

Case Description (/court-case/ayodhya-title-dispute)

Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

Day 26 Arguments: 13 August 2019

The court continued hearing suit number 5 filed on behalf of Lord Ram. Sr. Adv. K. Parasaran concluded his arguments.

Sr. Adv. C.S. Vaidyanathan began arguing on behalf of Lord Ram. He submitted that the Ram Janmasthan is a deity with a juridical personality, over which no party can claim possession. He also argued that there was a pre-existing temple over which the mosque was built.

Background:

The court is hearing a set of appeals to the 2010 Allahabad High Court judgment which divided the Ayodhya title equally between three parties: the Sunni Waqf Board, the Nirmohi Akhara and Lord Ram.

In March 2019, hearings were suspended so that the parties could attempt mediation. However, the mediation proceedings failed and the court resumed day-to-day hearings on 6 August.

In the previous hearing (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-25-arguments>), Sr. Adv. K. Parasaran argued that both suits 3 and 4 are barred by limitation and that the Ram Janmabhoomi site is a juristic person.

Today's hearing

2.11 Plaintiff in a suit can claim alternative reliefs

Sr. Adv. K. Parasaran opened the hearing by arguing that a plaintiff could rely on two inconsistent sets of allegations and alternative rights. He relied on the case law to submit that the Civil Procedure Code does not bar a party from seeking alternative relief. He concluded his arguments by submitting that only the allegations in the pleadings, and nothing beyond, could be argued on the materials.

Then, Sr. Adv. C.S. Vaidyanathan outlined that he would place 'relevant documentary and oral evidence' in respect to:

- (i) whether Janmasthan is a deity;
- (ii) whether there was a pre-existing temple over which Babri Masjid was built;
- (iii) issues relating to land records.

He proceeded to read details of the pleadings in the other suits, to suggest the existence of the temple.

2.12 Hindus and Muslims had joint possession of the land

He objected to the Sunni Waqf Board's claim that it was in exclusive and continuous possession of the disputed land. He submitted the Allahabad High Court's finding that Hindus and Muslims had joint possession of the land. He also submitted that Waqf Board's cause of action arose on 16 December 1949, when idols were placed inside the mosque.

Reading the statement of the plaintiff in suit 4, he emphasised that *namaz* was offered five times a day between 1856 and 1934, after which only Friday prayers were offered. He submitted that even the counsels for the Waqf Board had accepted that Lord Ram was born at Ayodhya. They only denied that the specific site of the mosque is the birthplace. Further, he submitted that the Nirmohi Akhara has existed since the second half of the 19th century, but certainly not in the 16th century. He also alleged that an investigation into the revenue records found that they had been manipulated.

2.13 There was a pre-existing temple before the Babri Masjid was built

Sr. Adv. C.S. Vaidyanathan submitted that historical and archaeological evidence such as historical records, inscriptions on pillars and slabs in the temple, gazetteers, court-appointed Archaeological Survey of India excavation reports photographs of the disputed structure prior to its destruction, photographs of artefacts inside the mosque in 1991 etc. supported his claims.

Next, he submitted that there is oral evidence by 80-90 year old Hindu and Muslim residents of Ayodhya who recall Hindu prayers taking place continuously.

2.13.1 Existence of idol is not necessary for a temple to exist

At this point, Sr. Adv. C.S. Vaidyanathan returned to Sr. Adv. K. Parasaran's argument from the previous hearing regarding the formlessness of deities. He submitted that the existence of an idol is not a necessary condition for a temple to exist. He emphasised that what determines whether a place is a temple, is dependent on whether people believe it to be one. If a large section of the public considers a particular place to have a divine presence and offers worship in the belief that it is likely to be the recipient of the divine presence's blessings, then such divine presence is a deity. He cited the examples of worshipping the Ganga and Yamuna as deities.

Delving into the realm of theology, he stated that a place is a deity on account of its divinity and such status is non-alterable and cannot be destroyed by human actions. He submitted that the divine status of a deity is perennial.

2.13.2 Lord Ram devotees in the 17th century

Returning to material reality, he cited evidence from the early 17th century that suggests the presence of Lord Ram devotees at Ayodhya. The British merchant, William Finch, had written about parikrama and prostrating in the inner courtyard of the site in his travel journal.

2.13.3 No evidence that Hindus were denied access to the inner courtyard

Sr. Adv. C.S. Vaidyanathan emphasised that there exists no evidence that Hindus were denied access to the inner courtyard from 1856 to 1949. Further, he submitted that there is no evidence of *namaz* being offered in the inner courtyard between 1856 and 1934.

Focusing on the statements of plaintiffs and witnesses in suit 4, he sought to conclusively establish that Hindus have offered worship at the site prior to 1961:

- Plaintiff's Witness 1: Hindus have been doing parikrama for hundreds of years. Resident of Ayodhya produced as a witness by plaintiff 2 in suit 4, 72 years old at the time of giving evidence.
- Plaintiff's Witness 2 (Haji Mehboob Ahmad): Janmasthan is where Lord Ram was born and a number of people come from outside to offer prayers
- Plaintiff's Witness 7: Hindus offer worship believing place to be Lord Ram's birthplace

2.14 Ram Janmasthan is a juridical person

Sr. Adv. C.S. Vaidyanathan relied on the 2010 Allahabad High Court judgment which recognised the Hindu belief that the site has been worshipped since time immemorial and is a deity. He added that given that deities are perpetual minors (in the eyes of the law, as they require a legal guardian), the Indian law of limitation would not apply.

He cited Justice Khan's opinion from the High Court judgment, wherein it was held that suit 5 is maintainable because the idol is a deity capable of holding property. Note that while the High Court unanimously held suit 5 to be maintainable for plaintiff 1 (Ram

Lalla), only two judges held it to be maintainable for plaintiff 2 (Ram Janmabhoomi site).

Sr. Adv. C.S. Vaidyanathan re-iterated that the birthplace is specifically where the devotees worship, namely underneath the central dome, as they believe it to be the birthplace. He did so to counter the potential claim that the birthplace is 50-60 paces away from the dome. The ASI report argues that there was a temple there roughly 300 years ago.

He added that the Janmasthan cannot be restricted to the central dome alone because the parikrama path extends beyond it.

2.15 Hindus and Muslims had joint possession of the land

2.15.1 Sunni Waqf Board cannot claim adverse possession

He returned to the Sunni Waqf Board's possession claim. He submitted that no adverse possession claim can be made without establishing (a) exclusive possession and (b) ouster of possession. He argued that the mere offering of *namaz* being offered for a few years does not amount to a title claim via adverse possession.

Sr. Adv. C.S. Vaidyanathan continued submitting that the 2010 Allahabad High Court judgment accepted that the mosque was not built on vacant land. Two of the three judges held that it was built over the ruins of a temple.

2.15.2 No evidence that Hindus were denied access to the inner courtyard

He re-iterated that Hindus have always had access to the inner courtyard, even when disputes arose, and were never ousted. He stressed that between 1855 and 1934, Hindus had access and had not been dispossessed.

Justice Bode stated that Sr. Adv. C.S. Vaidyanathan was equating access with possession.

Sr. Adv. C.S. Vaidyanathan simply re-stated that the parties are in joint possession. He said that he is disputing the Sunni Waqf Board's claim of exclusive possession, which at best could be claimed to be in joint possession.

Justice Chandrachud asked him to show evidence of co-possession. Chief Justice Gogoi added that only the Waqf Board's title was being negated by Sr. Adv. C.S. Vaidyanathan but no evidence was being produced to demonstrate the title of his party.

The bench broke for lunch at 12.52 PM.

The bench assembled at 2.20 PM.

2.16 Ram Janmasthan is a juridical person

Sr. Adv. C.S. Vaidyanathan continued with his arguments on behalf of Lord Ram and Ram Janmasthan.

2.16.1 *Difference between concept of deity, abode of deity and property of deity*

Sr. Adv. C.S. Vaidyanathan differentiated between the concept of a deity, the abode of a deity and the property of a deity. He argued that the Ram Janmasthan is itself a deity and therefore *res nullius* (without an owner, nobody's property). As the Janmasthan is itself a deity, nobody can possess it and Hindu worshippers can only claim *access it*.

He contended that the Allahabad High Court had erred in conflating three different concepts. The High Court had recognised the place Janmasthan itself as the deity. However, it had held that the deity owned the place (i.e. itself) and that Muslim and Hindu parties had joint possession (assuming that a deity can be possessed). The latter two holdings, he argued, are inconsistent with the High Court's reasoning that the Ram Janmasthan is a deity.

He also questioned how Ram Janmasthan could vest in a deity, if it itself is a deity. He further argued that devotees can only have access to, and not possession of, the deity.

Justice Chandrachud then summarised Sr. Adv. C.S. Vaidyanathan's argument as being that the Ram Janmasthan, itself a deity, cannot hold the disputed land (itself). Justice Bobde clarified whether Sr. Adv. C.S. Vaidyanathan was differentiating this case (by contending that the property is itself a person) from cases where the property is vested in a person.

Sr. Adv. C.S. Vaidyanathan submitted that the Ram Janmasthan (the disputed property) is a juristic person on account of being a deity itself and is not a property dedicated to a deity. He cited case law to prove that deities have a juristic personality. Further, he

contended that adverse possession or joint possession may be claimed over the property held by a deity, but cannot be claimed of the deity itself or the abode of the deity.

Justice Chandrachud pointed out that the worldview of considering Ram Janmasthan as a deity is not universal. He stated that a second distinct worldview of the disputed site merely considered it as a place of worship and not a personification of the divine.

Sr. Adv. C.S. Vaidyanathan responded that the High Court had accepted the place Ram Janmasthan as a deity. He submitted that the present case ought to revolve around the question of access of worshippers and not possession by parties. He explained that a deity cannot be destructed or divided in Hinduism as it regards idols to live forever, irrespective of human actions. He contended that the deity cannot be mutilated and does not ever change its character. Therefore, the construction of a mosque and the consequent human actions do not give any rights over the disputed land to any party.

2.16.2 The disputed land was always a deity

Justice Bobde asked if the disputed land was always a deity or became a deity upon the occurrence of a specific event.

Sr. Adv. C.S. Vaidyanathan responded that the disputed land is a deity because the people hold faith and believe that it is the birthplace of Lord Ram. The construction of the mosque does not abrogate the divine nature of the disputed land as Hindus continue to worship and revere it as the birthplace of Lord Ram and feel the sanctity and divinity of the place.

He clarified that both Hindus and Muslims could not claim possession over the disputed land as they only had rights of access as worshippers, albeit for different religions. He then read out the findings of the Allahabad High Court as evidence of the fact that the mosque was built on the ruins of the temple. He claimed that the existence of a temple structure (irrespective of whether it was existing or in ruins) is indisputable. He added that the fact that the temple structure was in ruins did not alter the faith of devotees.

He cited extracts from previous court decisions to submit that Muslim parties and British authorities had admitted that Hindus considered the Ram Janmasthan a divine place and offered worship there.

Sr. Adv. Rajeev Dhavan, advocate for the Sunni Waqf Board, stated that Sr. Adv. C.S. Vaidyanathan had not submitted a single exhibit or piece of evidence, apart from extracts of the Allahabad High Court judgment, to make his claim. He stated that the process of reading judgments without producing exhibits and evidence was a 'hop, skip and jump' approach to substantiating one's claims. He questioned whether the bench would patiently hear him read out extracts from judgments to make his case or restrict him by stating that they had already perused through the judgment.

Chief Justice Gogoi stated that it was the plaintiff's 'negative point' that they were not demonstrating evidence. However, he contended that every party could argue the case as per its own choice and that the bench would extend the same time and attitude to all parties during the hearings.

2.16.3 Deity cannot be divided as that is akin to mutilation

Sr. Adv. C.S. Vaidyanathan continued to make the point that a deity cannot be divided as it is akin to mutilation.

At 3.52 PM, the bench rose for the day. The hearings will continue tomorrow.

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