

**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 &amp;Ors. etc. etc.

... Respondents

**AND****OTHER CONNECTED CIVIL APPEALS****SUBMISSIONS IN REPLY TO SUIT 1 OF 1989****BY DR. RAJEEV DHAVAN, SENIOR ADVOCATE**

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ADVOCATE ON RECORD:EJAZ MAQBOOL

**SUBMISSIONS ON SUIT NO. OOS NO.1 OF 1989**

**I. PRELIMINARY:**

1.1 Suit No.1 was filed by Gopal Visharad, Advocate on 16<sup>th</sup> January, 1950 (*substituted on 28.12.1989 by Rajendra Singh*) seeking declaration for entitlement to worship at the disputed site by going near the idol; and permanent injunction against the State Authorities-Defendants No. 6 to 9 and Sunni Wakf Board-Defendant No. 10 from removing idols of Lord Ram Chandraji. Defendant No. 1 to 5 passed away-No one was substituted in their place.

1.2 The suit was amended to insert para 6A and B in the suit to the effect that original plaintiff has passed away and present plaintiff has religious rights like his father, thus he has right to pursue the suit. Further as per order dated 17.10.1988 Defendant No.10 Sunni Waqf Board was allowed to be impleaded as party and relief was therefore also claimed against it.

**II. BASIC ARGUMENTS ADVANCED:**

2.1 The basic arguments advanced by the Plaintiff are as follows:-

- i. The place in dispute is Ram Janam Bhumi.
- ii. The plaintiff in Suit OOS No.1 of 1989 is not contesting Suit OOS No.5 of 1989, which is not in conflict with Suit No.1. In fact, Mr. Ranjit Kumar, Senior Advocate adopted the submissions of Mr. C.S. Vaidyanathan, Senior Advocate and Mr.Parasaran, Senior Advocate.
- iii. *Res judicata* is confined to Ram Chabutara.
- iv. Heavy reliance was placed on the 14 Affidavits filed by twenty Muslims in the proceeding under Section 145 Cr.P.C. which are filed as Exhibit 1 to Exhibit 14 in the present suit.
- v. The plaintiff's right to worship was never taken away and it was continuous.
- vi. The following cases has been cited by Plaintiff:
  - a) *Nar Hari Shastri vs. Shri Badrinath Temple Committee*, 1952 SCR849: AIR 1952 SC 245.
  - b) *Shastri Yagnapurushdasji vs.MuldasBhundardas Vaishya*, (1966) 3 SCR 242: AIR 1966 SC 1119.
  - c) *Bala Shankar Maha Shankar Bhattjee vs. Charity Commr. Gujarat State*, 1995 Supp (1) SCC 485.
  - d) *Most Rev. P.M.A Metropolitan vs. Moran Mar Mathoma*, 1995 Supp (4) SCC 286.
  - e) *M.P. Gopalakrishnan Nair vs. State of Kerala*, (2005) 11 SCC 45.
  - f) *Adi Saiva SivachariyargalNala Sangam vs. State of T.N.*, (2016) 2 SCC 725.

- 2.2 It is submitted that a detailed reply to the submission made by Mr. C.S. Vaidyanathan, Senior Advocate and Mr. Parasaran, Senior Advocate has already been given. Further the issue of *res judicata* will be dealt with by Mr. Naphade, Senior Advocate.
- 2.3 As far as the 14 affidavits of the Muslim persons of Ayodhya filed in the Section 145 Cr.P.C. proceedings are concerned, it is submitted that since the authors of these affidavits have not been cross examined and they are also not party to the proceedings individually, they cannot be relied on. Even in the impugned judgment the said affidavits have been held to be unreliable. [Para. No. 3020 at Pg. No. 1672 of Vol. II]
- 2.3 A detailed analysis of the Pleadings, Exhibits, Witnesses of Suit 1 and the cases cited during the arguments is provided hereinafter.

### III. SUBMISSIONS ON PLEADINGS OF SUIT OOS NO.1.

#### A. PLAINT

- 3.1. The following paragraphs from the Complaint of Shri Gopal Singh Visharad are relevant [pgs. 1-7, Running Volume 72]:-
- Plaintiff has been worshipping and having darshan of Lord Shri Ram Chandra Ji and Charan Paduka (foot impressions) etc. in that place of Janambhumi. [Para 2 @ pg. 2, Running Volume 72]
  - On 14 January, 1950, the employees of Defendant No. 6 -9 (State of UP and its officials) prevented the plaintiff from going inside the place where idol of Shri Ram Chandra Ji were placed. These officials were influenced in this regard by the Muslim parties (Def 1-5). [Para 3 @ pg. 2, Running Volume 72]
  - Defendant No.6 through its employees Defendant No. 7 to 9 are putting pressure on Hindu public that they will remove the idols of Lord Shri Ram Chandra Ji. [Para 4 @ pg. 3, Running Volume 72]
  - Cause of action has arisen on 14<sup>th</sup> January 1950. [Para 6 @ pg. 4, Running Volume 72]
  - Original Plaintiff passed away on 28.12.1989. Present plaintiff is his legal representative. The present plaintiff has right to pursue. Defendants No. 1 to 5 also passed away and there was no need to substitute anyone in their place. [Para 6A @ pg. 4-5, Running Volume 72]
  - As per order dated 17.10.1988 Defendant No.10 (UP Sunni Waqf Board) is being made the party and relief is also sought by the plaintiff against it. [Para 6B @ pg. 5, Running Volume 72]

g. The Prayer was:

- ❖ A declaration that the Plaintiff according to his custom is entitled to do worship without any let/hindrance by Defendants No.6 -10 (State Parties and Sunni Wakf Board)
- ❖ Permanent and perpetual injunction against Defendant No. 1-10 (i.e Muslim parties, State authorities and Sunni Wakf Board) from removing the idols from the place. [Para 8 @ pg. 5-6, Running Volume 72]

#### B. WRITTEN STATEMENT: MUSLIM PARTIES

- *Written Statement of Defendant Nos. 1-5.*

- 3.2 Written Statement was filed by the Muslim Parties – Defendant Nos 1-5 (this does not include Sunni Wakf Board) on 21.2.1950.
- 3.3 The following are relevant paragraphs from the Written Statement of Defendant Nos. 1-5 [pgs. 8-17]:-
  - a. The suit property is not Janambhumi but a mosque constructed by emperor Babar Shah. [Para 2 @ pg 9, Running Volume 72]
  - b. Mosque was constructed by Babar Shah through his Minister Mohammad Mir Baqi and was dedicated as a waqf. [Para 9 @ pg 9-10, Running Volume 72]
  - c. Grant was given by Babur. Nawab of Awadh continued it after enhancing to Rs.302 and 6 annas. British Government continued it, however, instead of cash, land at Sholapuri and Behranpur were granted. [Para 10 @ pg. 10, Running Volume 72]
  - d. In 1885, a suit was filed which was in the knowledge of all Hindus. In the said suit Plaintiff filed a map in which mosque has been depicted and relief has been claimed only in respect of Chabootra. Ld. Sub Judge Sahab Bahadur Faizabad on 24 December 1885 dismissed the suit. [Para 11-14 @ pg. 10-11, Running Volume 72]
  - e. Under Muslim Waqf Act 1936, Chief Commissioner Waqf decided that mosque was constructed by Babar and as per law, the Mosque was a Sunni Waqf. [Para 15 @ pg. 12, Running Volume 72]
  - f. Muslims have been in possession of the mosque as a wakf property since 1528. The Muslims have been in possession of the property for more than 400 years (which is more than 12 years period required for adverse possession) and thus again Hindus have no right, whatsoever, on the suit property. [Para 16 @ pg. 12, Running Volume 72]
  - g. Plaintiff never had possession, therefore suit is not maintainable. [Para 17 @ pg. 13, Running Volume 72]



- h. Plaintiff has not established ownership. [Para 19 @ pg. 13, Running Volume 72]
- i. Plaintiff has not filed any application under Order 1 Rule 8 C.P.C so as to be able to represent the entire Hindu community. [Para 20@ pg. 13, Running Volume 72]
- j. Plaintiff has not complied with Section 80 C.P.C and has not given notice to the state authorities. [Para 21@ pg. 13, Running Volume 72]
- k. Uptil 16.12.1949 the Namaz was offered and at that time there was no idol. [Para 22@ pg. 13-14, Running Volume 72]
- l. Institution of proceedings under Section 145 Cr.P.C. has been done to help the opposite parties. [Para 25 @ pg. 14-15, Running Volume 72]
- m. Another Janamsthan temple exists in Ayodhya since a long time and this shows that the claim that Babri Masjid was the Janamasthan was false. [Para 27@ pg. 14-15, Running Volume 72]

• **Written Statement of Defendant No. 10 (Sunni Waqf Board).**

3.4 UP Sunni Waqf Board was made a party to the present proceedings on 17.10.1988 and it filed written statement on 24.02.1989. The relevant portion of the Written Statement of Defendant Nos. 10 is as follows [Pgs. 37-47, Running Volume 72]:-

- a. Property in suit is not a birthplace of Lord Ram and is a mosque known as Babri Masjid and constructed during the regime of Babar. [Para 2@ pg. 37-38, Running Volume 72]
- b. No idols were kept in the said mosque prior to the incident of 22<sup>nd</sup> - 23<sup>rd</sup> December 1949. [Para 3 @ pg. 38, Running Volume 72]
- c. The mosque was constructed around 1528 AD during the regime of Babar under the supervision of Mir Baqi and same has always been used as mosque and never used as temple. [Para 10@ pg. 39, Running Volume 72]
- d. Originally a grant of Rs. 60 was given by Babur for the maintenance and annual repairs of the Mosque. The Nawab of Awadh continued the grant after enhancing it to Rs.302 and 6 annas. Subsequently even, British Government continued the grant, instead of cash land at Sholapur and Bahuranpur were granted. [Para 11@ pg. 40, Running Volume 72]
- e. Details of the 1885 suit were provided. [Para 12@ pg. 40-41, Running Volume 72]
- f. Under U.P. Muslim Waqf Act, 1936 survey was conducted by the Chief Commissioner and same was registered as waqf and a gazette notification issued. [Para 14@ pg. 41, Running Volume 72]

*[Note: Even though there was a technical lapse rendering this registration incomplete and inadequate, it represents an assertion of a right].*

- g. Muslim remained in possession of the Mosque from 1528 upto date of attachment. **[Para 15 @ pg. 41, Running Volume 72]**
  - h. The Mosque stands registered as Waqf No.26 Faizabad in the register of Waqf under UP Muslim Waqf Act 1960. **[Para 16@ pg. 42, Running Volume 72]**
  - i. The suit is barred by Limitation. **[Para 18@ pg. 42, Running Volume 72]**
  - j. Plaintiff has neither shown any personal claim nor title over the property. **[Para 19@ pg. 42, Running Volume 72]**
  - k. Plaintiff's suit is not in representative capacity. **[Para 20@ pg. 43, Running Volume 72]**
  - l. Muslims Regularly offering prayers in mosque upto 21.12.1949 and Friday prayer upto 16.12.1949. **[Para 22@ pg. 43, Running Volume 72]**
  - m. Manner in which the idols are said to have been kept in the night of 22<sup>nd</sup> /23<sup>rd</sup> December 1949 is not in accordance with Hindu Law and Jurisprudence and therefore could not confer right or title. **[Para 29@ pg. 45, Running Volume 72]**
  - n. Present Plaintiff Sri Rajendra Singh cannot claim those alleged rights set up by original plaintiff and as such suit cannot be continued. **[Para 30@ pg. 45, Running Volume 72]**
  - o. Instant suit is barred by the principles of res-judicata. **[Para 31@ pg. 46, Running Volume 72]**
  - p. Plaintiff is estopped from claiming mosque as plaintiff's predecessor has confined his claim to Chabootra. Further, there exists a Ram Janamsthan Mandir in northern side of property. **[Para 32@ pg. 46, Running Volume 72]**
- 3.5 Thereafter, on 05.12.1952, Gopal Singh Visharad filed his replication to the Joint Written statement filed by Defendant Nos. 1-5. In the replication, Gopal Visharad reiterates that the property in suit is the temple of Janam Bhumi and it has never been treated as Mosque since after 1934.

• **Replication by Plaintiff**

- 3.6 The following paragraphs from the Replication on 05.12.1952, to the Written Statement of Defendant Nos. 1-5 [pgs. 18-23]:-
- a. There had been evolution of idol of Shri Ram Chandra Ji as the suit property. It has not been a mosque since 1934. [Para 9 @ pg. 18, Running Volume 72]
  - b. Act No. 13 of 1936 is absolutely inapplicable. [Para 15 @ pg. 19, Running Volume 72]
  - c. The defendants had filed application under Order 1 Rule 8 C.P.C. [Para 20 @ pg. 20, Running Volume 72]
  - d. Defendant No. 1 to 5 have no right to raise objection with respect to Section 80 C.P.C. [Para 21 @ pg. 20, Running Volume 72]
  - e. No Namaz has been offered since after 1934. [Para 22 @ pg. 20, Running Volume 72]
  - f. Government Officials have specifically prevented the Hindu public and the Plaintiffs from entering into the site and performing worship there and this illegal act of the government is the base of this thing. [Para 23 @ pg. 21, Running Volume 72]
  - g. Plaintiff is an advocate. [Para 29 @ pg. 22, Running Volume 72]
  - h. Defendants claim that the disputed structure is Babri Mosque, yet no Muslim has managed to enter into the temple. [Para 31 @ pg. 22-23, Running Volume 72]

**C. WRITTEN STATEMENT: STATE AND OFFICIALS**

• **Written Statement of Defendant No. 6 (State of UP).**

- 3.7 The United Province, Uttar Pradesh Estate, Defendant No. 6 filed written statement on 25.04.1950:
- 3.8 The following paragraphs from the Written Statement of Defendant No. 6 [pgs. 24-27, running Volume 72] are relevant:
- a. No notice, as required by section 80 CPC, has been served and suit deserves to be dismissed. [Para 9 @ pg. 25, Running Volume 72]
  - b. Plaintiff has not described the property in suit. [Para 10 @ pg. 25, Running Volume 72]
  - c. The property in suit is known as Babri Mosque, and it has, for a long period been used as a mosque for the purpose of worship by Muslims. It has not been used as temple of Shri Ram Chandra Ji. [Para 12 @ pg. 25, Running Volume 72]

- d. On the night of 22<sup>nd</sup> December, 1949 the Idols of Shri Ram Chandraji were surreptitiously and wrongly put inside it. [Para 13 @ pg. 25, Running Volume 72]
- e. Magistrate attached the property and appointed Shri Priya Datt Ram, the receiver. [Para 17 @ pg. 26, Running Volume 72]
- f. This court has no jurisdiction to grant any injunction which may interfere in performance of public duties by a department of the government. [Para 19 @ pg. 27, Running Volume 72]

• **Written Statement of Defendant No. 8 (Additional City Magistrate).**

- 3.9 In Written Statement filed by Additional City Magistrate, Faizabad – [Defendant Nos. 8], it has been averred that a situation imperiling public peace and tranquility was created in December last. City Magistrate passed an order under Section 144 Cr.P.C. He attached the property and appointed receiver.
- 3.10 The following paragraphs from the Written Statement of Defendant Nos. 8 [pgs. 28-31] are relevant:-
  - a) No notice as required by section 80 CPC has been served and suit deserves to be dismissed. [Para 9 @ pg. 29, Running Volume 72]
  - b) Plaintiff has not described the property properly in this suit. [Para 10 @ pg. 29, Running Volume 72]
  - c) A situation imperiling public peace and tranquility was created in December end. [Para 12 @ pg. 29, Running Volume 72]
  - d) City Magistrate passed an order under Section 144 Cr.P.C. dated 29.12.49. [Para 13 @ pg. 29, Running Volume 72]
  - e) The case was of emergency and therefore the said property was attached and receiver was appointed. [Para 15 @ pg. 30, Running Volume 72]
  - f) This court has no jurisdiction to grant injunction which may interfere in performance of public duties. [Para 17 @ pg. 30, Running Volume 72]

• **Written Statement of Defendant No. 9 (Superintendent of Police)**

- 3.11 In the Written Statement filed by Superintendent of Police, Faizabad – [Defendant Nos. 9] on 01.05.1950, it has been averred that a situation imperiling public peace and tranquility was created in December end and therefore the City Magistrate passed an order under section 144 Cr.P.C. He attached the property and appointed receiver.

- 3.12 The following portions of the Written Statement of Defendant No. 9 are relevant: [pgs. 32-36, Running volume 72]
- a. No notice as required by Section 80 CPC has been served and suit deserves to be dismissed. [Para 9 @ pg. 33, Running Volume 72]
  - b. Plaintiff has not described the property in suit. [Para 10 @ pg. 33, Running Volume 72]
  - c. Property in suit is known as Babri Mosque, and it has, for a long period has been used as a mosque for the purpose of worship by Muslims. It has not been used as temple of Shri Ram Chandra Ji. [Para 12 @ pg. 33, Running Volume 72]
  - d. On the night of 22<sup>nd</sup> December 1949 the Idols of Shri Ram Chandraji were surreptitiously and wrongly put inside it. [Para 13 @ pg. 33, Running Volume 72]
  - e. Due to emergent situations, Magistrate attached the property and appointed Shri Priya Datt Ram, the receiver. [Para 17 @ pg. 34, Running Volume 72]
  - f. Any interference with their discretion would be prejudicial to the maintenance of public peace. [Para 18 @ pg. 35, Running Volume 72]
  - g. This Court has no jurisdiction to grant injunction which may interfere in performance of public duties by a department of the Government. [Para 19 @ pg. 35, Running Volume 72]

#### D. CONCLUSION DERIVED FROM THE PLEADINGS:

- 4.1 After reading the paragraphs of plaint the following points are clear:-
- a. The Plaint has been filed mainly against the State authorities as the main grievance is that the State authorities prevented the Plaintiff from worshipping inside the disputed structure.
  - b. The Plaint was filed to enforce a personal right of the Plaintiff i.e. the right to worship inside the disputed structure and thus, this right gets automatically extinguished on his death.
  - c. There was no mention that the exact place of birth of Lord Ram was under the central dome.
  - d. The Plaintiff has not even clearly mentioned if he had earlier done any worship inside the disputed structure and his entire grievance is :-
    - ❖ On 14.1.1950, he was prevented from going inside and praying at the place where the idols had been kept.
    - ❖ Pressure is being put by the State authorities to remove the idols from the disputed structure.

e. After reading the paragraphs of written statement of State and its Officials the following points are clear:-

- ❖ The State Government clearly stated that property in suit is known as Babri Mosque, and it has, for a long period, been used as a mosque for the purpose of worship by Muslims.
- ❖ It has not been used as temple of Shri Ram Chandra Ji.

#### IV. EXHIBITS AND RELEVANT DOCUMENTS FILED BY PLAINTIFF OF SUIT NO. 1 OF 1989

4.1 The following chart provides a detailed analysis of the exhibits filed by the Plaintiff:-

Date	Particulars	Comments
16.02.1950	<b>Exhibit No.1</b> Copy of the affidavit by Abdul Ghani dated 16.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr. PC. P.S. Ayodhya District Faizabad. [Pgs. 1-4/Vol. 87]  ❖ It is stated in this affidavit that Muslims people could read Namaz in the Mosque only on Friday. (Pg. 3) ❖ It has further been stated that the deponent has no objection if the mosque is handed over to the Hindus because reading of namaz at that place is against the sharah of Muslims. (Pg. 4)	<b>Findings/Observations in the Impugned Judgment:-</b> ❖ Justice Sudhir Agarwal has held that these affidavits are inadmissible and has observed that - <i>since author of the affidavit not cross examined and they are also not party to the proceedings individually. We have no benefit of testifying the correctness of the contents of the said documents. In the absence of any one available to prove the contents of the said documents, in our view, the same cannot be relied.</i> [Para. No. 3020 at Pg. No. 1672 of Vol. II]  ❖ Justice Sharma on the other hand has held these affidavits to be admissible evidence and has observed that - <i>affidavit in the proceedings under Section 145 Cr. P.C. case of 1949 have been filed under order of the Magistrate the same are admissible evidence.</i> [Pg. 3315, 3343 & 3352-53 of Vol. III]
3.2.1950	<b>Exhibit No.2</b> Copy of the affidavit of Hasnu & Wali Mohammad dated 3.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr. P.C. Rex Vs. R.J.B. & B.M. [Pgs. 5-8/Vol. 87]  ❖ It is stated in this affidavit that after gadar Muslims were continuing reading Namaz in the Mosque on the day of Juma. (Pg. 7) ❖ No objection if mosque is given to Hindus. (Pg. 8)	❖ Justice Khan has agreed with Justice Agarwal [Pg. 109/Vol. 1]

29.12.1950	<b>Exhibit No.3</b> Copy of affidavit filed by Hasnu dated 29.12.1950, in the Court of City Magistrate Faizabad U/s 145 Cr.P.C. [Pgs. 9-12/Vol. 87] <ul style="list-style-type: none"> <li>❖ It is stated in this affidavit that after gadar Muslims were continuing reading Namaz in the Mosque on the day of Juma. (Pg. 11)</li> <li>❖ No objection if mosque is given to Hindus. (Pg. 12)</li> </ul>	<b>Comment:-</b> It is submitted that these affidavits i.e. Exhibit Nos. 1 to 14 are not admissible in evidence under section 3 of the Indian Evidence Act. Also, none of deponents have appeared in the present proceedings in order to prove these statements made on affidavits.
11.2.1950	<b>Exhibit No.4</b> Copy of affidavit of Mohd. Umar dated 11.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr. P.C. [Pgs. 13-18/Vol. 87] <ul style="list-style-type: none"> <li>❖ It is stated in this affidavit that Muslim people could read Namaz in the Mosque only on Friday. (Pg. 17)</li> <li>❖ No objection if mosque is given to Hindus. (Pg. 18)</li> </ul>	
13.2.1950	<b>Exhibit No.5</b> Copy of affidavit of Ajeemullah dated 13.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr. P.C. [Pgs. 19-22/Vol. 87] <ul style="list-style-type: none"> <li>❖ It is stated in this affidavit that Muslim people could read Namaz in the Mosque only on Friday. (Pg. 21)</li> <li>❖ No objection if mosque is given to Hindus. (Pg. 22)</li> </ul>	
13.2.1950	<b>Exhibit No.6</b> Copy of affidavit filed by Latif dated 13.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr. P.C. [Pgs. 23-26/Vol. 87] <ul style="list-style-type: none"> <li>❖ It is stated in this affidavit that Muslim people could read Namaz in the Mosque only on Friday. (Pg. 25)</li> <li>❖ No objection if mosque is given to Hindus. (Pg. 26)</li> </ul>	

14.2.1950	<b>Exhibit No. 7</b> Copy of affidavit of Mohd. Husain dated 14.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr. P.C. [Pgs. 27-30/Vol. 87] <ul style="list-style-type: none"> <li>❖ It is stated in this affidavit that Muslim people could read Namaz in the Mosque only on Friday. (Pg. 29)</li> <li>❖ No objection if mosque is given to Hindus. (Pg. 30)</li> </ul>
16.2.1950	<b>Exhibit No.8</b> Copy of affidavit of Abdul Sattar dated 16.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr. P.C. [Pgs. 31-34/Vol. 87] <ul style="list-style-type: none"> <li>❖ It is stated in this affidavit that Muslim people could read Namaz in the Mosque only on Friday. (Pg. 33)</li> <li>❖ No objection if mosque is given to Hindus. (Pg. 34)</li> </ul>
16.2.1950	<b>Exhibit No. 9</b> Copy of affidavit of Ramzan dated 16.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr. P.C. [Pgs. 35-38/Vol. 87] <ul style="list-style-type: none"> <li>❖ It is stated in this affidavit that Muslim people could read Namaz in the Mosque only on Friday. (Pg. 37)</li> <li>❖ No objection if mosque is given to Hindus. (Pg. 38)</li> </ul>
16.2.1950	<b>Exhibit No. 10</b> Copy of affidavit of Hoshaldar dated 16.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr. P.C. [Pgs. 39-42/Vol. 87] <ul style="list-style-type: none"> <li>❖ It is stated in this affidavit that Muslim people could read Namaz in the Mosque only on Friday. (Pg. 41)</li> <li>❖ No objection if mosque is given to Hindus. (Pg. 42)</li> </ul>



16.2.1950	<b>Exhibit No.11</b> Copy of affidavit of Abdul Sakoor dated 16.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr. P.C. [Pgs. 43-46/Vol. 87]  ❖ It is stated in this affidavit that Muslim people could read Namaz in the Mosque only on Friday. (Pg. 45) ❖ No objection if mosque is given to Hindus. (Pg. 46)
16.2.1950	<b>Exhibit No.12</b> Copy of affidavit of Abdul Razal dated 16.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr. P.C. [Pgs. 47-50/Vol. 87]  ❖ It is stated in this affidavit that Muslim people could read Namaz in the Mosque only on Friday. (Pg. 49) ❖ No objection if mosque is given to Hindus. (Pg. 50)
14.2.1950	<b>Exhibit No.13</b> Copy of affidavit of Abdul Jaleel dated 14.2.1950, in the Court of City Magistrate Faizabad U/s 145 Cr. P.C. [Pgs. 51-54/Vol. 87]  ❖ It is stated in this affidavit that Muslim people could read Namaz in the Mosque only on Friday. (Pg. 53) ❖ No objection if mosque is given to Hindus. (Pg. 54)
11.2.1950	<b>Exhibit No.14</b> Copy of affidavit of Peeru dated 11.2.1950, filed before City Magistrate Faizabad in proceeding U/s 145 Cr. P.C. [Pgs. 55-60/Vol. 87]  ❖ It is stated in this affidavit that Muslim people could read Namaz in the Mosque only on Friday. (Pg. 59) ❖ No objection if mosque is given to Hindus. (Pg. 60)

13.12.1870	<p><b>Exhibit No. 30</b> Copy of memo of appeal dated 13.12.1870 before Commissioner against order dated 03.04.1877 passed by Dy. Commissioner. [Pgs. 136-144/Vol. 87]</p> <p>❖ On 3.4.1877, permission granted for construction of a gate on the Northern Side, i.e. the Singh Dwar, in the outer wall of the mosque. This permission was challenged by Mohd. Asghar</p>	<p><b>Finding/Observations in the judgment:-</b></p> <p>Justice Sudhir Agarwal has relied on these documents to show that prayer was constantly being done at the Ram Chabutara and has stated that these documents do not help the Muslim parties. [See para 1976 @ pg. 1235/Vol. 1 read with Para 1979-1984 and Para 1986 at pgs. 1236-1238/Vol. 1]</p> <p><b>Comment:-</b> It is relevant to note that the permission was not cancelled on the grounds of 'public safety'. This is evident from the following facts:-</p> <p>a) The Report of the Commissioner mentions that if the other door is not opened then human life would be endangered as there was great rush, [See pg. 65 of Vol. 87]</p> <p>b) The order of the Commissioner states that the other door was required in the interest of Public Safety. [See pg. 68 of Vol. 87]</p> <p>In any event, all these documents pertain to <u>outer courtyard which is beyond the scope of Suit 1</u>, which pertains only to the inner courtyard.</p>
13.12.77	<p><b>Exhibit No.15</b> Copy of the report of Deputy Commissioner Faizabad in compliance of Commissioner's order dated 14.05.1877 in Misc. Appeal No.56 decided on 13.12.77. [Pgs. 61-65/Vol. 87]</p> <p>When the aforesaid appeal was filed by Mohd. Asghar, a report was called for from the Deputy Commissioner, who took the view that the permission should not be cancelled as there was great rush and life would be endangered.</p>	
13.12.1877	<p><b>Exhibit No.16</b> Copy of the order of the Commissioner Faizabad dated 13.12.1877 in Mohd. Asgar Vs. Khem Das, Misc. Appeal No. 56. [Pgs. 66-68/Vol. 87]</p> <p>Commissioner Dismissed the Appeal of the Muslims preferred against opening of Gate in outer wall of Mosque. By saying that door in question was opened by Deputy Commissioner in the interest of Public Safety (Pg. 68)</p>	
18.6.1883	<p><b>Exhibit No.17</b> Copy of judgment dated 18.6.1883 passed by Sub Judge, Faizabad in case No.1374/943, Syed Mohd. Asghar Vs. Raghubar Das. [Pgs. 69-79/Vol. 87]</p> <p>In this case the dispute between Hindu and Muslim Parties was regarding share of rent in respect of sitting on the</p>	<p><b>Finding/Observations in the judgment:-</b></p> <p>Justice Sudhir Agarwal has relied on these documents to show that prayer was constantly being done at the Ram Chabutara and has stated that these documents do not help the Muslim parties. [See para 1976 @ pg. 1235/Vol. 1]</p>

	<p>platform (baithak of Chabutra) and Gaddinashini (TakhtNashni). (Pg. 75)</p> <p><b>[Reference in the Impugned Judgment:-</b>  <b>[Para. No. 2980 at Pg. No. 1658 of vol. II]</b></p>	<p><b>1 read with Para 1985-1986 at pgs. 1236-1238/Vol. 1]</b></p> <p>This document has also been relied upon by Justice Agarwal to conclude that the Muslims were unable to show possession from 1528 AD[See also Para 2980 at Pg. No. 1658 of vol. II]</p> <p><b>Comment:-</b>  This judgment shows that the dispute between Hindu and Muslim parties was in respect outer courtyard of the Babri Mosque and not Inner Courtyard. Thus this document is of no help to the Plaintiff of Suit 1 as the said suit pertains only to inner courtyard.</p>
2.11.1883	<p><b>Exhibit No.18</b>  Copy of the application of Mohd. Asghar dated 2.11.1883 in the Court of Assist. Commissioner Faizabad Mohd. Asgar Vs. Raghubar Das. [Pgs. 80-85/Vol. 87]</p> <p>This an Application by Mohd. Asgar (who was the Mutwalli of Babri Masjid) claiming that he is entitled to get the wall of mosque whitewashed but is being obstructed by Raghubar Das though he has right only to the extent of Chabutara and Rasoi.</p> <p><b>[Reference in the Impugned Judgment:-</b>  <i>An application was submitted by Mohd. Asgar as Mutwalli Masjid Babari claiming that he is entitled to get the wall of mosque whitewashed but is being obstructed by Raghubar Das though he has right only to the extent of Chabutara and Rasoi.</i></p> <p><b>[Para. No. 2363 at Pg. No. 1419; Para. No. 2981 at Pg. No. 1658; . No. 4092 (V) at Pg. No. 2540 and Pg. No. 2543 of Vol. II and Pg. No. 3062 of Vol. III].</b></p>	<p><b>Findings/Observations in the Judgment:-</b>  These documents have been discussed at Paras 2981-2982 (at pgs. 1658-59/Vol. II of the Impugned Judgment; see also Para 2363-2365 @ pgs. 1419-20/Vol. II of the Impugned Judgment) and have ultimately been used to deduce that the Muslim parties were unable to make good their plea of adverse possession and therefore Issue 7 (suit 1) was decided against the Muslim parties at para 2991 at (pg. 1661/Vol. II of the Impugned Judgment).</p> <p><b>Comment:</b>  i. This application shows that the dispute between Hindu and Muslim parties was in respect of the outer portion of the Babri Mosque. This application concerns only the pahtak&amp; the outer wall of the Babri Mosque and categorically states that for years the applicant has been renovating and repairing the outer wall of the mosque whenever the need arises and now the Defendants is obstructing the whitewash- and is stating that he will get the whitewash of the outer wall. [See pg. 84/Vol. 87]</p>

12.1.1884	<p><b>Exhibit No.34</b> Copy of the order dated 12.1.1884 passed by Asstt. Commissioner, Faizabad in Case No. 19435 in respect of Najool of Ram Janam Bhumi Pargana Haveli Awadh, FaizaadlMohd. Asghar Vs. Raghubar Das. [Pgs. 162-164/Vol. 87]</p> <p>In this order Mutawalli was directed to keep the outer door open. No lock will be allowed. It was further stated that this was absolutely essential to observe the strictest neutrality and maintain <i>status quo</i>.</p> <p><b>[Reference in the Impugned Judgment:-</b> <i>The outer door will be left open. No lock will be allowed upon it</i> [Para. No. 2364 at Pg. No. 1419 of Vol. II].</p>	<p>ii. This application shows that the entire compound was in the possession of the Muslims except for the fact that the Hindus used to visit the Ram Chabutara and Sita Rasoi. [Pg. 84/Vol. 87]</p> <p>iii. Further even the order of the Court restricts Raghubar Das from carrying out repairs in the internal as well as the outer portion of the compound, thus reinforcing the right of the Muslims. [Pg. 125/Vol. 87]</p> <p>iv. The Muslims were directed not lock the outer door of the compound- again showing that the Hindus were having access only to the outer courtyard. [Pg. 125]</p> <p>v. In view of the foregoing, it is clear that these documents show that the Muslims were in possession of the entire compound except Ram Chabutara and Sita Rasoi; it is therefore submitted that the finding of the Hon'ble High Court is erroneous to that extent.</p> <p>vi. Further these exhibits only show that the Hindus had access to the outer courtyard which is of no consequence since Suit 1 pertains only to inner courtyard.</p>
22.1.1884	<p><b>Exhibit No.27</b> Copy of the order dated 22.1.1884 in case No. 19435 by Asstt. Commissioner, Faizabad. [Pgs. 122-125/Vol. 87]</p> <p>This is the order on the aforementioned application of Mohd. Asghar. By virtue of this order it was Raghubar Das who was restrained from carrying out repairs etc. in the internal and outer part of the compound and Mohd Asghar was advised not to lock the outer door of the compound. (Pg. 125)</p> <p>[; Para. No. 2982 at Pg. Nos. 1658-1659 of Vol. II].</p>	

28.11.1858	<p><b>Exhibit No.19</b> Copy of report dated 28.11.1858 of Sheetal Dubey Thanedar Awadh (Case No. 384). [Pgs. 86-89/Vol. 87]</p> <p>In this case Sri Sheetal Dubey Thanedar Oudh forwarded a report stating that one Nihang Singh FaqirKhalsa organized Hawan and Puja of Guru Govind Singh and erected a symbol of Sri Bhagwan within the premises of Masjid and 25 people belonging to Sikh community were also present. (Pg. 89)</p>	<p><b>Findings/Observations in the Impugned Judgment:-</b> This document only shows worship by a non-Muslim inside the building in dispute. We find no help from the above document in support of the plaintiffs' case that the Muslims were offering Namaz in the building. The report does not say that erection of symbol and Havan and Puja by the said non-Muslim person was complained of by Muslims as obstructing in offering Namaz[Para. 2316 @ Pg. Nos. 1362- 1362 of Vol. II].</p> <p><b>Comment:-</b> It is submitted that the finding in the judgment that this exhibit reflects that puja was being done by Non-Muslims in the building in dispute is erroneous. It is relevant to note that this report of Thanedar only mentions that hawan was organized in the premises of Masjid-which could be anywhere in the compound, even the outer courtyard. Further this report shows that this was an illegal act of trespass by the members of the Sikh Community.</p>
30.11.1858	<p><b>Exhibit No.20</b> Copy of application /complaint dated 30.11.1858 of Mohd. Khateeb (in Case No.884). [Pgs. 90-94/Vol. 87]</p> <p>The Moazzin of Babri Masjid made an application in Case No.884 to demolish the earth chabutra which was constructed by one Nihang Sikh inside the building of the mosque and it prayed that a direction be issued to remove the symbol and idol from the Mosque installed by him.(Pg. 93-94)</p>	<p><b>Findings/ Observations in the Impugned Judgment:-</b></p> <ul style="list-style-type: none"> <li>❖ This exhibit is reproduced at para 2317 @ pgs. 1363-65/Vol. II of the Impugned Judgment.</li> <li>❖ Hindus have continuously offered prayer inside the disputed building as well as the premises in the inner courtyard as also at the Ram Chabutara and SeetaRasoi which was in the outer courtyard. It is not stated anywhere in the said application that Muslims ever offered Namaz in the disputed building or were obstructed.[Para. 2318 at Pg. 1366 of Vol. II]</li> <li>❖ It thus appears that in 1858 a Chabutara was constructed in the inner courtyard also and the complaint was made in respect thereto. Had the building in dispute and the inner courtyard been in</li> </ul>

		<p>possession of Muslims, such an act on the part of the Hindus could not have been possible at all. [Para. 2319 at Pg. 1366 of Vol. II]</p> <p><b>Comment:-</b> It is that this Faqir as well as the symbol erected by him was removed. [See order dated 10.12.1858 @ Para 2325 at pg. 1370/Vol. II of the Impugned Judgment]</p>
1.12.1858	<p><b>Exhibit No. 21</b> Copy of report dated 1.12.1858 of Sheetal Dubey Thanedar Awadh (Case No. 884). [Pgs. 95-98] ,</p> <p>Sri Sheetal Dubey forwarded a report stating that for summoning Nihang Singh Faqir, he went to him. He was admonished (for his act) but the said Faqir continued to insist that every place belonged to Nirankar. It is further stated that Neither he said a word about leaving the place he was illegally occupying nor left. (Pg. 98)</p>	<p><b>Findings/Observations in the Impugned Judgment:</b></p> <p>❖ These exhibits are reproduced at Para 2321 and 2322 at pgs. 1366-1368/Vol. II of the Impugned Judgment and thereafter another order and compliance report have been mentioned which are as follows:-</p> <ul style="list-style-type: none"> <li>• An order was passed to remove the Faqir on December 5, 1858. [Pg. 1360-1370/Vol. II of the Impugned Judgment]</li> <li>• A compliance report was filed by Sh. Sheetal Dubey, wherein it was stated that Faqir had been removed as well as the symbol erected by him was also removed. [Pg. 1370-71/Vol. 2 of the Impugned Judgment]</li> </ul>
06.12.1858	<p><b>Exhibit No.22</b> Copy of report dated 6.12.1858 of Thanedar Awadh (Case No. 884) [Pgs. 99-102/Vol. 87]</p> <p>In his report Sri Sheetal Dubey stated that Faqir appeared and he submitted a report. (Pg. 102)</p>	<p>❖ Despite the foregoing, the impugned judgment proceeds to observe as follows:-</p> <p><i>It thus appears that the order of ouster of Faquir and removal of Jhandafrom the mosque was complied with. Here also it does not say anything about observance of Namaz or its revival by the Muslims in the said mosque.[Para 2326 @ pg. 1371/Vol. II]</i></p> <p><b>Comment:-</b> It is submitted that when the Mutawalli of the Mosque has filed an application against an illegal trespass committed by the Faqir and the Faqir as well as the symbol erected by him have been ordered</p>

		to be removed from the property, it shows that the mosque was in possession of Muslim parties. Further, if the case of the Hindu parties is to be believed that the mosque was abandoned, then it is incomprehensible as to why a mutawalli will file such an application and the Government will pass such an order of eviction.
9.4.1860	<p><b>Exhibit No.23</b> Copy of application dated 9.4.1860 of Mohammadi Shah. [Pg. 103-106/Vol. 87]</p> <p><b>[Reference in the Impugned Judgment:-</b> <b>[Para. 2327 at Pg. Nos. 1371-1373 of Vol. II]</b></p>	<p><b>Findings/ Observations in the Judgment:-</b> This document shows an admission that the entire Mauja Rampur was entered as Nazul. This fact is admitted before us by the learned counsel for the parties. [Para 2328 @ pg 1373/Vol. II of the Impugned Judgment]</p>
22.10.1882	<p><b>Exhibit No.24</b> Copy of the plaint dated 22.10.1882 of Suit No. 374/943 of 1882 Mohd. Asghar Vs. Raghubar Das in the Court of Munsif Faizabad. [Pgs. 107-111/Vol. 87]</p> <p>Syed Mohd. Asghar Khatib, Mutawalli Babri Masjid filed a suit claiming rent for the user of Chabutra and Takhat situated near the door of Babri Masjid. (Pg. 110-111)</p>	<p><b>Findings/Observations in the Impugned Judgment:-</b> This exhibit has been referred at two places, with the observation that this suit was dismissed by the Trial Court on June 18, 1883. [Para. No.2362 at Pg. Nos. 1415-1419 Para. No. 2980 at Pg. No. 1657 of Vol. II]</p> <p><b>Comment:-</b> This document concerns the chabutra in the outer courtyard and is therefore not relevant for the present suit which concerns only the Inner Courtyard.</p>
22.2.1870	<p><b>Exhibit No.26</b> Copy of plaint dated 22.2.1870 case Mohd. Asghar Vs. Sarkar Bahadur. [Pgs. 116-121/Vol. 87]</p> <p>Mohd. Asgar as Khatib and Mohd. Afjal as Muazzim Masjid Babari moved an application stating their claim on 21 trees of Imli on the ground that Masjid Babari situated at Janam Asthan is ancestral and under the possession of them since ancient times.</p> <p><b>[Para. Nos. 2350 at Pg. Nos. 1399-1402; Para. No. 2975-76 at Pg. No. 1657 of Vol. II]</b></p>	<p><b>Findings/Observations in the Impugned Judgment:-</b> The claim of Mohd. Asgar about ownership of graveyard was rejected but regarding the tamarind trees, his claim was allowed. [Para. No. 2351 at Pg. No. 1402-1404; Para. No. 2977 at Pg. No. 1657 of Vol. II]</p> <p><b>Comment:-</b> It is relevant to note that this exhibit which has been filed by Plaintiff of Suit I, records the presence of Babri Masjid as well as the graveyard. However, in the written statement filed by this Plaintiff in</p>

22.8.1871	<p><b>Exhibit No.25</b> Copy of the judgment dated 22.8.1871. [Pgs. 112-115/Vol. 87]</p> <p>Mohd. Asghar filed a case claiming ownership rights of Arazi (land) of Qabristan (graveyard) and trees of Tamarind in front of door of Masjid Janamsthan. It was held that this is a general graveyard and courtyard in front of door of Masjid Janamsthan. (Pg. 115)</p>	Suit No. 4 the presence of both (the mosque as well as the graveyard) has been denied. [See para 2 @ pg. 96/Vol. 72-Pleadings Volume]
27.6.1884	<p><b>Exhibit No.28</b> Copy of the application of Raghubar Das dated 27.6.1884 before Asstt. Commissioner, Faizabad. [Pgs. 126-130/Vol. 87]</p> <p>Raghubar Das made an application in the Court of Assistant Commissioner Faizabad complaining that Muslims are white washing at places where they never have done. (Pg. 130)</p>	<p><b>Findings/Observations in the Impugned Judgment:</b> The impugned judgment reproduces relevant portions of this exhibit at two places, but gives no categorical finding. [Para. No. 2366 at Pg. No. 1420-1422 of Vol. II; Para. No. 2983 at Pg. No. 1659 of Vol. II].</p> <p><b>Comment:</b> This document clearly shows that Babri Masjid being managed by Muslim and the Muslims were getting the repairs/whitewash etc. done.</p>
12.10.1866	<p><b>Exhibit No.29</b> Copy of the order dated 12.10.1866 of Deputy Commissioner, Faizabad in Case No.223. [Pgs. 131-135/Vol. 87]</p> <p>Order dated 12.10.1866 of Deputy Commissioner, Faizabad in case No. 223 Mohd. Afzal against Tulsi Das and others directing for consignment of record to office.</p>	<p><b>Findings/Observations in the Impugned Judgment:</b> Mentioned in the judgment, but not specific finding given.[Para. 2348 at Pg. No. 1397-1398; Para. 2972 at Pg. No. 1657 of Vol. II]</p> <p><b>Comment:</b> No further information about this order is available and the contents of this order do not reflect as to what is the dispute in the said matter..</p>
5.11.1860	<p><b>Exhibit No.31</b> Copy of Application dated 5.11.1860 of Rajjab Ali in the Court of Deputy Commissioner Faizabad, Meer Rajjab Ali Vs. Akali Singh. [Pgs. 145-152/Vol. 87]</p> <p>The Khatib Babri Masjid Oudh made an application before the Deputy Commissioner, Faizabad, for removal of the chabutra constructed by one Askali Singh Nihang in graveyard adjacent to the Babri Masjid and direction to the</p>	<p><b>Findings/Observations in the Impugned Judgment:</b> This is the first document which we have with us going to the extent that in the inner courtyard, the muezzin used to recite Adhan (ajjan) which obviously call the Muslim people for offering Namaz otherwise there do not arise any reason for calling Adhan (ajjan). The document of 5th November, 1860 thus is evident that a Muezzin used to recite Adhan (ajjan) in the building in dispute i.e. inner courtyard. [Para 2330 @ pg. 1376/Vol. 72-Pleadings Volume]</p>



	<p>opposite party not to interfere interfere illegally in Masjid Property and not to blow conch (Shankh/ Naqoos) at the time of Azaan.</p> <p>(i). About 30 days back the respondent made a small chabootra in violation of law, in the graveyard, adjacent to Babri Masjid. (Pg. 151)</p> <p>(ii). The Commissioner found that a flag within the lawn of the Masjid was pitched to create tension and terror. The Commissioner after seeing himself on the spot, the flag unpitched. (Pg. 151-152)</p> <p>(iii). When the Moazzin recites Azaan, the opposite party begins to blow conch (Shankh/ Naqoos) (Pg. 152)</p> <p><b>[Reference in the Impugned Judgment:-</b>  <b>[Para. 2329 at Pg. No. 1373-1376 of Vol. II]</b>  <i>The document of 5th November, 1860 thus is evident that a Muezzin used to recite Adhan (ajjan) in the building in dispute i.e. inner courtyard.</i>  <b>[Para. 2330 at Pg. No. 1376; of Vol. II]</b></p>	<p>2]</p> <p><b>Comment:</b>          (i). The Commissioner himself removed the flag, illegally pitched, from the lawn of the Babri Masjid. This shows that any interference by the Respondent was nothing but an illegal trespass into the property of Muslims          (ii). This document shows that Azaan was being recited in the Babri Mosque. It is submitted that Azaan is a call for Namaz, which implies that Namaz was being offered at the mosque.</p>
	<p><b>Exhibit No.32</b>          Copy of the Map Kistwar, village Ramkot Tehsil Haveli District Faizabad. [Pgs. 153-157/Vol. 87]</p> <p><b>[Reference in the Impugned Judgment:-</b>  <b>[Para. No. 3397 at Pg. No. 1924 of Vol. II].</b></p>	<p><b>Findings/Observations in the Impugned Judgment:-</b>          No specific finding.</p> <p><b>Comment:</b>          Illegible</p>
26.8.1868	<p><b>Exhibit No.33</b>          Copy of order dated 26.8.1868 disposed of by Major J. Read Commissioner, Faizabad in Appeal No. 275 Niamat Ali Shah Vs. Ganga Dhar Shastri. [Pgs. 158-161/Vol. 87]          ❖ Appeal was filed that Ganga Dhar encroached North west corner of Masjid.</p>	<p><b>Findings/Observations in the Impugned Judgment:</b>  <i>This also shows that Hindu parties whenever contested a case, have throughout called it a mosque and there has not been any change to this stand atleast till 1950. [Para 3406-3407 @ pg. 1931/Vol. 2]</i></p>

	<p>❖ It was found that Ganga Dhar's house touched the wall of Masjid.</p> <p>❖ It was also quoted the Commissioners order dated 27<sup>th</sup> February, 1864 that Hindus should not encroach on the boundaries of Mosque and chabutra. (Pg. 161)</p> <p><b>[Reference in the Impugned Judgment:- [Para. No. 3406 at Pg. No. 1931 of Vol. II]</b></p>	
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4.2 A perusal of the above exhibits shows that:-

- i. The Hindu parties had access to only the outer courtyard of the Mosque, that too only at Ram Chabutara and Sita Rasoi.
- ii. While there were a few attempts of trespass in the inner courtyard, the authorities always passed directions in favour of the Muslim parties and the trespassers were evicted from the disputed site.
- iii. Even the Hindu parties have always referred to the disputed structure as the Babri Mosque at least till 1950.

#### V. WITNESSES ON BEHALF OF PLAINTIFF (SUIT NO.1)

5.1 Three witnesses have been produced on behalf of the Plaintiffs in Suit 1, they are:-

- i. DW 1/1 – Sri Rajendra Singh
- ii. DW 1/2- Sri Raja Ram Pandey
- iii. DW 1/3- Sri Sahdeo Prasad Dubey

5.2 All the above witnesses are witnesses of fact, who have been produced to establish that the disputed site was the birthplace of Lord Ram and was being worshipped as such.

5.3 In this background, it is important examine the statements of the aforementioned witnesses:-

a) DW 1/1 – SRI RAJENDRA SINGH [Date of Examination in Chief; 22.07.2003]

- ❖ Examination in Chief: Pg. 7748/Vol. 47
- ❖ Cross Examination: Pg. 7755/Vol. 47
- ❖ 65 years old at the time of Examination in Chief

*Examination in Chief*

- i. This witness is the son of the original Plaintiff- Sri G.S. Visharad, he was substituted in the matter on 22.02.1986, after the demise of his father.[Pg. 7749/Vol. 47]
- ii. He has stated that his father was a staunch devotee of the Ram Janambhoomi Temple and he used to go regularly for Darshan of the temple at Janambhumi and offer prayers there. [Pg. 7751/Vol. 47]
- iii. In the evenings also, he alongwith his family used to visit the Janambhumi Temple. [Pg. 7751/Vol. 47]
- iv. He used to go upto GarbhGriha without any interruption and have darshan and offer prayers there.[Pg. 7751/Vol. 47]
- v. A little before the Makar Skranti of 1950 – my father Shri Gopal Singh Visharad became unwell and, therefore, could not visit the temples for darshan and prayers. After recovering, when on occasion of Makar Skranti, he went to the Janmabhumi for darshan and pooja, the employees of the State Government stopped him from going inside where the idols of Lord Shri Ramchander and others were there. [Pg. 7751/Vol. 47]
- vi. On making enquiries by my father, he came to know that the defendant No. 6 through his employees – i.e. defendant Nos. 7 to 9 having been unduly influenced by the unfounded and false bias and prejudice of defendant No. 1 to 5 and of others belonging to his religion had deprived the Hindu from their just and fair right of having darshan and offering prayers and defendant No. 6 because of the prejudice of defendant Nos. 1 to 5 declare that in future also, they will deprive the Hindus of their rights like this. [Pg. 7751/Vol. 47]

*Cross Examination*

- vii. When I had gone to the disputed site for the first time, Lord Rama's idol was not there in the wall of iron-bars but people did go inside occasionally. There was no idol of any God in the inside of the iron bar wall. There was no idol of any deity under the dome (gumbad) nor was there any picture of any deity. It was not locked. (Pg. 7757 of Vol.47)
- viii. Prior to 1949, we used to go with our father for the darshan of Ram Chabutra. My father after having the darshan of the Ram Chabutra would sometimes go inside but I used to stay out(Pg. 7757 of Vol.47).
- ix. It is relevant to note that this Suit was filed by Shri G.S. Visharad for curtailment of his right to go inside the disputed structure and pray at the GarbhGriha. It is submitted that upon his demise, his right to pray also got extinguished and the present suit became infructuous. It is further submitted

*that this suit cannot be proceeded with by substituting the son of the original plaintiff when the suit was for the enforcement of the personal right and particularly when his son had never even worshipped inside at the garbhgriha.*

- x. In 1949, I had heard that Lord Rama had made appearance in the GarbhGriha. (Pg. 7764 of Vol.47)
- xi. In 1528, Mirbaki had tried to construct a mosque but he could raise only a structure and could not give it the shape of a mosque. (Pg. 7764 of Vol.47)
- xii. The police restrictions were on offering prayers in the inside portion of the iron bar wall or on offering prayers inside the Janmabhumi temple. (Pg. 7759/Vol. 47)
- xiii. On seeing photograph No. 156 of the same album, the witness stated that in that photograph the floor of the lower portion of the dome of the disputed building was visible. This type of flooring is slightly different from the flooring of other temples, i.e. he had not seen this style of flooring in any other temple. (Pg. 7773 of Vol.47)
- xiv. Babar had got no mosque constructed. The Hindus did not recognise it as a mosque and they used to do Parikrama and Pranam considering the place as Janamsthan. (Pg. 7814/Vol. 47)

**b) DW 1/2- KRISHNA CHANDRA SINGH [Date of Examination in Chief: 28.7.2003]**

- ❖ Examination in Chief: Pg. 7793/Vol. 47
- ❖ Cross Examination: Pg. 7799/Vol. 47
- ❖ Age at the time of Examination in Chief: 79 years

*Examination in Chief*

- i. Witness was a resident of village Haripur, Jalalabad, Tehsil, Sohawal, District Faizabd. His family was a Ram devout vaishnav family and Lord Ram was worshipped as his household deity. He came to Ayodhya in 1932, when he went to the Ram Janambhoomi Temple for the first time. [Para 1,4 & 8 at pgs. 7793-7794/Vol. 47]
- ii. The land under the central dome is regarded as the Janambhoomi of Lord Ram according to traditional faith and belief. [Pgs. 7796/Vol. 47]
- iii. In 1934, there were Hindu Muslim riots in Ayodhya because many Muslims assembled outside the Janambhoomi with the intention of occupying it. (Pgs. 7797/Vol. 47)
- iv. After the 1934 riots, the Government levied riot-tax on Hindu population of Ayodhya as penalty and collected thousands of rupees. (Para 17 @ Pg. 7797 of Vol. 47)

- v. After 1932, no Muslim could enter the building. If any Muslim was seen coming towards the Ram Janambhoomi premise, the ascetics used to run to beat him and scare him away. (Para 18-19 @ pg. 7797/Vol. 48)

*Cross Examination*

- vi. On north side of Ram Janambhoomi there is Janamasthan (birthplace) temple and there is a road between both. (Pgs. 7801/Vol. 47)
- vii. Bhagwan Ramlala graciously appeared there in the year 1949. when I went there earlier, Ramlala was not there at the place under the dome. (Pg. 7804 of Vol. 47)
- viii. Before 1949 when I went for the first time to the disputed site, the devotees used to salute the site below the central dome from the wall having bars but did not go inside. (Pg. 7804/Vol. 47)
- ix. However, Charanamrita was not offered there at that time, it was offered only at Ram Chabutara. No ascetic lived at the site below the dome at that time. (Pg. 7804/Pg. 47)
- x. Before 1949 whenever I went to the disputed site I did never try to go inside through the door having bars. Whenever I went there before 1949, sometimes the door of the wall having bars used to remain closed and sometimes open. (Pg. 7804 of Vol. 47)
- xi. How the idol of Ram Lala went inside from Ram Chabutara, I have no knowledge, but the idol of Ram Lala was seen inside where Sihasana (throne) was built and this throne was atleast 2-3 feet high. (Pg. 7811/Vol. 47) *This again reaffirms the fact that the desecration was pre-planned and a throne was kept ready to place the idol.*
- xii. The disputed building could not be constructed fully during the time of Meerbaki. (Pg. 7828 of Vol. 47)
- xiii. It is a fact that the Government levied punitive tax on Hindus at that time. It may be that by recovering the punitive tax the Government got constructed the demolished part of the disputed building on Government expenses. (Pg. 7838 of Vol. 47)
- xiv. Whether there was embankment to support the building on the west side or not I did not pay attention to that. I do not remember whether small wall was constructed or not on the west side of the Parikrama Marg. Again said I have not seen and I do not remember also. (Pg. 7848 of Vol. 47) *This shows that the witness has never been to the disputed building.*
- xv. Some Buddhists live in Ayodhya and their temple is also there. Ayodhya is an important religious place of the Buddhists. (Pg. 7854 of Vol. 47)

c) DW 1/3- DR. SAHADEV PRASAD DUBEY [Date of Examination 4.08.2003]

- ❖ Examination in Chief: Pg. 7873/Vol. 47
- ❖ Cross Examination: Pg. 7880/Vol. 47
- ❖ Age at the time of Examination in Chief: 74 years

*Examination in Chief*

- i. Resident of Village Khironi, Tehsil- Sohawal, District Faizabad. (Pg. 7874/Vol. 47)
- ii. Got Ph.D Degree in 1981 from Avadh University, Faizabad. The subject matter of my work was "Ram Kavya Parampara Mein Vaidehi Vanwas" - A Special Study. (Para 4 @ Pg. 7874 of Vol. 47)
- iii. was appointed as a teacher in R.D. Inter College Suchitaganj, District Faizabad in December, 1958. In 1963, I was promoted as Lecturer of Education. From September 1984, I remained Principal. (Para 5 @ Pg. 7874 of Vol. 47)
- iv. According to Mythological books and legends the birthplace of Lord Rama, the entire city of Ayodhya is revered as birthplace of Lord Rama. However, it is common belief of most people that Janambhoomi Mandir located at Ramkot is acknowledged as birthplace of Lord Ram. (Pg. 7875/Vol. 47)
- v. According to Indian Mythology and sanatani faith and belief, a temple was built on this place as a token of Janam Bhoomi (birth place) a number of years ago and thereafter, the great King Vikramaditya built a grand temple on that place some 2060 years ago during his reign according to the chronological order. This chronological order is called VikramSanwat. (Pg. 7875/Vol. 47)
- vi. It is submitted that this witness has himself referred to the entire reference of Birth of Lord Ram as a mythological story.

*Cross Examination*

- vii. I do not recollect in which year I had visited Ram Janam Bhoomi Temple for the first time. I do not remember my age when I went there. (Pg. 7881 of Vol. 47)
- viii. The place under the tower was vacant earlier and later on God had appeared there. (Pg. 7885 of Vol. 47)
- ix. The witness was shown coloured Album Paper No. 200 C-1, Picture No. 156 and on seeing it the witness said that he cannot recollect whether the floor shown in the picture is the same which was under the middle tower to

the disputed building, in this picture the black colour strip is visible on the white colour floor. (Pg. 7902 of Vol. 47)

- x. The disputed building was built by the Gaharwal Kings during 11th - 12th century. (Pg. 7903 of Vol. 47)
- xi. It is written in Valmiki Ramayana that Shri Ram Chander Ji was born in a palace in Ayodhya. It is not mentioned in Valmiki Ramayana where this palace is located in Ayodhya. (Pg. 7905 of Vol. 47)
- xii. Ramcharitmanas was written four hundred years ago from today. As there is no mention of Ramkot Mohalla in this book, therefore, on this basis it cannot be said that Ramkot Mohalla did not exist at the time of writing Ramayana. So far as I know there is no mention in any mythological book about this fact that Shri Rama was born in a particular place or Mohalla of Ayodhya. (Pg. 7906 of Vol. 47)
- xiii. It is correct that in scriptures no particular place of Ayodhya has been mentioned as JanamSthali of Shri Ram Chander Ji. (Pg. 7906 of Vol. 47)
- xiv. It may be that the temple built during the period of King Vikramaditya got damaged and thereafter a new temple would have been constructed during the period of Gaharwal Kings. I have not read about the construction of these temples in any book or scripture, but it is simply my idea. I have referred to 127 Hindi books and 56 Sanskrit books in Para 10 of my affidavit which I have read. (Pg. 7908 of Vol. 47)

5.4 From the perusal of the witness statements, the following points emerge:-

- i. Since the original plaintiff is no more and he had filed the instant suit for enforcing his personal right of worship, the said right can no longer be enforced by anyone other than him.
- ii. The present Plaintiff, who is the son of the original plaintiff, has himself admitted that he has never gone inside the disputed structure and therefore no occasion arises for him to enforce the said right.
- iii. Even the second witness, DW 1/2 has though stated that the land under the central dome is regarded as the birthplace, he has on the otherhand admitted that even though the grill door was open, he never attempted to go inside to alleged birthplace of Lord Ram.
- iv. Further DW 1/3 has himself stated that the factum of birth of Lord Ram at Ayodhya is nothing but Mythology.

## VI. CASES CITED BY COUNSEL

- 6.1 *Nar Hari Sastri v. Shri Badrinath Temple Committee* (1952) SCR 849

- i. This case concerns the Deoprayagi Pandas to enter the Badrinath Temples with their Yajmans to enter their temple. But there was nothing in the Badrinath Temple Act 1939 which gives the pandas the right to take within the precincts of the temple, the gifts they receive at the time of worship. It is submitted that :
    - a) The affairs of the temple are now controlled by the Badrinath Temple Act 1939 and its bye-laws
    - b) The right of the pandas to enter the precincts was a pre-statutory right accepted by a resolution
    - c) The Badrinath Temple Act does not forbid gifts given inside the temple to belong to the person they are given to (p.866) but can be regulated by bye law and rules made under the Act
    - d) Reference was made to pp. 850, 853, 855, 860-1, 862 and to the impugned judgment's recording the order of 3 March 1951 (Volume III pp3803-4 to show that if Suit 5 is decreed, any existing right will remain)
  - ii. Except to establish Indians' wanting to pray, this case does not establish help to the Plaintiff. This case holds that generally Indians' like to pray at holy places under regulatory statutory control. If anything this case might affirm the rights of the shebait.
- 6.2 *Sastri Yagnapurushdasji v. Muldas* (1966) 3 SCR 242
- i. This case concerned whether Temple Entry statutes applied to the Swami Narayan Temples. The simple answer was that Article 25 emphatically included Hindus, Buddhists, Jains in its province which would apply under the Bombay Harijan Temple Entry Act 1947. Thus even if the Swaminarayans claimed they were not Hindus, by a constitutional fiction they would fall under aegis of the Act.
  - ii. However, the Supreme Court took the issue to a high pedestal by defining a Hindu in terms of what was said by *Monier Williams* (pp. 259-261), *the Encyclopedia of Religion and Ethics* (p.260), *Dr. Radhakrishnan* (pp260-2) , *Max Mueller* (p. 263 ) , *Tilak* (p. 265 ) and various texts to state;
 

*"Therefore, it would be inappropriate to apply the traditional tests in terms of extent of the jurisdiction of Hindu religion. It can safely be described as a way of life based on certain basic precepts..."*
  - iii. With respect, this judgment stands in the way of a full interpretation of Articles 25-8 recognizing distinct sects and beliefs with protected constitutional rights as recognized in the *DAV Arya Samaj case* (i.e. DAV College, Jalandhar) (1977) 2 SCC 269 and *TMA Pai v State of Karnataka* (2002) 8SCC 481 at pr.78. It is submitted that there are various cases where the distinct rights of sects have been recognised.



- iv. Indeed, such an examination was made in *Bala Shankar MahaShankerBhatjee v. Charity Commissioner (1995) Supp. 1 SCC 485* which also included non-exclusive references to a Gazette to determine if the temple was a public endowment under the Bombay Trusts Act.
  - v. This can only give obscure support to any argument in support of the plaintiffs of Suit 1 or 5.
- 6.3 *Most Rev. PMA Metropolitan v. Moran Ma Thoma (1995) Supp. 4 SCC 286* did explore historical background but turned on previous Supreme Court decisions and the Constitution of 1934. This too only obscurely helps the plaintiffs in the above suits, if at all.
  - 6.4 *MP Gopalakrishnan Nair v State of Kerala (2005) 11 SCC 45* concerns the electoral college and management of the Guruvayur temple under a special statute of 1978 and it was not correct to hold there was a presumption that Communists Socialists are ipso facto non-believers in God or temple worship. The ceremonies would be according to the faith. It is difficult to see how this helps the plaintiffs in Suit 1 or 5.
  - 6.5 *Adi Saiva v. Government of Tamil Nadu (2016) 2 SCC 725* relied on various aspects of *Yagnapurushdasji (1966)* to conclude that certain archakas could be appointed to that post even if Harijans. Such a decision does not help the Plaintiffs in Suit 1 and 5.
  - 6.6 Thus it seems that none of these cases are only obscurely helpful if at all.

## VII. CONCLUSION:

- 7.1 From a comprehensive reading of the above, the following points emerge:-
  - a. The original Plaintiff was asserting a personal right of worship, which cannot be claimed by anyone else and stands extinguished upon his demise.
  - b. Further, his son, who was substituted in place of the original plaintiff has never even worshipped at the alleged garbhagriha, which again prevents him from claiming the said right.
  - c. The idols of Lord Ram Chandra Ji were placed surreptitiously / stealthily on the intervening night of 22<sup>nd</sup>/23<sup>rd</sup> December 1949 inside the mosque. Therefore, there was no occasion for the original plaintiff to do worship of darshan of said idols. Further, no right can be claimed on the basis of the illegal act of desecration of the mosque.
  - d. The exhibits filed by the Plaintiff show that :-

- ❖ Hindu parties had access to only the outer courtyard of the Mosque, that too only at Ram Chabutara and SitaRasoi.
  - ❖ While there were a few attempts of trespass in the inner courtyard, the authorities always passed directions in favour of the Muslim parties and the trespassers were evicted from the disputed site.
  - ❖ Even the Hindu parties have always referred to the disputed structure as the Babri Mosque at least till 1950.
- e. Further, the Plaintiff (DW 1/1) and DW- ½ have themselves stated that they never went inside the disputed structure despite there being no lock on the grill wall. Moreover, DW- 1/3 has himself termed the entire factum of birth of Lord Ram as a mythology.