, and probably merely means that they came about the same time. It would then be some ten generations ago, or (say) 250 years,—at the commencement of the seventeenth century. There is an extensive *dih* in the centre of the village, which is said to have belonged to the Lodhs. The masses of broken brick that cover it speak of a different people or different customs and circumstances than those of its present inhabitants. The population is 3,481, who are mostly Hindus, and all of the agricultural classes. The place is noted for the fine tobacco leaf grown here.

A Government school is established, at which the attendance is 24. Of the population, 59, are Musalmans.

**AJODHYA\*—(Ajodhya)—Pargana HAWELL OUDH—Tahsil FYZABAD—**

**District FYZABAD.**—A town in the district of Fyzabad, and adjoining the city of that name, is to the Hindu what Mecca is to the Muhammadans, Jerusalem to the Jews; it has in the traditions of the orthodox a highly mythical origin, being founded for additional security, not on the transitory earth, but on the chariot wheel of the Great Creator himself. It lies  $26^{\circ} 47'$  north latitude and  $82^{\circ} 15'$  east longitude, on the banks of the Gogra. The name Ajodhya is explained by well-known local pandits to be derived from the Sanskrit words—*ajud*, unconquished; also *Aj*, a name of Brahma.—‘The unconquerable city of the creator.’ But Ajodhya is also called Oudh, which in Sanskrit means a promise; in allusion, it is said, to the promise made by Rám Chandar when he went in exile, to return at the end of fourteen years. These are the local derivations; I am not prepared to say to what extent they may be accepted as correct. Dr. Wilson of Bombay thinks the word is taken from *yudh*, to fight, ‘The city of the fighting Chhattis.’

**Area.**—The ancient city of Ajodhya is said to have covered an area of 12 *jojan* or 48 *kos*, and to have been the capital of Uttar-Kausála or Kosála (the northern treasure), the country of the Súrjábans race of kings, of whom Rám Chandar was fifty-seventh in descent from Rája Manu, and of which line Rája Sumitra was the one hundred and thirteenth and last. They are said to have reigned through the Satya, Treta, and Dwapar *yugs*, and two thousand years of the *Kali* or present *yug* or era.

With the fall of the last of Ráma's line, Ajodhya became a wilderness, and the royal races became dispersed. From different members of this scattered people, the rajas of Jaipur, Udaipur, Jamber, &c., of modern times, on the authority of the “Tirhút Katha,” claimed to descend. Even in the days of its desertion, Ajodhya is said still to have remained a comparative paradise; for the jungle by which it was overrun was the

\* By P. Carnegie, Esq., Commissioner.

Rahma, the creator. The population is 2,365, of whom 85 are Musalmans. There are 10 masonry houses and 529 of mud.

**AJGAON—Pargana MOHÁN AURÁS—Tahsil MOHÁN—District UNAO.**—This is merely a large village, situated at the north-west end of the pargana, on the banks of the Sai, and about three miles to the south of Aurás. It belongs to a family of Rajputs, of the Janwár tribe, who are said to have founded it on their way from Sultanpur to Nímsár-Misrikh to bathe. The same story is current about all the Rajput colonizations in this part of the country, and probably merely means that they came about the same time. It would then be some ten generations ago, or (say) 250 years,—at the commencement of the seventeenth century. There is an extensive *dih* in the centre of the village, which is said to have belonged to the Lodhs. The masses of broken brick that cover it speak of a different people or different customs and circumstances than those of its present inhabitants. The population is 3,481, who are mostly Hindus, and all of the agricultural classes. The place is noted for the fine tobacco leaf grown here.

A Government school is established, at which the attendance is 24. Of the population, 59, are Musalmans.

**AJODHYA\*—(Ajodhya)—Pargana HAWELL GUDH—Tahsil FYZABAD—District FYZABAD.**—A town in the district of Fyzabad, and adjoining the city of that name, is to the Hindu what Mecca is to the Muhammadans, Jerusalem to the Jews; it has in the traditions of the orthodox a highly mythical origin, being founded for additional security, not on the transitory earth, but on the chariot wheel of the Great Creator himself. It lies 26° 47' north latitude and 82° 15' east longitude, on the banks of the Gogra. The name Ajodhya is explained by well-known local pandits to be derived from the Sanskrit words—*ajud*, unvanquished; also *Aj*, a name of Brahma.—'The unconquerable city of the creator.' But Ajodhya is also called Oudh, which in Sanskrit means a promise; in allusion, it is said, to the promise made by Rám Chandar when he went in exile, to return at the end of fourteen years. These are the local derivations; I am not prepared to say to what extent they may be accepted as correct. Dr. Wilson of Bombay thinks the word is taken from *yudh*, to fight, 'The city of the fighting Chhattis.'

**Area.**—The ancient city of Ajodhya is said to have covered an area of 12 *jojan* or 48 *kos*, and to have been the capital of Uttar-Kausála or Kosála (the northern treasure), the country of the Súrajans race of kings, of whom Rám Chandar was fifty-seventh in descent from Rája Manu, and of which line Rája Sumitra was the one hundred and thirteenth and last. They are said to have reigned through the Satya, Treta, and Dwapar *yugs*, and two thousand years of the *Kali* or present *yug* or era.

With the fall of the last of Ráma's line, Ajodhya became a wilderness, and the royal races became dispersed. From different members of this scattered people, the rajas of Jaipur, Udaipur, Jamber, &c., of modern times, on the authority of the "Tirhút Katha," claimed to descend. Even in the days of its desertion, Ajodhya is said still to have remained a comparative paradise; for the jungle by which it was overrun was the

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\* By P. Carnegie, Esq., Commissioner.

sweet-smelling Keora, a plant which to this day flourishes with unusual luxuriance in the neighbourhood.

Then came the Buddhist supremacy under Asoka and his successors; a Brahmanical revival then supervened. With this period the name of Bikramájít is traditionally and intimately associated, when Buddhism again began to give place to Brahmanism.

To Bikramájít the restoration of the neglected and forest-concealed Ajodhya is universally attributed. His main clue in tracing the ancient city was, of course, the holy river Sarju, and his next was the shrine, still known as Nágeshwar-náth, which is dedicated to Mahádeo, and which presumably escaped the devastations of the Buddhist and Atheist periods. With these clues and aided by descriptions which he found recorded in ancient manuscripts, the different spots rendered sacred by association with the worldly acts of the deified Ráma were identified, and Bikramájít is said to have indicated the different shrines to which pilgrims from afar still in thousands half-yearly flock.

*Rámkot.*—The most remarkable of those was, of course, Rámkot, the stronghold of Rám Chandar. This fort covered a large extent of ground, and, according to ancient manuscripts, it was surrounded by twenty bastions, each of which was commanded by one of Rám's famous generals after whom they took the names by which they are still known. Within the fort were eight royal mansions, where dwelt the Patriarch Dasrath, his wives, and Rám, his deified son.

*Samundra Pál Dynasty.*—According to tradition, Rája Bikramájít ruled over Ajodhya for eighty years, and at the end of that time he was outwitted by the Jogi Samundra Pál; who, having by magic made away with the spirit of the rája himself, entered into the abandoned body; and he and his dynasty succeeding to the kingdom, they ruled over it for seventeen generations, or six hundred and forty-three years, which gives an unusual number of years for each reign.

*The Sribástam Dynasty.*—This dynasty is supposed to have been succeeded by the trans-Gogra Sribástam family, of which Tilok Chand was a prominent member—a family which was of the Buddhist or Jain persuasion, and to which are attributed certain old *deoharas*, or places of Jain worship, which are still to be found in Ajodhya, but which are of modern restoration. It was probably against the Sribástam dynasty that Sayyad Sálár made his ill-starred advance into Oudh, when, in the earliest Muhammadan invasion, he and his army left their bones to bleach in the wilds of Bahraich. (See *Chronicles of Unao*, pages 83 to 85.) But the hold of the trans-Gogra rulers of Ajodhya was soon after this lost, and the place passed under the sway of the rájas of Kanauj. Their power, however, according to hazy tradition, seems for a time to have been successfully disputed by the Magadha dynasty, whose temporary rule is still acknowledged.

*The Kanauj Dynasty.*—Subsequently to this, the Muhammadans made another partial advance into Hindustan, in alliance with Kanauj, whose rája it again restored to sovereignty; but in these parts this

sovereignty was altogether repudiated, and minor local rulers sprang up throughout the land, and a period of territorial confusion then prevailed, which was only finally terminated by the Muhammadan conquest. A copper grant of Jai Chand, the last of the Kanauj Ráthors, dated 1187 A. D., or six years before his death, was found near Fyzabad, when Colonel Caulfield was Resident of Lucknow. (See *Asiatic Society's Journal*, Volume X, Part I, 1861.)

Sir H. Elliot mentions that on the occasion of Bikramájít's visit to Ajodhya, he erected temples at three hundred and sixty places rendered sacred by association with Ráma.

Of these shrines but forty-two are known to the present generation, and as there are but few things that are really old to be seen in Ajodhya, most of these must be of comparatively recent restoration. There are also six *mandirs* of the Jain faith, to which allusion has already been made. It is not easy to over-estimate the historical importance of the place which, at various times and in different ages has been known by the names of Kosála, Ajodhya, and Oudh; because it may be said to have given a religion to a large portion of the human race, being the cradle alike of the Hindu and the Buddhist faith.

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

Again, it is in Ajodhya that we still see pointed out the birth-place of the founder, as well as of four others of the chief hierarchs of the Jain faith. Here it was that Rikhabdeo of Ikshváku's royal race matured the schism, somewhat of a compromise between Brahmanism and Buddhism, with which his name will ever be associated.

It may be observed that the Chinese traveller, Hwen Thsang, found no less than twenty Buddhist monasteries, with three thousand monks at Ajodhya, in the seventh century, and also a large Brahmanical population with about twenty of their temples; so that, after the revival of Brahmanism, the idea of monasteries was probably borrowed from the Buddhists; or, may it not have been that whole monasteries went from the one faith to the other, as they stood? If a Gaur Brahman in these days can legitimately supervise a Jain temple, it seems just possible that the sectarian feelings of the Brahmanists, and Buddhists, and Jains of former times, were less bitter than we are liable to suppose.

*The monastic orders.*—There are seven *akháras*, or cloisters, of the monastic orders, or *Bairágis* disciples of Vishnu, in Ajodhya each of which is presided over by a *mahant* or abbot; these are—

1. *Nirbáni* or Silent sect, who have their dwelling in Hanomán Garhi.

2. The *Nirmohi*, or Void-of-affection sect, who have establishments at Rām Ghāt and Guptār Ghāt.

3. *Digambari*, or Naked sect of ascetics.

4. The *Khāki*, or Ash-besmearers devotees.

5. The *Mahānirbāni*, or literally Dumb branch.

6. The *Santokhi*, or Patient family.

7. The *Niralambhi*, or Provisionless sect.

The expenses of these different establishments, of which the first is by far the most important, are met from the revenues of lands which have been assigned to them, from the offerings of pilgrims and visitors, and from the alms collected by the disciples in their wanderings all over India.

*The Nirbāni sect.*—I believe the mahant of the *Nirbāni Akhāra* or

- |                     |   |
|---------------------|---|
| 1. Kishan Dāsi.     | many as three of four hundred are generally in attend-  |
| 2. Tulsi Dāsi.      | ance, and to whom rations are served out at noon daily. |
| 3. Mani Rāni.       |   |
| 4. Jānkisaran Dāsi. | The present incumbent has divided his followers into    |
- four *thaks* or parties, to whom the names of four disciples, as marginally noted, have been given.

There are in this sect—*first*, lay-brothers, *second* anchorites; the former do not abandon the world, the latter first make a round of the sacred places, Dwārka, Jagannāth, Gya, and are then admitted to full brotherhood: celibacy is enforced—all castes are admitted, but Brahmans and Chhattis have two exceptional privileges, they are admitted over the age of sixteen and they are exempted from servile offices.

*Nirmohi sect.*—It is said that one Gobind Dās came from Jaipur some two hundred years ago, and having acquired a few bighas of revenue-free land, he built a shrine and settled himself at Rām Ghāt. Mahant Tulsi Dās is the sixth in succession. There are now two branches of this order, one at Rām Ghāt, and the other occupying the temples at Guptār Ghāt. They have rent-free holdings in Basti, Mankapur, and Khurdabad.

*The Digambari sect.*—Sri Balrām Dās came to Ajodhya two hundred years ago, whence it is not known, and having built a temple settled here. Mahant Hira Dās is the seventh incumbent. The establishment of resident disciples is very small, being limited to fifteen; they have several revenue-free holdings in the district.

*The Khāki sect.*—When Rām Chandar became an exile from Ajodhya, his brother Lachhman is said, in his grief, to have smeared his body with ashes and to have accompanied him. Hence he was called *Khāki*, and his admiring followers bear that name to this date. In the days of Shujā-ud-daula, one mahant, Daya Rām, is said to have come from Chitarkot, and having obtained four bighas of land, he thereon established the *akhāra*, and this order of *Bairāgis* now includes 180 persons, of whom 50 are resident and 130 itinerant. This establishment

has some small assignments of land in this, and in the Gonda district. Rám Dás, the present mahant, is seventh in succession from the local founder of the order.

*The Mahánirbáni sect.*—Mahant Parsotam Dás came to Ajodhya from Kota Búndi in the days of Shujá-ud-daula, and built a temple at Ajodhya. Dayál Dás, the present incumbent, is the sixth in succession. He has twenty-five disciples, the great majority of whom are itinerant mendicants. The word Mahánirbáni implies the worshipping of God without asking for favours, either in this world or the next.

*The Santokhi sect.*—Mahant Rati Rám arrived at Ajodhya from Jaipur in the days of Mansúr Ali Khan, and building a temple founded this order. Two or three generations after him the temple was abandoned by his followers, and one Niddhi Singh, an influential distiller in the days of the ex-king, took the site and built thereon another temple. After this, Khushál Dás of this order returned to Ajodhya and lived and died under an Asok tree, and there the temple, which is now used by the fraternity, was built by Rámkishan Dás, the present head of the community.

*The Niralamhí sect.*—Sri Birmal Dás is said to have come from Kota, in the time of Shujá-ud-daula, and to have built a temple in Ajodhya, but it was afterwards abandoned. Subsequently Narsingh Dás of this order erected a new building near Darshan Singh's temple. The present head of the fraternity is Rám Sewak, and they are dependent solely on the offerings of pilgrims.

*The Janamasthán and other temples.*—It is locally affirmed that at the Muhammadan conquest there were three important Hindu shrines, with but few devotees attached, at Ajodhya, which was then little other than a wilderness. These were the "Janamasthán," the "Swargaddwár mandir" also known as "Rám Darbár," "Treta-ke-Thákur."

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

The Janamasthán marks the place where Rám Chandar was born. The Swargaddwár is the gate through which he passed into paradise, possibly the spot where his body was burned. The Treta-ke-Thákur was famous as the place where Ráma performed a great sacrifice, and which he commemorated by setting up there images of himself and Síta.

*Bábar's mosque.*—According to Leyden's *Memoirs of Bábar*, that Emperor encamped at the junction of the Serwa and Gogra rivers two or three kos east from Ajodhya, on the 28th March 1528, and there he halted seven or eight days, settling the surrounding country. A well-known hunting ground is spoken of in that work, seven or eight kos above Oudh, on the banks of the Sarju. It is remarkable that in all the copies of Bábar's life now known, the pages that relate to his doings at Ajodhya are wanting.



In two places in the Bábari Mosque, the year in which it was built, 935 H., corresponding with 1528 A. D., is carved in stone, along with inscriptions dedicated to the glory of that Emperor.

If Ajodhya was then little other than a wilderness, it must at least have possessed a fine temple in the Janamasthán; for many of its columns are still in existence and in good preservation, having been used by the Musalmans in the construction of the Bábari Mosque. These are of strong, close-grained, dark-colored or black stone, called by the natives *kasauti* (literally touch-stone slate,) and carved with different devices. To my thinking these more strongly resemble Buddhist pillars than those I have seen at Benares and elsewhere. They are from seven to eight feet long, square at the base, centre and capital, and round or octagonal intermediately.

*Hindu and Musalman.*—The Janamasthán is within a few hundred paces of the Hanomán Garhi. In 1855, when a great rupture took place between the Hindus and Muhammadans, the former occupied the Hanomán Garhi in force, while the Musalmans took possession of the Janamasthán. The Muhammadans on that occasion actually charged up the steps of the Hanomán Garhi, but were driven back with considerable loss. The Hindus then followed up this success, and at the third attempt took the Janamasthán, at the gate of which seventy-five Muhammadans are buried in the "martyrs' grave" (*Ganj-i-Shahídán*.) Eleven Hindus were killed. Several of the King's regiments were looking on all the time, but their orders were not to interfere. It is said that up to that time the Hindus and Muhammadans alike used to worship in the mosque-temple. Since British rule a railing has been put up to prevent disputes, within which, in the mosque, the Muhammadans pray; while outside the fence the Hindus have raised a platform on which they make their offerings. A second attempt was made shortly afterwards by Molvi Amír Ali of Amethi; the object was to seize the alleged site of an old mosque on the Hanomán Garhi.

The two other old mosques to which allusion has been made (known by the common people by the name of *Naurang Shah*, by whom they mean Aurangzeb) are now mere picturesque ruins. Nothing has been done by the Hindus to restore the old *mandir* of Rám Darbár. The Treta-ke-Thákur was reproduced near the old ruin by the Rája of Kálu, whose estate is said to be in the Panjáb, more than two centuries ago; and it was improved upon afterwards by Aholya Báí, Marathin, who also built the adjoining ghát, A. D. 1784. She was the widow of Jaswant Ráe, Holkar of Indor, from which family Rs. 231 are still annually received at this shrine.

*The Jain Hierarchs.*—The generally received opinion of this sect is, that they are a branch of the Buddhists who escaped the fate of the orthodox followers of Gautama in the eighth and ninth centuries, by conforming somewhat to Brahmanism, and even helping to persecute the Buddhists. Hence many Jains acknowledge Shiva, and in the south are even divided into castes. The precise period of the schism is unknown. The Jains recognize twenty-four Jenas or *tirthankáras*, or hierarchs, and in this they resemble the Hindus.



FYZABAD

A GAZETTEER

BEING

VOLUME XLIII

OF THE

DISTRICT GAZETTEERS OF THE UNITED  
PROVINCES OF AGRA AND OUDH,

BY

H. R. NEVILL, I.C.S.



ALLAHABAD:

PRINTED BY F. LUKER, SUPDT., GOVT. PRESS, UNITED PROVINCES.

1905.

Price Rs. 3 (4s.).

whether a permanent missionary will be retained at the station.

The Wesleyan Methodist Mission first commenced work in this district in 1876, but till 1880 this was confined to the English community. In the latter year vernacular mission work was started at Goshainganj and in 1883 the Reverend J. A. Elliott was appointed to Fyzabad, a post which he has held ever since. At Fyzabad the mission possesses a substantial church, a mission house, a large boarding school for native girls and a zanana mission house for English ladies working in the district. There are outstations at Amaniganj, Raunahi, Bhadarsa, Darshannagar, Goshainganj, Akbarpur, Tanda, Iltifatganj, Baria-wan, Baskhari and Jalalpur, as well as at Rudauli in Bara Banki. The work of the mission has been largely directed towards education and in addition to the boarding school the mission maintains two *parda-nashin* schools in the city, while instruction is also privately given in the zananas. Several schools are maintained at the outstations and in 1897 an orphanage for girls was erected at Akbarpur. Since 1899 efforts have been made to secure industrial occupation for poor Muhammadan women of good family in Fyzabad—a measure which has been attended with considerable success. Evangelistic work is conducted both at Fyzabad, where open-air services are held in the Chauk, and at the outstations. At the present time the mission employs 51 native agents and maintains eleven schools. The income raised locally in 1903, including Government grants, amounted to Rs. 7,231.

Hindu  
sects.

Hinduism in this district is naturally influenced in a large degree by the presence of Ajodhya, the birthplace of Rama, so that it is only to be expected that the Vaishnavite form should predominate. The census returns show, however, that the professed followers of Vaishnavism amount to only a small proportion of the Hindu population. No more than 7.7 per cent. were returned as Vaishnavites and 5.5 per cent. as Ramanandis. In both cases the proportions are high, but still the great mass of the Hindus appear to belong to no particular sect, as is generally the case throughout Oudh.

Monastic  
orders.

Among the numerous Faqirs whose home is at Ajodhya there are many Bairagis, who are included in the Vaishnavites.

These Bairagis belong to regularly constituted religious bodies and are divided among seven different *akharas* or orders. The disciples have to pass through a series of stages, which are identical in all cases. They are admitted while under the age of sixteen, although the rule is relaxed in the case of Brahmans and Rajputs, who also enjoy other privileges, especially in the matter of exemption from menial service. The first stage is known as *chhora* and lasts for three years: the work of the novice consists of servile offices, such as cleaning the smaller utensils of the temple and of the common mess, carrying wood, and performing *puja path*. The second stage is also for three years and is known as *bandagidar*. The disciple now draws water from the well, cleans the larger vessels, cooks the food, as well as doing *puja*. At the expiration of this period there follows a third stage of equal duration, known as *hurdanga*. In this the work consists in taking the daily food to the idols, distributing the daily rations given at midday to the brethren, doing *puja* and carrying the *nishan* or temple standard. In the tenth year the disciple enters on a fourth period of three years called *naga*. During this stage he leaves Ajodhya with his contemporaries and goes the round of all the *tiraths* or sacred places of India, subsisting all the time on mendicancy. At his return, he reaches the fifth and final stage called *atithi*, which continues till his life's end. He now ceases to work, except in the matter of *puja path*, and is provided with food and clothing.

The seven orders have a regular system of precedence which is observed in ceremonial processions and on similar occasions. In front come the Digambaris, followed by the Nirbanis on the right and the Nirmohis on the left. In the third rank behind the Nirbanis march the Khakis on the right and the Niralambris on the left; and after the Nirmohis come the Santokhis and Mahanirbanis in the same order. Between each body a space is left, both in front and on the flanks. The Digambaris or naked ascetics are said to have been founded by one Balram Das, who came to Ajodhya over two hundred years ago and built a temple here. The present head of the college is the eleventh mahant. The order is a small one, as the number of resident brethren is limited to fifteen; it is on the other hand possessed of considerable

Digam-  
baris.

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wealth, having several revenue-free holdings in Gorakhpur and two villages, Puraina in tahsil Fyzabad and Kalupur in Tanda, recently purchased in this district. The largest community is that of the Nirbanis, who live in the celebrated Hanuman Garhi temple. They are very numerous, but there are not more than 250 resident disciples who obtain daily rations. The Nirbanis are divided into four *thoks* or *pattis*, which go by the names of Hardwari, Basantia, Ujainia and Sagaria, each with its own mahant; but over all is a single presiding mahant, chosen by common consent, who occupies the *gaddi* in the verandah in front of the temple. The Nirbanis are very wealthy: besides owning revenue-free lands in Fyzabad, Gonda, Basti, Partabgarh and Shahjahanpur, they carry on an extensive business as money-lenders and dealers in elephants, and have purchased several villages with the proceeds. Their revenue from the offerings made by pilgrims is also very large. The Nirbhohi sect claim spiritual descent from one Gobind Das of Jaipur. They formerly held the Janamasthan temple in Ramkot, the remains of which still belong to them; but on its destruction by the Musalmans they moved to Ramghat. Subsequently a quarrel arose among them on a question of succession and a split occurred, a branch leaving Ramghat and settling at Guptarghat. The mahant of the Ramghat branch is the ninth in succession from the founder. The Nirbhohis of Guptarghat have some revenue-free lands in Basti, Mankapur and Khurdabad, but the others are wholly dependent on the temple offerings. The name signifies "void of affection."

The Khaki or ash-besmeared *akhara* was established in the days of Shuja-ud-daula by one Daya Ram from Chitrakot, who obtained four *bighas* of land in Ajodhya and built thereon a temple. The order numbers 180 persons, of whom 50 are resident and the rest itinerant. The present head is eleventh in succession from the founder. The Khakis own some land in Basti and hold the lease of one village in Gonda. The sect called Niralam-bhis, or provisionless, dates from the same period, having been founded by Birmal Das of Kotah, who came to Ajodhya and built a temple which was afterwards abandoned. One of his successors, Narsingh Das, erected a new temple near that of Darshan Singh. The fraternity is a small one and depends solely on the offerings

Nirbanis.

Nirbhohis.

Khakis.

Niralam-bhis.

of pilgrims. The Santokhis or patient faqirs are a small and poor sect without any endowment. The *akhara* was founded in the time of Safdar Jang by Rati Ram of Jaipur, who built a temple in Ajodhya. This was subsequently abandoned and the site taken for another temple by Niddhi Singh, an influential Kalwar in the days of Wajid Ali Shah. After this, one Khushal Das of the Santokhi sect returned to Ajodhya, and his successor, Ramkishan Das, built the present temple. In 1900 the mahant died and for some time the *akhara* was deserted and no successor appointed. Lastly come the Mahanirbanis or dumb faqirs, the word implying worship without asking for favours either in this world or the next. The present mahant is the seventh in succession from the founder, one Parsotam Das, who came to Ajodhya from Kotah Bundi in the reign of Shuja-ud-daula, and built a temple. There are twenty-five brethren, the majority of whom are itinerant mendicants.

Santokhis.

Mahanirbanis.

According to the census returns of 1901 the Hindu population comprises representatives of an unusually large number of castes. They amounted in all to ninety-six, while in the case of 2,381 persons no caste was specified. Many of these indeed are numerically of little importance: in forty instances there were less than one hundred persons enumerated; eleven others had under 500 members, and of the rest an equal number under two thousand. On the other hand, no fewer than 23 castes occur with a strength exceeding 10,000 persons apiece—a remarkably large number; while the remainder were found in numbers varying from two to nine thousand. It is only to be expected that among so great a variety and in a district so densely populated several castes should be found in numbers exceeding the general average for Oudh, but there are few which are either peculiar to Fyzabad or which are not to be found in some or all of the adjoining districts.

Castes.

The Chamars are by far the strongest caste numerically in the district, numbering 171,729 souls, or 15·8 per cent. of the total Hindu population. They are far more common in the Tanda and Akbarpur tahsils than in the west of the district, and are fewest in Bikapur. Most of them are engaged in agriculture, chiefly as labourers on the holdings of high caste tenants, although a considerable number occupy land in their own names.

Chamars.

None of them, however, hold proprietary rights in any village of the district.

**Brah-  
mans.**

Next come the Brahmans, who are again unusually numerous, having in all 164,759 representatives in 1901, or 15·16 per cent. of the Hindu population. Over 50,000 were found in the Bikapur tahsil, but elsewhere they are very evenly distributed. They are more numerous in Fyzabad than in any other part of Oudh except Gonda, and almost all of them belong to the Sarwaria subdivision, the rest being chiefly Sakaldipis and Kanaujias. Many of the Brahmans follow the religious profession, but the majority of them are engaged in agriculture. As tenants they hold land at favoured rates, generally about 25 per cent. less than that paid by low caste cultivators; but as they mainly rely on hired labour their profits are no greater than those of the less favoured castes. As proprietors they hold more land than any other caste except the Rajputs; but this is chiefly owing to the fact that a single Sakaldipi, the Maharaja of Ajodhya, owns the largest estate in the district. He is the only Brahman taluqdar; but at the last settlement 49,834 acres were held by Brahman zamindars and pattidars in different parganas. They chiefly prevail in the Bikapur tahsil and in Mangalsi and Akbarpur. Of the various Brahman communities the most land is held by Tiwaris and Pandes, while Upaddhyas, Misrs, Dubes and Shukuls own large numbers of small mahals. In former days the Brahman possessions were more extensive, as is evidenced by the fact that they still hold 64,190 acres in sub-settlement; their superior right having passed during the last century to the taluqdars, although much of their land was seized by other Brahmans in the persons of the Rajas of Mabdauna.

**Ahirs.**

The third place is taken by the Ahirs, who are exceptionally numerous in this district, amounting at the time of the last census to 148,571 souls or 13·67 per cent. of the total number of Hindus. They are fairly evenly distributed throughout the four tahsils, but are most numerous in Bikapur. They are almost without exception engaged in agriculture and are cultivators of a high order. Their proprietary holdings are very small and are confined to six minute mahals in the Mangalsi, Khandausa and Birhar parganas, amounting at the time of the last

settlement to only 63 acres; they, however, own 446 acres in sub-settlement. The fourth place is occupied by Kurmis, who numbered 74,191 persons or 6.82 per cent. of the Hindus—a figure which is small in comparison with the districts to the north and west, but which is far higher than in Sultanpur. The Kurmis stand in the foremost rank of the cultivators, and tenants of this caste are always in request, although they have to pay a high rent. They are the chief growers of sugarcane and generally devote their attention to the more valuable staples. They own a small amount of land, 756 acres in all at the time of the last settlement, comprising 13 mahals, chiefly in the Tanda, Haveli and Mangalsi parganas. Like most of the castes they have lost at the hands of the taluqdars, but retain 1,670 acres in sub-settlement.

Rajputs, though they hold the fifth place in point of numbers, are the most important caste in the district. At the last census they numbered 67,522 persons or 6.21 per cent. of the Hindu population. Their distribution is fairly even, but they occur in greatest strength in the western parganas of the district. They are a purely agricultural and landowning caste, and as tenants hold their lands on terms very similar to those of the Brahmans. As proprietors they own more land than any others, being in possession of no less than 544,726 acres or nearly half the entire district at the time of the last assessment. In addition to this, they held 126,065 acres in sub-settlement, although much of this is included in the properties of taluqdars of the same caste. The Rajputs of Fyzabad belong to a great number of clans. Those having the most representatives are the Bais, amounting to 17,509 persons in all and residing chiefly in the Bikapur tahsil and pargana Mangalsi; Chauhans, principally in Bikapur; Bisens, who are mainly confined to the same tahsil, where they still hold large estates; Surajbansis, Panwars, Palwars, Raghubansis, Raikwars and Bachgotis, the last including their kinsmen, the Rajkumars, who have overflowed into this district from Sultanpur. Some account of the principal clans will be given later in dealing with the various taluqas, while reference to the chief colonies in different parts of the district will be found in the pargana articles.

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