

4/9/2019
(I)**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NOS. 10866-10867 OF 2010****IN THE MATTER OF: -**

M. Siddiq (D) Thr. Lrs.

... Appellant

VERSUS

Mahant Suresh Das & Ors. etc. etc.

... Respondents

AND**OTHER CONNECTED CIVIL APPEALS**

**NOTE ON CONCLUSIONS DERIVED FROM PLEADINGS IN
SUIT NO. 3 OF 1989 & CIVIL APPEAL NO. 4908 OF 2011**

BY**DR. RAJEEV DHAVAN, SENIOR ADVOCATE**

ADVOCATE-ON-RECORD: EJAZ MAQBOOL

**NOTE ON CONCLUSIONS DERIVED FROM PLEADINGS IN SUIT
NO. 3 OF 1989 & CIVIL APPEAL NO. 4908 OF 2011**

After reading the pleadings and the Civil Appeal, the following points are clear:

- 1. The only claim is against the State and against the Section 145 Order**
 - i. See prayer at Pg. 52 of Volume 72 (Pleadings Volume)- which seeks removal of the Defendant No. 1 i.e. the Receiver from the management and charge of the said temple.
- 2. The claim is for management and possession of the temple.**
 - i. See prayer at pg. 52 of Volume 72 (Pleadings Volume)
- 3. The suit was restricted only to inner courtyard.**
 - i. See Para 3 of the plaint at pgs. 49-50 of Volume 72 (Pleadings Volume)
 - ii. See Volume II of the Impugned Judgment at pg. 1662 at para 2994.
- 4. Earlier Hindus were worshipping at the Ram Chabutara, in the outer courtyard.**
 - i. See Volume I of the Impugned Judgment at pg. 1114 at para 1706
 - ii. See Volume II of the Impugned Judgment at pg. 2521 at para 4072
 - iii. See Volume II of the Impugned Judgment at pg. 2522 at para 4078
- 5. On the intervening night of December 22-23, 1949, the idol was shifted from Ram Chabutara (in the outer courtyard) to Central Dome (in the inner courtyard).**
 - i. See Volume I of the Impugned Judgment at pg. 1114 at para 1706
 - ii. See Volume II of the Impugned Judgment at pg. 2521 at para 4072

iii. See Volume II of the Impugned Judgment at pg. 2522 at para 4078

6. No averment that the central dome was the birth place.

7. Nirmohi as Shebait has been deprived of the management and charge of the property.

i. Para 7, 8 & 14 at pages 51 of Volume 72 [Pleadings Volume]

8. Shebaitship has been denied to them.

9. Even in the new temple (if built by Nyas), Nirmohi will remain the Shebait.

i. Nirmohi would not contest locus of next-friend to file Suit 5 if Plaintiffs of Suit 5 do not question the Shebait Right of Nirmohi. [Point No.1 of Stand of Nirmohi Akhara on the maintainability of Suit 5 of 1989]

ii. Nirmohi being Shebait can independently maintain the suit and that relief for restoration of charge & management of the temple cannot be categorized as a relief against the temple for which it can be permitted to be represented through a disinterested next friend. [Point Nos. 2& 3 of Stand of Nirmohi Akhara on the maintainability of Suit 5 of 1989]

10. Nirmohi has first stated that the term Janam Asthan is a completely meaningless phrase, later it has accepted that Janam Asthan is a juridical entity

i. See Para 4 of Written Statement at pg. 262 of Volume 72 [Pleadings Volume]

ii. See para 1B at pg. 8 of the Civil Appeal No. 4905-4098 [Volume 89]

iii. See para (g) at pg. 9 of the Civil Appeal No. 4905-4098 [Volume 89]

11. Disowned Mahant Raghubar Das, then accepted him

i. Disowned:- See Replication of Nirmohi at para 17-19 at pgs. 69-70 of Volume 72 [Pleadings Volume]; See Written Statement of Nirmohi (in Suit 4) at para 6 at pg. 110 of Volume 72 [Pleadings Volume]

- ii. Accepted:- See para 964 at pg. 797 of Volume 1 of the Impugned Judgment.
- iii. In written submissions, at one place Nirmohi states Raghubar Das had filed the 1885 suit in representative capacity, but at the same time it states that the said suit and other suits of where Raghubar Das has been impleaded shows the possession of Nirmohi. [Pg. 58 of Written Submissions]

12. Though, it has been held by Justice Sudhir Agarwal, that Nirmohi (Plaintiff) was not entitled to any relief, outer courtyard has been given in the possession of Nirmohi

- i. See Volume III of the Impugned Judgment at pg. 2868 at para 4556-67
- ii. See Volume III of the Impugned Judgment at pg. 2871 at para 4566 (iii)- Ram Chabutara, Sita Rasoi & Bhandar given exclusively to Nirmohi, holding that *they shall be entitled to possession thereof in the absence of any person with better title*. [Note:- Justice Khan also allots Ram Chabutara and Sita Rasoi to Nirmohi on the basis of Joint possession- See pg. 116 in Volume I of the Impugned Judgment]
- iii. See Volume III of the Impugned Judgment at pg. 2871 at para 4566 (iv)- Outer Courtyard will be shared by deities and Nirmohi since it was used by Hindus generally for worship.