

Reserved

In the High Court of Judicature at Allahabad,

Lucknow Bench, Lucknow

O.O.S.No.1/1989

(R.S.No.2-50)

Sri Gopal Singh Visharad, aged about 42 years, son of Thakur Girdhari Singh, resident of Mohalla Sargdwar Ayodhya, Pargana Haveli Avadh, Tehsil Va Zila Faizabad -(dead)

Rajendra Singh aged about 46 years son of Sri Gopal Singh Visharad, at present resident of State Bank of India Branch Gonda—Amended vide court order dated 22.02.86.

..... Plaintiff.

Versus

1. Zahoor Ahmad, aged about 68 years, son of not known, resident of Mohalla Bara Bazar-dead, City Ayodhya, Pargana Haveli Avadh, Tehsil Va Zila Faizabad, Shahar Ayodhya.
2. Haji Feku, aged about 65 years, son of not known, resident of Mohalla Terhi Bazar-dead, CityAyodhya, Pargana Haveli Avadh, Tehsil Va Zila Faizabad, Shahar Ayodhya.
3. Mohammad Faiq, aged about 45 years, son of not known, resident of Mohalla Terhi Bazar-dead, CityAyodhya, Pargana Haveli Avadh, Tehsil Va Zila Faizabad, Shahar Ayodhya.

4. Mohd.Shami Churiwala, aged about 45 years, son of not known, resident of Mohalla Ramganj-dead, City Ayodhya, Pargana Haveli Avadh, Tehsil Va Zila Faizabad, Shahar Ayodhya.
5. Mohammad Achchan Miyan, aged about 45 years, son of not known, resident of Mohalla katra-dead, CityAyodhya, Pargana Haveli Avadh, Tehsil Va Zila Faizabad, Shahar Ayodhya.
6. ~~United Provinces~~, Uttar Pradesh, State, Lucknow –Amended under court order dated 21.02.50.
7. ~~K.K.Nayyer~~, Deputy Commissioner, Faizabad –Amended vide court order dated 07.01.87.
8. ~~Sri Markandey Singh~~, Additional City Magistrate, Faizabad— Amended under court order dated 07.01.87.
9. ~~Sri Ram Kripal Singh~~, Superintendent of Police Faizabad— Amended under court's order dated 23.08.90.
10. Sunni Central Waqf Board Uttar Pradesh Lucknow, Moti Lal Bose Road, Police Station Kaiserbagh through Secretary.
11. Nirmohi Akhara Ayodhya, Haveli Avadh, Ayodhya, district Faizabad through Sarpanch Ram Swaroop Das, Upsarpanch Mahanth Bhaskerdas and Panch Rajaram Chandracharya.

.... Defendants

Judgment delivered by
Hon'ble Dharam Veer Sharma, J.

The suit was initially filed by Sri Gopal Singh Visharad. After his death, his son Sri Rajendra Singh was substituted at his place. The

plaintiff has sought following reliefs;

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It be declared that plaintiff is entitled for worship and offering prayers without any interruption of the deity of Lord Rama installed at Ram Janam Bhumi for which particulars are available at the foot of the plaint and further defendant nos.1 to 6 or their heirs and defendant nos. 7 to 9 and defendant no.10 be restrained not to interfere in the aforesaid right of the plaintiff. The defendants be restrained from removing the idols from the disputed place and be further restrained not to cause any hindrance in the entry of the plaintiff and also be prohibited not to close the entry door causing hindrance in the worship and Darshan of the plaintiff. The plaintiff be granted any other relief deemed fit by court along with costs.

The details of the disputed property are as under:--

East – Bhandar and platform of Janam Bhoomi.

West—Parti land

North—Sita Rasoi

South—Parti land

Plaintiff claims that he is the follower of Sanatan Dharm and used to worship and Darshan of God and Goddesses like his father. The plaintiff in the birth spot of Lord Rama was worshipping the deity of Lord Ram Chandra at foot steps etc. and was continuing visiting the spot for offering prayers and for Darshan without any interruption and hindrance and he is also entitled to perform his religious duties in future also. On 14.1.1950, late Gopal Singh Visharad, the original plaintiff, visited Ram Janam Bhumi site but the

employees of defendant no.6 restrained him from entering into the place where the deity of Lord Ram Chandra Ji was installed and the same was done under the influence of defendant nos. 1 to 5 and persons of their community. Thus they have restrained Hindus from worshipping the above deity without any justification. They have also declared that they would interfere in the prayers and worship of Hindus which amounts to interference in religious rights illegally. Employees of defendant no.6 are defendants no. 7 to 9 and they are illegally pressurizing the Hindus to remove the idols installed at the birth place of Lord Ram. It is further averred that in view of the declaration of Queen Victoria which she made and under the Government of India Act, 1935 the act on the part of the defendants no.1 to 5 and further of defendant nos. 6 to 9 is contrary to the declaration and also against the law which has compelled the plaintiff to file the suit. The cause of action arose on 14.1.1950 within the jurisdiction of the court when the defendants interfered with the rights of the plaintiff and restrained him from discharging his various religious obligations. After the death of the plaintiff, his son is entitled to maintain the present suit. Defendant nos. 1 to 5 are also no more and it is not necessary to implead his successors. Defendant no.10 has been arrayed in accordance with the directions of this Court dated 17.10.88 and the relief has also been sought against him.

Defendants no. 1 to 5 have died. Plaintiff has not substituted any person on their place. Prior to their death the defendants no. 1 to 5 had filed their written statement on 21.2.50 wherein they stated that

the land in suit is not Ram Janam Bhumi but it is a mosque constructed by emperor Babar. This mosque was constructed by Emperor Babar through his minister Mir Baqi in the year 1528 and dedicated it as waqf for use of Muslim community. Every Muslim has a right to worship in this Mosque. The grant of Rs. 60 was allowed by Emperor Babar from Royal Treasury which continued during Mughal period and during the reign of Nawabs of Oudh. This amount was enhanced to the tune of Rs. 302, 3 ana and 6 pai. This continued even during the British Government. During the period of settlement, the British Government granted rent free land in the villages Solapuri and Bahoranpur. In the year 1885, Mahant Raghubar Das had filed a suit against Secretary of State for India in Council and Mohd. Asgar Mutwalli of Babri Mosque in the Court of Sub-Judge, Faizabad for the declaration of his title. A map was appended with the plaint wherein the mosque was clearly shown and was not denied and only relief was sought regarding a platform, therefore, the plaintiff is estopped from saying that entire land in suit belongs to Ram Janam Bhumi temple. This fact is completely false and groundless. The Sub-Judge, Faizabad had dismissed the suit on 24.12.1885.

This verdict was upheld by appellate court and the remark of Sub-Judge in favour of the plaintiff regarding title over the platform in suit was also struck off and so many Mahants of Ayodhya on behalf of the Hindu public had contested the suit and all the Hindus had full knowledge of this litigation. As per provision of Act No.13

of 1936, the Chief Commissioner of Waqf was appointed who after inspection of the site of Babri Mosque declared that this mosque was built by Emperor Babar and is a Sunni Waqf. Accordingly requisite notification was issued. The Muslim community is in continuous possession over Babri Mosque since 1528 and therefore if plaintiff or any other Hindus succeed in proving that at any point of time there was a temple over the land in suit, in that event also having been in possession for more than 400 years over the land in suit as public mosque no right or title remained with the plaintiff and the same has been extinguished by the lapse of time and plaintiff had no right of possession over the property in suit. Therefore, the suit is barred by Section 42 Specific Relief Act and is also time barred of which no application has been moved by the plaintiff under Order 1 Rule 8 C.P.C. and no right has been claimed through the Hindu community. Therefore, the suit is not maintainable. The suit is barred for want of notice under Section 80 C.P.C. Namaz was offered in the Babri Mosque on 16.12.1949 and there was no idol in it. If any, idol has been installed surreptitiously and stealthily in that event also no Hindu has right to enter into the mosque for having Darshan of the said idol or worship over there. Accordingly civil court has no jurisdiction to grant any relief in favour of the plaintiff. There is mis-joinder by defendants no.6 to 9 in the present suit. The proceeding initiated under Section 145 Cr.P.C. has been commenced with ulterior motive with the aid and knowledge of the then City Magistrate. There is a temple known as Janam Sthan Sri Ram Chandra Ji where idols of

Ram Chandra Ji and other Gods are installed. The suit is liable to be dismissed. The plaintiff has filed replication reiterating the facts given in the plaint.

Deputy Commissioner, Faizabad, defendant no.6 has also filed written statement wherein it is stated that notice as contemplated under Section 80 C.P.C. has not been served on defendant no.6, therefore this suit is liable to be dismissed on this ground alone. The plaint allegations are fake. There is no cause of action for the suit. In the intervening night of 22nd December, 1949, the idols of Sri Ram Chandra Ji surreptitiously and wrongly put inside the disputed property resulting threat to public peace and tranquility. The public authorities had to be intervened in order to prevent breach of peace. The City Magistrate, Guru Dut Singh passed an order on 23.12.49 under Section 144 Cr.P.C. prohibiting the carrying of fire arms etc. and assemblage of more than 5 persons within the limits of Faizabad and Ayodhya Municipalities. On the same date, the Additional City Magistrate, Sri Markendey Singh on police report and other information, passed orders under Section 145 Cr.P.C. calling upon the claimants to the premises to appear and file their written statements by 17.1.1950. The said Magistrate being of opinion that the case was one of emergency, attached the said suit property and appointed Sri Priya Datt Ram, Chairman, Municipal Board, Faizabad-cum-Ayodhya as a Receiver of the said property and authorised him to manage the same and further directed him to submit a scheme for the management thereof.

The City Magistrate, defendant no.8 filed written statement on 25.4.50 wherein he has stated all the facts which have already been mentioned in the WS of defendant no.6.

Defendant no.9 S.P., Faizabad has also filed written statement reiterating all the facts mentioned in the written statement of Deputy Commissioner, Faizabad and the City Magistrate mentioned hereinbefore.

Defendant no.10, U.P. Sunni Central Board of Waqf has also filed written statement on 24.2.89 through its Secretary Zamir Ahmad Khan who has stated that the building referred to in the plaint is not the Janam Bhumi of Sri Ram Chandra Ji and no idols of Sri Ram Chandra Ji were installed in the said building and as such there arises no question of any right or claim of the plaintiff to perform Pooja and Darshan over there. Property in suit is a mosque known as Babri Mosque and the same was constructed during the regime of Emperor Babar. On 22/23.12.49, idol was surreptitiously and stealthily kept in the mosque by some mischievous elements. This mosque was never used for performing Pooja and Darshan. The property in suit is an old mosque constructed around the year 1528 during the regime of Emperor Babar under the supervision of Mir Baqi and the same has already been used as a mosque and it was never used as a temple or as a place of worship for any other community except Muslims. The Emperor Babar had given a grant of Rs. 60 per annum for the maintenance and annual repairs and other expenses relating to the said mosque which was paid during the Mughal period and during the

regimes of Nawab of Oudh the said grant was enhanced and the British Government had also continued the said grant and at the time of the first settlement as a Mafi expenses of the said mosque.

In 1885 Mahant Raghubar Das(Mahant of Janam Sthan of Ayodhya) had filed a suit against the Secretary of State for India in Council and Mohd. Asgar, Mutwalli of the mosque, in the Court of Sub-Judge, Faizabad in which the site plan was annexed alongwith the plaint and in the said site plan the mosque in question was specifically mentioned in the western side of the Chabutra in respect whereof the suit was filed for permission to erect temple over the said Chabutra. In respect of the said Chabutra the said Mahant Raghubar Das had stated that the temple of Janam Bhumi was desired to be constructed over there, but the said Mahant could not succeed even in that suit which was ultimately dismissed on 24.12.1885 by the Sub Judge, Faizabad and the appeal filed against the said judgment and decree dated 24.12.85 was also dismissed by the District Judge, Faizabad and the second appeal filed against the same had also been dismissed by the Judicial Commissioner of Oudh.

The aforesaid suit was filed by the Mahant Raghubar Das on behalf of other Mahants and Hindus of Ayodhya and Faizabad. That after the proclamation of U.P. Muslims Waqf Act 1936, the Chief Commissioner of Waqfs had got a survey made in respect of properties and in that connection survey of the mosque in question was also conducted and the same was registered as a waqf and a gazette notification had also been issued in respect thereto under the

provisions of the said Act. Muslims had all along remained in possession of the said mosque right from 1528 upto the date of the attachment of the said mosque under Section 145 Cr.P.C. in December, 1949. The said mosque stands registered as a mosque in the office of the U.P. Sunni Central Board of Waqf as Waqf No. 26 Faizabad even in the register of Waqfs maintained under Section 30 of the U.P. Muslim Waqf Act, 1960.

Plaintiff had never been in possession or occupation of the building in suit. He has no right, title or claim over the said property and as such the suit is even barred by the provisions of Section 41 of the Specific Relief Act. Muslims remained in possession over the property in suit from 1528, therefore, the suit is barred by time. The plaintiff has not been able to set up any right or title on the basis of customary or easementary right. The suit is bad for want of permission under Order 1 Rule 8 C.P.C. and notice under Section 80 C.P.C. and is liable to be rejected under Order VII Rule 11 C.P.C. Keeping of the idol in the mosque in the night of 22/23rd December, 1949 will not confer any right or any title upon the plaintiff as it was done stealthily and in the mischievous manner. It has further been stated by the U.P. Central Board of Waqf that the attachment of mosque was unjust, improper and illegal. The ownership of the mosque in question vests in the God Almighty and the said mosque is a waqf property and its character cannot be challenged. The suit is barred by the provisions of U.P. Muslim Waqf Act 1936. The substituted plaintiff cannot even claim those alleged rights which

were set up by his father. The judgment in original suit no. 61/280 of 1885 will operate as res judicata. The plaintiff is estopped from claiming the mosque in question as the Janam Bhumi as the plaintiff's predecessors Mahant Raghubar Das had confined his claim to the Chabutra of 17' X 21' outside the said mosque. Thus, the suit is liable to be dismissed with special costs.

<p>Annexure-II Pages 30 to 59</p>

Issues

Issues framed by the Civil Judge Faizabad on 9.3.1962 in the suits noted above:-

1. Is the property in suit the site of Janam Bhumi of Shri Ram Chandra Ji?
2. Are there any idols of Bhagwan Ram Chandra Ji and are His Charan Paduka' situated in the site in suit.?
3. Has the plaintiff any right to worship the 'Charan Paduka' and the idols situated in the place in suit.?
4. Has the plaintiff the right to have Darshan of the place in suit.?
- 5(a) Was the property in suit involved in original suit no.61/280 of 1885 in the court of sub-judge, Faizabad Raghubar Das Mahant Vs. Secretary of State for India & others.?
- (b) Was it decided against the plaintiff.?
- (c) Was that suit within the knowledge of Hindus in general and were all Hindus interest in the same.?
- (d) Does the decision in same bar the present suit by principles of Resjudicata and in any other way?
6. Is the property in suit a mosque constructed by Shansha Babar commonly known as Babri mosque, in 1528A.D.?
7. Have the Muslims been in possession of the property in suit

from 1528A.D.?

8. Is the suit barred by proviso to section 42 Specific Relief Act.?
9. Is the suit barred by provision of section (5) (3) of the Muslim Waqfs Act (U.P. Act 13 of 1936);?
 - (a) Has the said act no application to the right of Hindus in general and plaintiff of the present suit, in particular to his right of worship.?
 - (b) Were the proceedings under the said act referred to in written statement para 15 collusive? If so, its effect?
 - (c) Are the said provisions of the U.P. Act 13 of 1936 ultra-vires for reasons given in the statement of plaintiff's counsel dated 9.3.62 recorded on paper No.454-A-?
10. Is the present suit barred by time ?
- 11(a) Are the provisions of section 91 C.P.C. applicable to present suit ? If so is the suit bad for want of consent in writing by the advocate general ?
- (b) Are the rights set up by the plaintiff in this suit independent of the provisions of section 91 C.P.C. ? if not its effect. ?
12. Is the suit bad for want of steps and notices under order 1 Rule 8 C.P.C. ? If so its effect. ?
13. Is the suit No.2 of 50 Shri Gopal Singh Visharad Vs. Zahoor Ahmad bad for want of notice under section 80 C.P.C. ?
14. Is the suit no.25 of 50 Param Hans Ram Chandra Vs. Zahoor Ahmad bad for want of valid notice under section 80 C.P.C. ?
15. Is the suit bad for non-joinder of defendants. ?
16. Are the defendants or any of them entitled to special costs under section 35-A C.P.C.?
17. To what reliefs, if any, is the plaintiff entitled. ?

Statement under Order 10 Rule 2 C.P.C. in O.O.S. No.1 of1989

Reg. Suit No. 2 of 50

Q. In what capacity does the plaintiff seek to exercise the relief which he seeks in the plaint?

Ans. In my individual capacity.

Q. What is your individual capacity?

Ans. My individual capacity is distinct from public capacity and in this matter an idol worshiper . This shows that the plaintiff's counsel is not in a position to answer the court question. The plaintiff must present in court personally on the date fixed.

Q. Has your client any religion?

Ans. The plaintiff is a Sanatan Dharmi.

Sd/- illegible
CJ
15.09.51

Sd/- illegible
Chaudhary Kedar Nath
15.09.51

13.01.60

Parties as before
sd/-illegible

Sri Goswami States ABCDEF is the land and building in suit as indicated in the map of the Commissioner Sri Shiva Shanker Lal dated 25.5.50. It is the temple since 1934. Deities installed are Sri Sri Ram. The building existed prior to 1934. The plaintiff can't say for how long it have been existing. The plaintiff can't say who built it and what it was prior to 1934. Sri Gopal Singh Visharad came in on about 1934 to Ajudhya. He saw the (murti) there, and began to worship them. Sri Paramhans instructs that the (murti) were there from before 1934. Whenever he saw it was a temple. It has always been a temple. He can't say who got it constructed and dedicated.

The plaintiff do not admit that at any time the building was used for prayer or as a Mosque by the Mohammeden community. Babar never built it. He was never emperor of India. I deny that it was ever used as a mosque.

The plaintiffs confine their case to the construction shown by letters ABCDLKJPOHNGA as shown in the map of the Commissioner dated 25.5.50. The Chabutra and Mandir shown in the map of the Commissioner as "Ram Chabutra" and "Bhandar" are the same as those described in the eastern boundary of the temple in question in the plaint.

The replication para 31 filed in suit no. 25 of 1950 by

Paramhans does not refer to the litigation mentioned in para 14 of the map filed by Zahur Ahmad and others. The proceedings mentioned in the last part of para 31 of the replication relate to those cases and proceedings which were between Mohammedans-sunnies & shias & others i.e. relating to suit no. 29 of 1945 of the Court of Civil Judge, Faizabad.

sd/-illegible
13.1.60

In the Court of Civil Judge, FD.
Reg. Suit No. 02/50
Gopal Vs. Zahoor
Regular Suit No. 25/50
Paramhans Vs. Zahoor

07.03.62

Defendant Gopal Singh Visharad and Sri Param Hans Ram Chandra plaintiffs of both the suits no. 2/50 and 25 of 1950 accompanied by their counsel state that they do not want any relief with regard to constructions or structures indicated in the map of the Commissioner Shiv Shankar Lal dated 25.05.50. by the terms 'Sita Rasoi', 'Bhandar' and 'Ram Chabutra'. They say that the reliefs are asked for only with regard to property included in the said map by letters A, B, C, D, L, K, J, P, O, H, N, G, A.

They further add that the term 'Janam Bhumi' used in the plaint refers to Janam Bhumi of Sri Ram Chandra Ji and according to the plaintiff's belief the property in the suit is the site of the same.

They add that there is no foot prints carved out on any stone or any stone image of any Charan Paduka referred to in para 2 of the plaint.

According to them at the place in suit near the idol of Bhagwan Ram Chandra Ji are kept wooden sandals or Charan Paduka and also a small pair of silver Charan Paduka. They are not fixed to any stone, structure or floor but are placed loose near the idol.

They are that the idol of Bhagwan Ram Chandra Ji at the place in suit is an Achal idol.

They add that in plaintiffs claim right of worship with regard to the said Idol and also with regard to the 'Charan Paduka'.

The plaintiffs also claim a right to worship all the deities and idols situated in the property in suit besides that of Bhagwan Ram Chandra Ji as for example Laxman Ji, Hanuman Ji, Sita Ji, Saliqram Ji, etc. They also claim a right to worship and have Darshan of these as well as they have a right to a Darshan of the site in question, as according to their belief it is the birth place of Sri Ram Chandra Ji.

Sd/- illegible

Param Hans Ram Chandra Das
Gopal Singh Visharat
07.03.62

Sd/- illegible

Civil Judge, Faizabad
07.03. 62

**In the court of Civil Judge, FD
Reg. Suit No. 2 of 1950
Reg. Suit No. 25 of 1950**

07.03.60

Sri Mohd. Ayub, Advocate for the defendants states that the decision referred to in para 11 to 14 of the WS was in original Suit No. 61/280 of 1885 in the Court of Sub-Judge, Faizabad, Raghubar Das Mahanth versus Secretary State for India and Others. He adds that this decision bars the present suit by principle of resjudicata and estoppel.

Sd/-illegible
Sri Mohd. Ayub

Sd/- illegible
Civil Judge

07.03.62

**In the court of Civil Judge, FD
Reg. Suit No. 2 of 1950
Gopal Vs. Zahoor
Reg. Suit No. 25 of 1950
Param Hans Vs. Zahoor**

08.03.62

Sri P.D. Goswami, Advocate for defendants states that the reports of the Commissioner spoken in Para 15 of WS has not effect on the rights of plaintiff, nor do the provisions of Section 5 (3) of U.P. Act, 13 of 1936 apply to the present suit as they are based on a right of worship of plaintiff who is a Hindu. According to him the provisions of the Act are applicable to the property and the right of the Muslims only.

He does not give up the plea taken by him in the replication in that connection.

According to him the said Act has been repealed by U.P. Act 16 of 1960. He further adds that in case the said Act be considered applicable in the present suits it is ultra vires the provisions of the Government of India Act 1935 and is in conflict with the Ancient Monuments Preservation Act. (Act No. VII of 1904).

Sd/-illegible
P. D. Goswami

Sd/- illegible
Civil Judge, FD
09.03.62

**In the court of Civil Judge, FD
Reg. Suit No. 2 of 1950
Gopal Vs. Zahoor
Reg. Suit No. 25 of 1950
Param Hans Vs. Zahoor**

09.03.62

Sri Mohd. Ayub Advocate for the defendants states that under para 15 of the WS in Suit No. 2 of 1950, the defendants plead that the suit is barred by provision of Section 5 (3) of Muslim Waqf Act, 1936 (U.P. Act No. 13 of 1936).

He adds that by the plea set up in para 19 of the WS, it is meant that the suit is bad for want of consent in writing of the Advocate in general and other provisions of Section 91 of the C.P.C.

He adds that from para 9 of WS the plea arises that Almighty God in whom the property in suit vests duly represented by some authorised persons should have been made a party to the suit and the suit is bad for non-joinder of parties. He adds that the Muslim in

general or the Mutwalli

of the said Waqf or Sunni Central Board or Waqf should also have been made defendants in the suit.

He adds that the present suit being a suit for injunction is barred by time under Article 120 of the Indian Limitation Act.

Sd/- illegible
Sri Mohd. Ayub

Sd/- illegible
Civil Judge, FD
09.03.62

F I N D I N G S

ISSUES NO. 1, 2 & 6

1. **Is the property in suit the site of Janam Bhumi of Shri Ram Chandra Ji?**
2. **Are there any idols of Bhagwan Ram Chandra Ji and are His charan Paduka' situated in the site in suit.?**
6. **Is the property in suit a mosque constructed by Shansha Babar commonly known as Babri mosque, in 1528A.D.?**

FINDINGS

Original Suit No. 4 of 1989 is a leading case. The above issues are identical to issues No. 1(a) (b), 1-B (b), 19-d, 19-e and 19-f of the Original Suit No. 4 of 1989. I have already recorded the findings in Original Suit No. 4 of 1989. Let the copy of the judgment be placed in this record. The issues are decided accordingly.

ISSUES NO. 3, 4 & 7

3. **Has the plaintiff any right to worship the 'Charan Paduka'**

and the idols situated in the place in suit.?

4. **Has the plaintiff the right to have Darshan of the place in suit.?**
7. **Have the Muslims been in possession of the property in suit from 1528A.D.**

FINDINGS

These issues are identical to issues No. 1-B(c), 2, 4, 10, 11, 12, 13, 14, 15, 19-a, 19-b, 19-c, 27 and 28 of Original Suit No. 4 of 1989. Accordingly, I crave to refer the finding of Original Suit No. 4 of 1989. These issues are decided in terms of findings of the above leading case.

ISSUES NO. 9, 9(a), 9(b), 9(c)

9. **Is the suit barred by provision of section (5) (3) of the Muslim Waqfs Act (U.P. Act 13 of 1936);?**
 - a. **Has the said act no application to the right of Hindus in general and plaintiff of the present suit, in particular to his right of worship.?**
 - b. **Were the proceedings under the said act referred to in written statement para 15 collusive? If so, its effect?**
 - c. **Are the said provisions of the U.P. Act 13 of 1936 ultra-vires for reasons given in the statement of plaintiff's counsel dated 9.3.62 recorded on paper No.454-A-?**

FINDINGS

These issues are identical to issues No. 5-a, 5-b, 5-c, 5-d, 5-e, 5-f, 7-b, 17 (issue no.17 of O.O.S. No.4 of 1989 has already been decided by the Civil Judge, Faizabad) 18, 20-a, 20-b, 23, 24, 25 and 26 of Original Suit No. 4 of 1989. I have recorded the findings in the above leading case. I crave to rely over the same. These issues

are decided in terms of the aforesaid findings.

ISSUES NO. 5-a and 5-b

- a. **Was the property in suit involved in original suit no.61/280 of 1885 in the court of sub-judge, Faizabad Raghubar Das Mahant Vs. Secretary of State for India & others.?**
- b. **Was it decided against the plaintiff.?**

FINDINGS

These issues are identical to issue No. 1-B (a) of Original Suit No. 4 of 1989. The above issues are decided in terms of my finding recorded in the leading case.

ISSUES NO. 5(c) and 5(d)

- c. **Was that suit within the knowledge of Hindus in general and were all Hindus interest in the same.?**
- d. **Does the decision in same bar the present suit by principles of Resjudicata and in any other way.**

FINDINGS

These issues are inter related and identical to the issues No. 7-a, 7-c, 7-d and issue no. 8 in Original Suit No. 4 of 1989, on which the finding has already been recorded and the copy of the judgment is placed on record. The above issues are decided in terms of above findings in the leading case.

ISSUE NO. 13.

Is the Suit No.2 of 50 Shri Gopal Singh Visharad Vs. Zahoor Ahmad bad for want of notice under section 80 C.P.C. ?

FINDINGS

It is contended on behalf of the defendants that the suit is bad for want of notice under Section 80 C.P.C. and is liable to be dismissed on this count. In this regard it would be pertinent to refer Section 80 C.P.C., which used to exist at the time of filing the suit, which reads as under:-

“80. No suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to or left at the office of-

(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of the railway;

(c) in the case of a suit against a State Government, a Secretary to that Government or the Collector of the district:

and, in the case of public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered.”

Section 80 C.P.C. is first step in litigation when the cause

of action is complete. It provides that service of advance copy of plaint on defendant or defendants and no suit shall be instituted until expiry of two months after such service. It does not define right of parties or confer any rights on the parties. It only provides mode of procedure for getting the relief in respect of cause of action. It lays down rule of procedure and does not define substantial right. The first part dealing with that the service of notice is mandatory. Second part of which relates to the contents of the plaint is not mandatory. In case of failure to give notice, Section imposes statutory and unqualified obligation of Court and the suit not complied with Section 80 C.P.C. cannot be entertained and if instituted, the plaint must be rejected under Order 7 Rule 11 C.P.C. It further transpires that defendants, District Magistrate, City Magistrate and Superintendent of Police acted in discharge of their official capacity, accordingly failure to give notice is fatal in this case. It is a settled proposition of law that a suit against the Government or Public Officer to which the requirement of a public notice under Section 80 of Code of Civil Procedure is attracted, cannot be validly instituted even after giving the notice until the expiry of the period of two months, next after the notice in writing has been delivered to the authority concerned in the manner prescribed in the Section. It further transpires that the whole object of serving a notice under Section 80 is to give Government sufficient warning in the case proposed to be instituted so that Government can settle the claim without litigation.

The Section has been enacted as a measure of public policy with the object of ensuring that before a suit is instituted against the government or a public officer, the government or the officer concerned is afforded an opportunity to scrutinize the claim and if it be found a just claim, to take immediate action and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person who has issued the notice to re-institute the suit involving considerable expenditure and delay. Thus if for want of statutory notice, the suit must fail. The public purpose underlying the provisions of Section 80, is for the advancement of justice and securing of public goods by avoidance of unnecessary litigation. The language of the section is express, explicit and mandatory and it admits no exception. Therefore, it is the plaintiff's duty of the court to give effect to it and considerations of hardship will not be a legitimate ground for not faithfully implementing the mandate of the legislature. Plaintiff has not referred anything in the plaint as to why he has failed to make a substantial compliance of Section 80 C.P.C. Further in view of the fact that parties have advanced the arguments and the matter is tied up, accordingly I think this is not a fit case in which the plaint has to be rejected by invoking power under Order 7 Rule-11 C.P.C.

Since this is a suit for declaration, accordingly in view of the decision of Hon'ble Privy Council in the case of *Bhagchand Dagdusa Gujrathi and Ors. v. Secretary of State for India, AIR 1927 Privy Council 176*, notice under Section 80 C.P.C. is required to be

given before filing the suit for declaration. It further transpires that the plaintiff has also sought relief for injunction. The Privy Council in the case referred (supra) approved the decision of Allahabad High Court in *Bachchu Vs Secretary of State (1902) 25 All. 187* and took a view that Section 80 should be strictly complied with to all form of actions and all kind of relief including the suit for injunction. Their Lordships took a view that Section 80 imposes a statutory and unqualified obligation upon the Court to ensure the compliance of Section 80 C.P.C. This Court in *Union of India Vs. Brignath Rai, AIR 1971 All. 209* held that Section 80 applies for all suits for injunction perpetual, prohibitory and mandatory. Thus in view of the fore going decision, I am of the view that Shri Gopal Singh Visharad ought to have filed the suit after giving notice under Section 80 C.P.C. and the instant suit is bad for want of notice under Section 80 C.P.C. Issue no. 13 is decided against the plaintiff and in favour of the defendant.

ISSUE NO. 8

Is the suit barred by proviso to section 42 Specific Relief Act.?

FINDINGS

On behalf of the defendants it is urged that the instant suit is barred by the proviso to section 42 of the Specific Relief Act, 1877 which reads as under :-

“42. Any person entitled to any legal character (b), or to any right as to any property, may institute a suit against any

person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled (c) and the plaintiff need not in such suit ask for any further relief (d):

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so (e).

Explanation.- A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee."

It has been urged on behalf of the plaintiff that the plaintiff is not entitled for any declaration in view of the express bar of the proviso. The scope of the Section is that (1) plaintiff must be a person entitled to a legal character or to any right as to any property. (2) The defendant must be a person denying or interested to deny must have title to such character and the declaration must be of a legal character or to a right to the property and the plaintiff is able to seek mere declaration of title, he must seeks such relief. If any of the three conditions are not fulfilled, the suit must be dismissed. In this context, new Section 34 of Specific Relief Act, 1963 also deals with the legal character. Thus, according to Section 42, presently of Section 34 of Specific Relief Act any person entitled to a legal character or to any right as to any property may institute a suit against any person denying or interested to deny his title to such character or

right and the court may in its discretion make a declaration that he is/was entitled. In this suit the plaintiff has not come out with a case that he had any right to institute the suit denying the title of the defendants. Moreover, it is further clear that plaintiff's right must subsist on the date of the suit as well as on the date of decree vide *Bhagauti Prasad Khetan and others Vs. Laxminathji Maharaj and others, AIR 1985 All. 228*. It is now clear that the so called temple or place of worship in the year 1950 had already been demolished on 6th December, 1992. Consequently with the changed situation at present the plaintiff's right does not subsist. The plaintiff has not come out with a case that after the death of his father, anybody forbade him to worship the deity. In this case plaintiff has failed to establish his legal character for the reasons that it has nowhere been stated by him that he was forbidden not to offer prayers before the deity.

The only grievance of the plaintiff is that his father was not allowed to touch the deity for which there is an explanation from the side of the State Government that there was tense law and order situation, accordingly the proceedings under Section 145 Cr.P.C. were instituted and arrangements were made for the betterment of the property in suit by the receiver Shri Priya Dut Ram. It is further urged that to avoid any imperiling public peace and tranquility, authorities throughout acted in a manner warranted by law for maintenance of public peace on the festival. It is nobody's case that the plaintiff's father was deprived of Darshan. The only grievance of the plaintiff is that his father was not allowed to touch the deity. The

case of the defendant no.6 is that in view of the crowd on the festival day it was necessary to regulate the same and it was not possible that people may worship with touching the idol. Consequently, the restriction was reasonable. The plaintiff was not denied to worship deity. Darshan is also a kind of worship. The crowd cannot be allowed to touch the deity specially under a circumstance when the property was already attached and prohibitory order was issued under Section 145 Cr.P.C. earlier. Thus, the suit for declaration appears to be not maintainable in view of proviso to Section 42 of Specific Relief Act as the plaintiff has failed to establish his legal character. It is further clear that the plaintiff's right does not subsist on the date of the decree for the reason that the property has already been demolished and it has nowhere been mentioned in the plaint that after the demolition of the property, the plaintiff was deprived of having any Darshan. It has to be left to the discretion of the authority to decide about arrangement to be made in public interest and to secure a public peace. This cannot be a cause of grievance. Darshan comes within the category of worship. Darshan of the deity was not denied to the plaintiff's father. Consequently to my mind there was no cause of action to file the instant suit and specially in the circumstance that plaintiff has no legal character and this is not a case where the Court should exercise any discretion and pass any decree as prayed for, for the reasons that the present plaintiff had neither visited the place of worship before its demolition and was not deprived of worship. It is not the case that uniform standard was not applied to other

worshippers in allowing prayers and worship of deity. Thus, the procedure so adopted was uniform. The administration rightly maintained peace and public tranquility by regulating the crowd. This is not a case in which a discretion has to be exercised in favour of the plaintiff by allowing the suit of declaration to obstruct the discharge of administrative functioning of the State. The State authority acted bonafidely without causing any interference or hindrance in the worship of Hindus and only controlled the crowd and allowed privileges of Darshan to everybody including the plaintiff. The plaintiff's case does not fall within the special category through which he could ask for more rights than other worshippers. Thus on this count also, the suit for declaration and injunction fails.

ISSUES NO. 11(a) & 11(b)

- a. **Are the provisions of section 91 C.P.C. applicable to present suit ? If so is the suit bad for want of consent in writing by the advocate general ?**
- b. **Are the rights set up by the plaintiff in this suit independent of the provisions of section 91 C.P.C. ? if not its effect. ?**

FINDINGS

According to the plaint averments, it is clear that suit was filed in individual capacity. There is nothing on record to suggest that the suit was in the nature of representative capacity or it was a case of public nuisance. Consequently, the plaintiff has not rightly approached Advocate General by not treating the case as public nuisance under Section 91 of C.P.C. Section 91 C.P.C. then in force

reads as under :-

“91. (1) In the case of a public nuisance the Advocate General or two or more persons having obtained the consent in writing of the Advocate General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

(2) Nothing in this Section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.”

It further transpires that for alleged civil wrong, the suit was filed. Accordingly the question of complying Section 91 C.P.C. does not arise. I further feel that from the bundle of facts, it does not transpire that the plaintiff has said that there was any public nuisance. Consequently, this Court is unable to presume that the case falls within the ambit of public nuisance and thus, provisions of Section 91 C.P.C., then in force, are not attracted at the time of filing the suit. Issues No. 11-(a) and 11(b) are decided accordingly in favour of plaintiff and against the defendants.

ISSUE NO. 12

Is the suit bad for want of steps and notices under order 1 Rule 8 C.P.C. ? If so its effect. ?

FINDINGS

It is urged on behalf of the defendants that the suit is bad for

want of steps under Order 1 Rule-8 C.P.C. The plaintiff has come out with a case that suit does not fall within the ambit of Section 92 C.P.C. as it was not a case having representative character. Consequently, the procedure so adopted under Order 1 Rule 8 C.P.C. was not required to be adhered to. After going through the contents of the plaint, it transpires that the plaintiff has filed the suit with the allegations that he was not allowed to touch the deity on 14th January, 1950. There is no other grievance to him and he has sought the relief that he should be allowed to have prayers as per his choice for which the defendants have denied that they have regulated the crowd and it was essential to control the crowd. Thus, it is not the case of the plaintiff that everybody should be allowed to touch the deity on every day. Even the permission was not sought by him to institute the suit under Section 92 C.P.C. Thus, looking to the contents of the plaint from all or any angle, it transpires that the suit was filed for declaration and injunction in individual capacity. Accordingly, the plaintiff has not set up the right for others and under no event this Court has to ask him to adhere to the procedure under Order 1 Rule 8 C.P.C.

I have also mentioned that the plaintiff has failed to establish his legal character to institute the suit. Issue no. 12 is decided in favour of the plaintiff and against the defendants.

ISSUE NO. 14.

Is the suit no.25 of 50 Param Hans Ram Chandra Vs.

Zahoor Ahmad bad for want of valid notice under section 80 C.P.C. ?

FINDINGS

This issue relates to consolidated suit no. 25 of 1950, Param Hans Ram Chandra Vs. Zahoor Ahmad. This suit has already been withdrawn, accordingly no finding is required.

ISSUE NO. 15.

Is the suit bad for non-joinder of defendants. ?

FINDINGS

It has been contended on behalf of the defendants that the suit is bad for non-joinder of defendants. There is nothing on record to suggest as to which of the defendants is required to be joined in this case. Even during the course of argument from the side of the defendants it has not been brought to the notice of the Court that non-joinder of any of the defendants is bad. On behalf of the plaintiff it is submitted that necessary parties have already been arrayed and he does not want to press the relief against any other defendants. Consequently, this Court is of the view that in view of plaintiff's averments it can conclusively be said that since the suit was filed in individual capacity against certain persons, accordingly it was not necessary for the plaintiff to implead any other person beyond the cause of action. Thus for want of any evidence, it is not possible to hold that the suit is bad for non-joinder of defendants. Issue no. 15 is decided accordingly.

ISSUE NO. 10

Is the present suit barred by time ?

FINDINGS

On behalf of the defendants, it has not been pointed out as to how suit is barred by time specially under the circumstances when the plaintiff has urged that on 14.1.1950 he was deprived to touch the deity and thereafter he filed the suit on 16.1.1950 for declaration and injunction. Thus for a suit of declaration and injunction, three days time cannot be said to be more than prescribed time. Thus with no stretch of imagination, the suit can be said to be barred by time. The issue No. 10 is decided accordingly.

ISSUES NO. 16 & 17

16. Are the defendants or any of them entitled to special costs under section 35-A C.P.C.?

17. To what reliefs, if any, is the plaintiff entitled. ?

FINDINGS

These issues are interrelated and can conveniently be decided at one place. In view of my findings referred to above, the plaintiff is not entitled for the relief claimed and defendants are also not entitled for special costs as initially the plaintiff, who filed the suit is no more.

ORDER

The suit is dismissed with easy costs.

(Dharam Veer Sharma)