

II. POSSESSION AND POSSESSORY TITLE (ISSUE NO. 2, 3 AND 8 OF OOS NO. 3 OF 1989)

16. In respect of possession and possessory title, following issues have been framed:-

Issue No. 2. Does the property in suit belong to the plaintiff No.1?

Issue No. 3. Have plaintiffs acquired title by adverse possession for over 12 years?

Issue No. 8. Have the rights of the plaintiffs extinguished for want of possession for over 12 years prior to the suit?

17. Reasonings and findings

(a) Issue No. 2, 3 and 8

Sudhir Agarwal J (Para 4481-4482 Page 2846 Vol III) (Para 2994 -3024 Vol II Page 1662 - 1673) (Para 3025- 3075 Vol II Page 1673-1690)

D.V. Sharma J (Page 3494 Vol III)

S.U. Khan J. Issue Not specifically decided issue No. 2, but decided issue No. 3 and 8 (Pg 109, Vol.1)

Submissions

18. The claim of the property "belonging" to the plaintiff in the plaint is based on two fold submissions - (i) that the property belongs to the plaintiff in the capacity of Manager/shebait. And (ii) that the Plaintiff being in possession acquires possessory title in view of section 110 Evidence Act and is entitled to be and continue in possession unless the defendant can show a better title than the Plaintiff.

19. **Nature of the property** - it is undisputed and has been found by all the three judges that the property in question was land locked while deciding issue No. 19(b) in OOS No. 4 of 1989.

Sudhir Agarwal J (Para 4060-4063 Page 2508 Vol II and Para 4066-67 Page 2520)

D.V. Sharma J (Page 3494 Vol III)

S.U. Khan J. Issue not specifically decided therefore should be deemed to agree with Sudhir Agarwal, J.

20. The Learned Judges have however differed on the issue of its effect. It is stated that the not only the disputed structure was landlocked but also surrounded by numerous Hindu structures which have been found by the Jus. S.U. Khan as well as Jus. Sudhir Agarwal to be in possession of the Nirmohi Akhara (as is evident from the Relief and the final decree granted). Jus. D.V. Sharma has not made a separate distinction between Hindus and Nirmohi Akhara and held that the said structures as well as the Outer courtyard were in possession of the Hindus generally (findings on issue No. 11 13, 14, 19(a), 19(c) (page 3378, 3454) and 19(b) (Page 3036) and hence his findings regarding possession by Hindus generally, in view of categorical

observation by both Jus. S.U. Khan as well as Sudhir Agarwal must be held to be referable to the Nirmohi Akhara.

21. It is stated that the stated express case of the Plaintiff - Nirmohi Akhara that it was the Shebiat/manager of the Janma Sthan as well as the Idols of Lord Ram, Lakshman, Hanuman and Saligram installed in the Disputed Structure (See Para 2 and 3 of the Plaintiff) in the main temple in the Inner Courtyard. There is specific pleading of the plaintiff qua inner courtyard which is described in the Plaintiff as the "Main temple". At no point of time any other rival claimant has ever claiming shebiatship or a right of management of the Deities. With regard to the Shebait of Plaintiff No. 1 and 2 of OOS No. 5 of 1989, it has been noticed by Jus. 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 plaintiff 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."

22. The Janma Asthan as well as the deities has been in existence from times immemorial and the High Court has also found that the plaintiff No. 1 - Nirmohi Akhara has been in existence atleast from 1734 AD. 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 outside to under central dome of the disputed structure. It is undisputed by the defendants that the Nirmohi Akhara was managing the affairs of the Idols when they were situate on the Chabutra, hence the inevitable conclusion has to be that the plaintiff was managing the affairs even when the deities were placed under the Central Dome.

"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 partiesbut 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 Plaintiff). Thus the first part is factually incorrect. The second part is an admission of the undisputed position that the priest of the Nirmohi Akhara was managing the affairs. The observation thereafter, despite the the earlier observations of the undisputed position, is unjustified especially since 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 who took possession on 5.1.1950.

23. Thus it cannot be disputed that for last innumerable years the Nirmohi Akhara was managing the affairs of the deities especially when it is the only institution in the immediately nearby vicinity in the outer courtyard itself which locked the Inner courtyard was 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.

24. Additionally, the High Court has drawn an artificial distinction between the Inner Courtyard and the Outer Courtyard. It is submitted that the inner and the outer courtyard together comprised and constituted a single building. The access to the Inner Courtyard was only through the Outer Courtyard, which had two gates - Hanmat Dwar and later the Singh Dwar. A distinction had to be made by the Plaintiff in its plaint since only the said "part" of the building was put under attachment. The plaintiff continued to be in possession of the Outer Courtyard and therefore the suit was confined to the Inner Courtyard or the Main temple. It has been observed by the High Court that the plaintiff has not placed documentary material in respect of the "Inner Courtyard"

Thus, for possession the evidence produced has to be analysed on the following basis:-

- (a) The suit of the Plaintiff Nirmohi Akhara is in respect of the "Inner Courtyard" or the Main Temple of Ram Janmbhumi. The said Main temple is land locked and surrounded by the Outer Courtyard and the only access to the said area is through the Outer Courtyard alone. The plaintiff has been found on the basis of material produced to be in possession of undisputed structures in the outer courtyard.
- (b) The Outer Courtyard was not a subject matter of dispute until the U.P. Sunni Central Board of Waqfs filed OOS No. 4 of 1989 on 18.12.1961. The said outer courtyard was also not under attachment either under section 145 Cr. P. C., or later by the interim order of the Civil Court. The outer courtyard continued to remain in possession of the plaintiff Nirmohi Akhara even after filing of suit OOS No. 4 of 1989.
- (c) **Exhibit 49 (Suit-4)(Hindi - Vol II Page 1667 Para 3004(C) and English - Vol II Page 1435 Para 2372)** which is a copy of the Nakal Khasra Abadi, of Plot No. 583 Kot Ram Chandra, pergana Haveli Awadh, Tahasil and District Faizabad of 1931 A.D. (which the plot of the disputed area), the name of Mahant Raghubar Das, Mahant of Nirmohi Akhara was directed to be mutated in place of Ram Charan Das by order dated 6th February, 1941. The property is described as a "Masjid" but in possession of Mahant Raghubar Das. The revenue record, may not be a conclusive material of title but undoubtedly is proof of possession. It is stated that there is no material that the said revenue entry was ever challenged by any of the Muslim Parties or the U.P. Sunni Central Board of Waqfs. Thus entire plot No. 583 has to be found to be possessed by the Nirmohi Akhara.
- (e) Thus the Appellant - Nirmohi Akhara must be held to be in "Settled Possession" of the disputed area.

- (f) Assuming the evidence produced by the Muslim Parties to suggest that they, after the 1934 Riots, they used to visit the place under police protection for prayers on Fridays is to be accepted, it would be not change the legal character of possession of the plaintiff being in settled possession and such intermittent infringement of possession which according to that evidence also stood "restored" after the prayers cannot lead to a conclusion of "joint possession" of the Hindus with the Muslims.
- (g) On the contrary, the fact that the Muslims had to take police protection for the Friday prayers would show that they were not in possession and there was undoubtedly an infringement and unequivocal threat since 1934 and hence they ought to have filed a suit for possession within 12 years. It is stated that having failed to file a suit, title if any was lost and got extinguished under section 28 of the Limitation Act, 1908.

26. Documentary Evidence

- (i) Exhibit 5 (Suit-3) (Page 51-52 Nirmohi Akhara Volume-1) is a copy of the letter dated 6.2.1961 submitted by Vedanti Rajaram Chandracharya to the City Magistrate, Faizabad since despite permission of the Nagar Palika, Faizabad to place a tin shed in the outer courtyard i.e. the outer portion of the Janma Bhumi, the police was preventing and was asking the Akhara to produce permission from the City Magistrate. By this letter a request was made to City Magistrate to issue necessary clarification.
- (ii) Exhibit 2 (Suit-3) (Page 45-46 Nirmohi Akhara Volume-1) is a copy of the order dated 9.2.1961 of City Magistrate, Faizabad issued no objection to the replacement of the Canvas or Sikri cover "if it is made on applicants own land which may not be under attachment".

Note: Until 18.12.1961 (i.e. filing of OOS No. 4 of 1989), there was no dispute regarding the outer courtyard.

- (iii) Exhibit 6 (Suit-3) (Page 53-59 Nirmohi Akhara Volume-1) is a copy of the application dated 27.9.1950/29.12.1950 against the order passed by the City Magistrate under Section 145 Cr.P.C. in which the plaintiff had claimed possession of inner as well as the outer courtyard.
- (iv) Exhibit 3, 4 (Suit-3) (Page 47-50 Nirmohi Akhara Volume-1) Permissions for constructions in the outer courtyard from the Nagar Palika.
- (v) Exhibit 8 (Suit-3) (Page 66-70 Nirmohi Akhara Volume-1) 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 - Sita Koop just outside the outer courtyard)

- (vi) Exhibit 9 (Suit-3) (Page 71-74 Nirmohi Akhara Volume-1) 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 Hanmat Dwar in the outer courtyard)
 - (vii) Exhibit 10 (Suit-3) (Page 75-78 Nirmohi Akhara Volume-1) 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 Hanmat Dwar in the outer courtyard)
 - (viii) Ex A-3 (Suit-4) - Supurdagi Nama (Suit-4) (Page 9 Nirmohi Akhara Volume-2) by which possession was taken over. The description of the building in Sl. No. 5 shows existence of Nirmohi Akhara in the Outer courtyard.
 - (ix) Ex 29 (Suit-1) - Copy of Order dated 12.10.1866 by Dy. Commissioner Faizabad, Khemdas of Nirmohi Akhara for opening of the Singh Dwar on the North Side (near Sita Rasoi).
 - (x) Ex 16 (Suit-1) - Copy of the order dated 13.12.1877 in appeal against the order dated 12.10.1966 filed by Md. Asgar (Misc. Application No. 56) by which the appeal was dismissed by the Commissioner, Faizabad.
27. The High Court has additionally considered other documents also:-
- (a) **In relation to Construction of Chabutra in the Inner Courtyard (in 1858)**
 - (i) (Para 2317-19 Page 1363-1366 Ex 20 (Suit-1) - Complaint dated 30.11.1858
 - (ii) (Para 2321 Page 1366-1368 Ex 21 (Suit-1) - Report in relation to the above complaint
 - (iii) (Para 2322 Page 1366-1368 Ex 22 (Suit-1)
 - (iv) (Para 2324 Page 1369 Ex A-70 (Suit-1)
 - (b) **In relation to construction of a Kothri inside the compound of Mosque (1866)**
 - (i) (Para 2347 Page 1394 Ex A-13 (Suit-1) A complaint Mir Rajab Ali construction fo Kothri
 - (ii) (Para 2348 Page 1397 Ex 29 (Suit-1) A complaint consigned to record.
 - (c) **In relation to construction of second Gateway (Singh Dwar) - 1877**
 - (i) (Para 2352 Page 1404 Ex 30 (Suit-1) - A appealSyedMd. AsgarAli
 - (ii) (Para 2353 Page 1409 Ex 15 (Suit-1) - Report submitted to Commissioner
 - (d) **Suit filed by Md. Asghar against Raghubar Das for rent for the Chabutra and Takht**
 - (i) (Para 2362 Page 1409 Ex 24 (Suit-1) - Plaint of Md. Asghar (suit was dismissed Pg 1419 on 18.6.1883)
 - (e) **Application of Md. Asghar for whitewash (1883)**
 - (i) (Para 2363 Page 1419 Ex 18 (Suit-1) - application dated 18.11.1883
 - (ii) (Para 2364 Page 1419 Ex 34 (Suit-1) - Order dated 12.1.1884 Ast. Commissioner.
 - (iii) (Para 2365 Page 1419 Ex 27 (Suit-1) - Order dated 22.1.1884 Ast. Commissioner.
 - (iv) (Para 2366 Page 1420 Ex 28 (Suit-1) - Complaint by Raghubar Das for spot inspection alleging violation by Md. Asghar

(f) **Suit - 1885 - filed by Raghubar Das seeking Construction permission on Chabutra**
 (i) (Para 2367 to 2371)

(g) **After 1934 Riots - permission given to Muslims for Cleaning and repairs**

(i) (Para 2373 - Page 1435 Ex A-49 (Suit-1))

(ii) (Para 2375 to 2378 - Complaint by contractor regard payment for construction done by him at and around Masjid.

28. The documents filed were considered upto Para 2395 Page 1452 and none of the documents either Pre-1934 or post 1934 show or suggest any Namaz being held in the building in question as found in Para 2395. The specific case setup by the Muslim Parties in OOS No. 4 of 1989 is that they were offering Namaz on every Friday after 1934 riots which is not established from any of the aforesaid documents. Oral Evidence was considered by the Court from Para 2456 (Page 1466 Vol II) till Para 2546 (Page 1499) and in Para 2546 it was found that the oral evidence produced by the Muslim Parties was not sufficient to establish last prayer being held on 16.12.1949 or 22.12.1949.
29. In **Para 2548 (Page 1501)** the stand taken by the State authorities that the inner courtyard used to remain under lock and opened 2-3 hours on Fridays for offering prayers has been noticed but it has been stated that no witness has been produced on behalf of the State Authorities.
30. In **Para 2549 (page 1501)** reference has been made to a report of the Waqf Inspector of 10.12.1949 Ex A-63 (Suit 1) which on the contrary shows that no namaz was being permitted by the Hindus.
31. In **Para 2550 (Page 1504)** there is a reference to a report dated 23.12.1949 (Ex A-64 (Suit-1)) wherein a reference has been made for the first time of a namaz on the Fridays. However the said report does not mention about the dates when such a namaz was held. It is claimed that Key of the Masjid is with the Muslims, but it is not clear as to who was holding the said keys or who opened up the locks of the Masjid as claimed. It is stated that on the basis of this sole letter it appears that a conclusion has been drawn in **Para 2551** with regard to Friday Namaz. The said conclusion is unsustainable even by an extreme stretch. Thereafter in **Para 2552 and 2558** it is noticed that an apparently tentative finding has been given:-

2552. DW 2/1-2 Ram Saran Srivastava has stated on the basis of the official record that the premises of inner courtyard kept in lock and allowed to be opened only on Friday for Jumma namaz for about 2-3 hours during which period cleaning and namaz used to be accomplished. **This is also fortified from the document exhibit A-64 (Suit-1), which is a report of the Waqf Inspector.** The other documents, which we have earlier referred to, also show that occasionally on certain days Adhan (ajjan) was called in the disputed building. On the contrary, no reliable evidence could be placed by the defendants that no Muslim ever entered building in dispute i.e. inner courtyard from 1934 or earlier till the night of 22nd/23rd December 1949. **Therefore, while the visit of Hindu public in the inner courtyard and worship during the entire period has been proved, simultaneously it also cannot be said that the Muslims could never enter the disputed building for offering namaz at any point of time since 1934 and onwards.**

“2558. So far as the inner courtyard is concerned, we have already held that atleast on Friday, if not regularly, then occasionally, muslims had visited disputed building and that visit obviously could be for offering namaz. The official documents, proved by the defendants witness DW 2/1-2 Sri Ram Saran Srivastava show that Friday namaz used to be observed therein. OPW-9 has also admitted that both communities used to worship in the inner courtyard. We find no reason to disbelieve it. But here is not a case of exclusive possession since the defendant Hindu parties and Hindus in general had also been visiting inner courtyard for darshan and worship according to their faith and belief, hence, it can be said that the inner courtyard *was virtually used jointly by the members of both the communities*, may be to a large extent by the Hindus since Ayodhya is one of the most prominent, sacred and reverend place for Hindus, being the city of Lord Rama, and the place in dispute, they believe to be the birthplace of Lord Rama, it cannot be doubted that must have been visited in a very large number everyday, swollen multi-fold on special occasions of fares that is Ramnavami etc. The importance of Ayodhya from the point of view of Hindus has fairly been accepted and admitted by many of the witnesses of even the plaintiffs (Suit-4) i.e. muslims parties though same thing is not applicable for others. If Hindu people were already visiting the inner courtyard and the disputed building for worship etc., we do not find any occasion of dispossession of muslims from the premises in dispute or discontinuation of possession as a result whereof somebody else has taken possession in order to attract Art. 142. The only thing which is claimed to have occurred on 22/23 December, 1949, is the placement of idol which according to OPW 1 and some other witnesses is mere shifting of idols of Sri Ram Chandra from the outer courtyard (Ram Chabutara) to inner courtyard. This placement of idol by itself cannot be termed as dispossession of muslims from the inner courtyard or the disputed building in the light of the meaning of 'dispossession' as we have discussed above. This is also not covered by the phrase "discontinuation of possession". It is probably for this reason that in the entire plaint there is not even a whisper that the muslim parties or the muslims or the plaintiffs were dispossessed or discontinued of possession by anyone on any particular date. The averments are different. Most of the witnesses have admitted that since the idols were kept inside the building, they did not go to the disputed building on and after 23 December, 1949. In this view of the matter we do not find that Art. 142 even has any application in this case

32.

33.

RE Shebiati Rights

Evidence

(a) PW-1 : Mahant Paramhans on whose information (page 58 Vol I OPW-1) - Witness on behalf of Plaintiff of Suit-5

Finding

Para 2133

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