

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**

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**SUMMARY NOTE
ON
PRELIMINARY SUBMISSIONS
BY
DR. RAJEEV DHAVAN, SENIOR ADVOCATE**

ADVOCATE-ON-RECORD: EJAZ MAQBOOL

PRELIMINARY SUMMARY

The Preliminary arguments were as follows :

- A. There was no discernable methodology which qualifies for the evidentiary reasonable balance test

This was presented earlier in Submission on Methodology.

(Submission No. A45)

- B. The Hindu and Muslim law applicable will be Indo-Anglian British law as continued by Article 372 of the Constitution:

This is established by earlier Submissions on:

- i. Justice, Equity and Good Conscience;

(Submission No. A43)

- ii. Case Compilation especially the case of Mullick v. Mullick;

(Submission No. A44)

- iii. Articles by Dhavan (so kindly accepted by the Court for ancillary support.)]

(Submission No. A55)

- C. It is wrong to assert that after 1950, Hindu and not Muslim law applied in a manner consistent with secularism.

This is established by the Submission on secularism in response to Mr. H. Jain's argument and includes reference to the Constituent Assembly Debates and case law on secularism.

(Submission No. A47)

- D. It is submitted that in the Vedic period there were no temples though reverence was given to wells, tanks, rivers, trees as a source of livelihood.

Further, the juristic personality of an idol was for limited purposes. Only the shebait had an exclusive right to sue on behalf of the deity to the exclusion of the deity except that an appropriate next friend could sue if there was a default on the part of the shebait or in a situation where a conflict of interest is precipitated

This was established by reference to the Submissions on (a) BKMukherjea and (b) Kane. **(Submission No. A49, A52)**

E. While the Hindus had a flexible concept of swatyam (ownership) , in Indian law it has to be applied as defined by modern Indian law The older law was demonstrated by reference to The Article by Derrett. **(Submission No. A50)**

F. Specific submissions were made on the nature of

a) Res nullius

Compilation on res nullius had been separately submitted.

(Submission No. A48)

b) Parens patriae

Compilation on parens patriae has been separately submitted.

(Submission No. A51)

G. The Places of Worship Act 1991 was referred to show:

a) the cut -off of 15 August 1947 in all cases other than Babri- Ayodhya

b) This case based on concepts of swayambhu should not provide basis for challenge to this statute

[see Compilation of Statutes by M. Siddiqui]

(Submission No. A69)