

place surrounding it, to be the sanctum sanctorum. The sanctum sanctorum encompassed the land beneath the three domes and the entire land of the circumambulation path.” (E.T.C.)

“रामजन्मभूमि स्थल के संबंध में पूरे दुनिया के हिन्दुओं की आस्था उसी प्रकार से है जैसे मुस्लिम सम्प्रदाय की आस्था काबा के संदर्भ में है। रामजन्मभूमि मंदिर पूरी दुनिया में केवल एक स्थान पर है जबकि राम के मंदिर हजारों की संख्या में होंगे।” (पेज 54)

“Hindus of the whole world have the same faith in reference to the place of Ramjanmbhumi as the Muslim community has in reference to Kaba. The Ramjanmbhumi temple is only on one place in the whole world but Rama temples are thousands in number.” (E.T.C.)

“जन्मभूमि स्थल बाहरी तथा भीतरी स्थान तथा उसके चारो तरफ की भूमि को मैं मानता हूँ यह सभी स्थान पूज्य स्थल हैं। यह पूरा स्थान भगवान राम का जन्मस्थान होने के कारण मेरे लिए निष्ठा तथा आस्था का प्रतीक है।” (पेज 66)

“The Janmbhumi site is considered by me to be the outer and inner part and the land surrounding it from all four sides. All these are revered places. This entire place is a symbol of faith and belief for me on account of being the birthplace of Lord Rama.” (E.T.C)

“1934 के पूर्व में रामचबूतरा के दर्शन के बाद बीच के शिखर के नीचे स्थिति गर्भगृह का दर्शन करता था इसके अतिरिक्त खम्भों पर जो मूर्तियां अंकित थी उनका दर्शन करता था तथा फूल तुलसी पत्ती आदि चढ़ाता था। पश्चिमी दिवार के समीप एक अलमारीनुमा चीज बनी हुई थी उस स्थान पर भी लोग पूजा सामग्री चढ़ाते थे तथा वह स्थान भी गर्भगृह से संबंधित था।” (पेज 97)

“Prior to 1934, after having darshan of Ramchabutara, I used to have darshan of 'Garbh-grih' (sanctum sanctorum) situated beneath the mid dome.

Besides this, I used to have darshan of the idols existing over the pillars and used to offer flower, Tulsi (Holy Basil) leaves etc. over them. There was a almirah shaped structure near the western wall. People used to offer worship articles over there and that place was also related to 'Garbh-grih' (sanctum sanctorum).” (E.T.C)

“प्रत्येक वह स्थान, जहां पर मूर्ति रहती है, उसे गर्भगृह नहीं कहा जाता है, जिस स्थान पर देवता विशेष प्रकट होता है, उस स्थान को गर्भगृह कहते हैं।” (पेज 134)

“Every such place, where idols exist, is not called 'Garbh-grih' (sanctum sanctorum). The place of descension of a particular God, is called the 'Garbh-grih' (sanctum sanctorum).” (E.T.C)

OPW-5, Ramnath Mishra alias Banarasi Panda

“विवादित भवन की तीन तरह की परिक्रमा होती है, पहली चौदह कोसी, दूसरी पांच कोसी और तीसरी अन्तर्गृही अर्थात् विवादित भवन के चारों तरफ।” (पेज 42)

“Three types of circumambulation are performed at the disputed structure, the first one being '14 kosi' (circumambulation of 14 kosas), the second one being '5 kosi' (circumambulation of 5 kosas) and the third one being the inner circumambulation, that is, round the disputed structure.” (E.T.C.)

“सन् 1932 से 1970 तक मैं बराबर दर्शन करने विवादित स्थल पर जाया करता था। सन् 1932 से 1970 तक मैं यात्रियों को लेकर वहां दर्शन कराने जाता था, इसलिए सरसरी तौर पर देखता था, और मैं उनके पूजा कराने, दर्शन कराने और अपनी दक्षिणा में ज्यादा ध्यान देता था।”

(पेज 44)

“From 1932 to 1970, I used to go to have darshan at the disputed structure. From 1932 to 1970 I used to take along pilgrims to that place for darshan; hence, I used to

see things cursorily and used to pay more attention to arranging Pooja and darshan for them and to taking 'Dakshina' (gift for religious services)." (E.T.C)

“विवादित परिसर के अन्दर मैं तीन जगह दर्शन करता था, पहले बायें वाले चबूतरे पर दर्शन करता था फिर शिखर वाले गर्भगृह का बाहर जंगले से दर्शन करता था और फिर उत्तर की ओर सीता रसोई के दर्शन करने जाता था। वहां सीता रसोई से कभी मैं उत्तरी फाटक से निकल जाता था, और कभी वापस आकर पूर्वी द्वार से बाहर निकल जाता था, जब ज्यादा भीड़ होती थी।” (पेज 45)

"Inside the disputed structure I used to have darshan at three places; I used to have darshan first at the left Chabutra, then at the domed 'Garbh-Grih' (sanctum sanctorum) through the outer grill and then at Sita Rasoi in the north. I sometimes came out of Sita Rasoi from the northern gate and sometimes returned to the eastern gate to go out through it, particularly when there were sizeable crowds." (E.T.C.)

“हमने उन यजमानों को केवल जन्म भूमि के पूजा व दर्शन कराया था।” (पेज 78)

"I had helped said 'Yajmans' in worship and darshan of Janmbhumi only." (E.T.C)

OPW-7, Ram Surat Tiwari

“मैंने सन् 1942 से लेकर 15 दिसम्बर 1949 के बीच में विवादित भवन के अन्दर गर्भगृह में जाकर कभी दर्शन नहीं किए। विवादित भवन के गर्भगृह में कोई मूर्तियां नहीं थीं। सीखचों की दीवार के बाहर से ही फूल, प्रसाद और द्रव्य चढ़ा दिया करते थे।” (पेज 10)

"Between 1942 to 15th December, 1949, I never had darshan by going into the sanctum sanctorum inside the disputed structure. There were no idols in the sanctum sanctorum of the disputed structure. I used to offer flowers, 'Prasad' and other materials only from outside the grill

wall.” (E.T.C.)

“अयोध्या में जहाँ पर राम जन्म भूमि मंदिर स्थित है, उसी को कुछ मुसलमान लोग तथाकथित बाबरी मस्जिद कहते हैं।” (पेज 22)

“That very place in Ayodhya where Ramjanmbhumi is situated, is called the so called Babri mosque by some Muslims.” (E.T.C.)

“तीन गुम्बद वाले भवन में सीखचे वाली दीवार के बाहर से मैंने केवल उपरोक्त स्थल का ही दर्शन किया था, और उसी को प्रणाम किया था और वहाँ किसी चीज का दर्शन नहीं किया था।” (पेज 71)

“From outside the grill wall in the three domed structure, I had ‘darshan’ only of the aforesaid place and paid obeisance to that very place.” (E.T.C.)

OPW-16, Jagadguru Ramanandacharya Swami Ram Bhadracharya

“शाश्वत पूज्य स्थलों में महंतों की आवश्यकता नहीं होती है। ऐसे शाश्वत पूज्य स्थलों में रामेश्वरम, जगन्नाथपुरी, द्वारिकाधाम, बद्री नारायण भी हैं, जहाँ महंत नहीं हैं। मथुरा के श्रीकृष्ण जन्मभूमि मंदिर पर भी कोई महंत नहीं है।” (पेज 56)

“Mahantas are not required at the eternally revered places. Among such eternally revered places are 'Rameshwaram', 'Jagannath', 'Dwarikadhaam', and 'Badri Narayan' as well, where there are no Mahantas. There is no Mahanta even at Mathura situated Sri Krishna Janam Bhumi temple.” (E.T.C.)

“पूजा अर्चना की बात सन् 1528 से लेकर सन् 1949 तक परम्पराओं के आधार पर हम सुनते चले आ रहे हैं और यह परम्परा लगातार सुनी हुई बातों पर आधारित है। उपरोक्त परम्परा मैंने अपने जीवनकाल में अपने पूर्वजों से सुनी और यह मेरे विश्वास की बात है कि यह बात मेरे पूर्वजों से सुनी और यह मेरे विश्वास की बात है कि यह बात मेरे पूर्वजों को उनके पूर्वजों ने बताई होगी। स्वयं कहा कि “अविच्छिन्न जनश्रुति” का ही नाम परम्परा है।” (पेज 63)

“We have been hearing of 'Pooja- Archana' (worship and prayer) from 1528 to 1949 on the basis of traditions and this tradition is based on the things heard consistently. I have heard of the aforesaid tradition from my forefathers in my life time and it is my belief that my forefathers may have been told this thing by their forefathers. (Himself stated) 'Avichchhinna Janshruti' (anything being heard consistently) itself is called tradition.” (E.T.C.)

DW-3/9, Shri Ram Ashrey Yadav

“तीन गुम्बद वाले विवादित भवन के बीच के गुम्बद के नीचे भगवान राम का जन्म हुआ था, ऐसा हिन्दू लोग मानते हैं। हिन्दुओं की यह मान्यता है कि राम जन्म भूमि का दर्शन करने से मोक्ष मिलता है।” (पेज 13)

“The Hindus so believe that Lord Rama was born under the mid dome of the three dome disputed structure. It is the belief of the Hindus that 'Moksha' (salvation) is obtained by 'Darshan' (offering of prayer by sight) of Ramjanmbhumi.” (E.T.C.)

DW-3/14 Swami Haryacharya

“मैं तीन गुम्बद वाले भवन में दर्शन करने पहले जाता था। मैंने दर्शन इसीलिए किया था क्योंकि मेरा यह विश्वास है कि वहाँ दर्शन मात्र से मोक्ष की प्राप्ति होती है।” (पेज 25)

“Earlier I use to go for darshan to the three domed building. I had the said sight because I believe that one can attain liberation by merely having sight of the said place.” (E.T.C.)

“अयोध्या में केवल जन्मभूमि पर गर्भगृह है। इसके अतिरिक्त अयोध्या के अन्य किसी मन्दिर में गर्भगृह नहीं है।” (पेज 107)

“In Ayodhya, the 'Garbh-grih' (sanctum sanctorum) exists only at the Janmbhumi. Apart from this, Garbh-grih is not found in any other temple at Ayodhya.” (E.T.C.)

1916. As long back as in 18th century even **Tieffenthaler** in

his work "**Description : Historique Et Geographique : Del'Inde**" (supra), **Exhibit 133 (Suit-5) (Register 21, pages 273-289)** has recognised the belief of Hindus with respect to the place on which they continue to worship despite its being razed as is evident from the following:

"The Hindus call it Bedi i.e. 'the cradle. The reason for this is that once upon a time, here was a house where Beschana was born in the form of Ram. . . . Subsequently, Aurengzebe or Babor, . . . got this place razed in order to deny the noble people, the opportunity of practising their superstitions. However, there still exists some superstitious cult in some place or other. For example, in the place where the native house of Ram existed, they go around 3 times and prostrate on the floor. . . ."

1917. He also recognised the celebration of the birthplace of Rama on 24th of the month of Chaitra.

1918. In view of the above, we find force in the submissions of the learned counsels that the plaintiffs 1 and 2 are juridical person and considering the fact that they are being visited as a matter of right by Hindus for Darshan and worship believing the Place as birthplace of Lord Rama, and the idols being the image of Supreme Being having divine powers which may cherish their wishes, provide happiness and salvation. This faith and belief cannot be negated on the challenge made by those who have no such belief or faith. How it was created, who created, what procedure of Shastrik law was followed are not the questions which need be gone at their instance. We find that such faith and belief is writ large by a long standing practice of Hindus of visiting the place for Darshan and worship.

1919. Now the question is what should be the procedure

where an idol is to be sued or sue. The suit in the name of the idol can be filed by Shebait. Similarly, idol can be made a defendant through Shebait. In certain circumstances, however, a suit can be allowed to be filed or defended through next friend.

1920. The term 'next friend' has been used in Order 32 Rule 1 CPC. This brings into picture Order 32 Rule 1 CPC which reads as under:

"1. Minor to sue by next friend.- Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

Explanation.- In this Order, "minor" means a person who has not attained his majority within the meaning of section 3 of the Indian Majority Act, 1875 (9 of 1875), where the suit relates to any of the matters mentioned in clauses (a) and (b) of section 2 of that Act or to any other matter."

1921. Meaning of the expression "a next friend" in Order 32 Rule 1 CPC came to be considered in **Amar Chand Vs. Nem Chand AIR (29) 1942 All.150** where an Hon'ble Single Judge (**Hon'ble Braund J.**) observed :

"The expression "a next friend" originally denoted the person through whom an infant acts without any necessary reference to litigation but in modern times it has come to assume a technical meaning of the person by whom a minor or an infant, as the case may be, is represented as a plaintiff in litigation. The real object of having a next friend is that there may be somebody to whom the defendant or the opposite party may be able to look for costs. The next friend himself does not actually become a party to the litigation. It is the minor who is the

party and the next friend is a person- so to speak in the background- who can act on the minor's behalf and to whom the opposite party can look for costs.

1922. The Court also considered the difference between "guardian" and "a next friend" and said:

"As every one knows, a minor who is a defendant to a suit is represented by a guardian ad litem. There is this difference between a guardian ad litem and a next friend that, whereas a guardian ad litem is constituted by an order of the Court, a next friend automatically constitutes himself by taking steps in the suit."

1923. About the procedure of filing a suit under Order 32 Rule 1 C.P.C. the Court said:

"Now, O. 32, R. 1 provides for the manner in which a suit is to be instituted by a minor. It says that every suit by a minor shall be instituted in his name by a person who in that suit shall be called his next friend. From that it is quite clear that a person who does, in fact, institute a suit in the name of a minor becomes his next friend and, according to the Code, that would apparently happen at the instant a plaint is presented on a minor's behalf."

1924. In **Annapurna Devi Vs. Shiva Sundari Dasi, AIR 1945 Cal 376** a different view was taken holding that the appointment of next friend by the Court was not necessary.

1925. For the purpose of procedure, recourse was taken to Order 32 CPC but not accepted by this Court in **Doongarsee Shyamji vs. Tribhuvan Das, AIR 1947 All 375** observing where the Shebait of a temple has done something which is obviously adverse to the interest of the institution, the Court may allow a disinterested third party to file a suit, but such a suit must be

filed in the interest of the foundation or the deity, as the case may be. This proposition was expanded and enlarged by a Division Bench of this Court in **Bihari Lal Vs. Thakur Radha Ballabh Ji and another AIR 1961 Allahabad 73** holding that the person who has beneficial interest in the temple property can take steps to see that the temple property is preserved to the idol and may file a suit for that purpose as the next friend of the deity, bringing the suit in the name of the deity himself.

1926. This Court in **Dongarsee Syamji Joshi (supra)** held :

"The analogy of a deity being treated as a minor is a very imperfect analogy and we cannot carry it far enough to make O. 32, Civil P.C. applicable. In cases where the sebaits of a temple have done something which is obviously adverse to the interest of the institution it may be that the Courts would allow a disinterested third party to file a suit, but such suits must be filed in the interest of the foundation or the deity, as the case may be. the cases relied on by learned counsel where a sebaite transferred property belonging to the deity and a stranger was allowed to file a suit as next friend can be distinguished on that ground."
(para 8)

"The result of accepting the argument of learned counsel would be that any person can constitute himself as the next friend of a deity and file a suit in the name of the deity for possession of the property by the dispossession of a de facto sebaite who may be managing the property and looking after the deity to the satisfaction of everybody and get hold of the property in the name of the idol till such time as he is dispossessed again by somebody else. We are not prepared to hold that such is the law that any third

person can constitute himself as next friend and file a suit and claim an absolute right to possession of the property simply because he has filed the suit in the name of the deity." (para 12)

"An idol, though it is a juristic person, is in charge of its sevait who, for all practical purposes, represents it. But there may be cases where the right of the sevait and the right of the idol are at conflict and in such a case it may be that the idol may bring a suit for the vindication of its rights through a disinterested third party as its next friend. We do not think we can accept the contention of learned counsel for the respondent that an idol has no right of suit at all, though we agree with him that a suit in the name of the idol can be filed only in the interest of the idol and not with the object of getting hold of its property by the person purporting to act as next friend." (para 13)

"There is really no such thing as an idol which is the private property of an individual or a family or which belongs to the public. According to Hindu philosophy, an idol, when it is installed in a temple is the physical personification of the deity and after consecration the stone image gets its soul breathed into it. Before an idol can be installed in a temple, the temple must be dedicated to it and it becomes its private property. The books of ritual contain a direction that before removing the image into the temple the building itself should be formally given away to God for whom it is intended. The sankalpa, or the formulae of resolve, makes the deity himself the recipient of the gift which, as in the case of other gifts has to be made by the donor taking in his hands water sesamum, the sacred kush

grass and the like. It is this ceremony which divests the proprietorship of the temple from those who had built it and vests it in the image which by the process of vivification has acquired existence as a juridical personage. A temple building, therefore, under the strict Hindu law is the property of God and the idol and cannot be the private property of an individual or a family or a section the public. The property dedicated to an idol in an ideal sense vests in the deity, though no Hindu professes to give the property to God. He only dedicates it to the worship of God and under the strict Hindu law the King, who is the servant and the protector of the deity, is the custodian of the property.” (para 15)

1927. In **Sri Nitai Gour Radheshyam Vs. Harekrishna Adhikari and others AIR 1957 Cal. 77** it was held that non-filing of application seeking permission to prosecute a suit on behalf of an idol as Shebait is only an irregularity and such application if filed later on and allowed by the trial court, the suit cannot be held to be filed wrongly or not maintainable for this reason alone.

1928. When a suit can be filed by an idol through a next friend was considered by a Single Judge in **Angoubi Kabuini and another Vs. Imjao Lairema and others AIR 1959 Manipur 42** wherein it was held:

"Similarly, there is no force in the contention that such a next friend must be appointed as the next friend by the Court before he can institute a suit on behalf of the idol. No provision of law was shown in support of it, rather the provisions in this respect in the Civil Procedure Code do not make such a course necessary. It is a different

matter that the defendants can question that suitability of the next friend after the suit is instituted and then the Court will have to decide that point, but that is no authority for the proposition that a next friend must be appointed by the Court before the suit can be instituted by him. This point was dealt with in Sri Annapurna Debi v. Shiva Sundari, AIR 1945 Cal 376 at some length and I am in respectful agreement with the view taken by the learned Judge in that case. The case reported in Kalimata Debi v. Narendra Nath, 99 Ind Cas 917: (AIR 1927 Cal 244) which was relied upon on the side of the petitioners also does not support their contention. What was stated in that case was that the Shebait alone can maintain a suit on behalf of an idol except perhaps in a case where the Shebait has refused to institute a suit. The observations in Sri Sri Sridhar Jew v. Manindra K. Mitter, AIR 1941 Cal 272 were also to the same effect, namely, that when the interests of the Shebait are adverse to that of the idol then the idol should be represented through a disinterested next friend. It will be thus clear that in a case like the present one it is permissible for a person who is not the Shebait to bring such a suit." (Para 4)

1929. It was contended in **Bhagauti Prasad Khetan Vs. Laxminathji Maharaj etc. AIR 1985 All. 228** that no suit through next friend is maintainable unless an application is filed seeking leave of the Court to sue as a next friend of the idol. The Court found that no such procedure is prescribed in Order 32. It also concurred with a similar view that no such application is necessary, expressed in **Ram Ratan Lal Vs. Kashi Nath Tewari, AIR 1966 Patna 235** and **Angoubi Kabuini vs. Imjao**

Lairema (supra). It is true that the two decisions of the Calcutta High Court in **Smt. Sushma Roy Vs. Atul Krishna Roy AIR 1955 Cal 624** and **Iswar Radha Kanta Jew Thakur V. Gopinath Das (supra)** in which it was held that if anybody else other than Shebait has filed suit on behalf of of the idol, he must be appointed as next friend by the Court on filing of such an application by him, have been dissented by this Court and it pointed out contradictory authorities of the Calcutta High Court in **Annapurna Devi (supra)**.

1930. Dealing with the right of deity to file suit, the Division Bench of this Court in **Bhagauti Prasad Khetan (supra)** in para 18 and 19 of the judgment said :

“18. The third point argued by the learned counsel for the appellants in connection with the maintainability of the suit is that in the present case Atma Ram did not apply for leave of the Court to sue as a next friend of the idol and as such the suit filed by him was not maintainable. In support of this argument he placed reliance upon Smt. Sushma Roy v. Atul Krishna Roy, AIR 1955 Cal 624 and Iswar Radha Kanta Jew Thakur v. Gopinath Das, AIR 1960 Cal 741. It was held in these cases that anybody other than Shebait suing on behalf of the idol must be appointed as next friend by the Court on application by him to that effect. After having carefully gone through these cases we find ourselves unable to agree with these observations. A glance on the judgment reported in AIR 1955 Cal 624, shows that the decisions of Calcutta High Court are not uniform on the appointment of the next friend by the Court. It has been held in Annapurna Devi v. Shiva Sundari Dasi, AIR 1945 Cal 376 that appointment of the next friend by

the Court is not necessary. Moreover in AIR 1960 Cal 741 it was observed at page 748 that :

“A worshipper or a member of the family has no doubt his own right to institute a suit to protect his right to worship and for that purpose to protect the debutter property. That is, however, a suit by the member of the family or worshipper in his personal capacity and not a suit by the deity. The deity has also a right of its own to have a suit instituted by a next friendAnybody can act as such next friend, but the law requires that anybody other than Shebait instituting the suit in the name of deity must be appointed as such by an order of the Court.”

19. It indicates that no appointment is necessary, if the suit is filed by a worshipper. Here Atma Ram has joined the suit as worshipper also. Thus the maintainability of the suit remains unaffected. Apart from this, in Ram Ratan Lal v. Kashi Nath Tewari, AIR 1966 Pat 235 and Angoubi Kabuini v. Imjao Lairema, AIR 1959 Manipur 42 it was held that such an appointment is not necessary. The Supreme Court has clearly held in Bishwanath vs. Sri Thakur Radha Ballabhji, AIR 1967 SC 1044 that the worshipper has an ad hoc power of representation of the deity when the Shebait acts adversely. It follows from this the worshipper having right to represent the deity can represent the deity without any specific order from the Court about his appointment. There is no definite procedure laid down in the Civil P.C. relating to suits on behalf of idol. The provisions of order 32 C.P.C. which relate to minor do not specifically provide for the

appointment of the next friend. It may also be added in this connection that the defendants, appellants did not raise any objection before the trial Court that Atma Ram should first make an application for his appointment as next friend of the deity and then the suit can proceed. Atma Ram clearly alleged in para 1 of the plaint that he is representing the deity as its next friend. The manner in which he was allowed to continue the suit indicates that he should be deemed to have been accepted as next friend of the deity. Thus the suit cannot be held not maintainable because Atma Ram did not make an application and was not appointed as next friend of the idol plaintiff 1 in the trial Court.”

1931. As a proposition of law we are inclined to express our respectful agreement with the above view taken in **Bhagauti Prasad Khetan (supra)** and learned counsel for the parties could not place before us any binding authority or otherwise material to pursue us to take a different view.

1932. In **Sri Thakur Kirshna Chandramajju vs. Kanhayalal and others AIR 1961 Allahabad 206** another Division Bench followed the view of this Court in **Bihari Lal Vs. Radha Ballabh Ji (supra)** by observing in paragraph 39 of the judgment, where the acts of the alleged Shebait are being impugned, then the idol may sue through a next friend who has beneficial interest in the property.

1933. In **Sri Sri Gopal Jew Vs. Baldeo Narain Singh and others, 51 CWN 383** the question of maintainability of suit of a deity through a person who was not a Shebait came to be considered in detail. Initially, the suit was filed in the name of deity alone through one Sri Rajendra as its next friend.

Subsequently, Rajendra was also impleaded as second plaintiff. The Court referred to general rule enunciated by James, L.J. in **Sharpe Vs. San Paulo Railway Co., L.R. 8 Ch. App. 597 at pp.609 and 610 (1873)** observing :

"..... a person interested in an estate or trust fund could not sue a debtor to that trust fund, merely on the allegation that the trustee would not sue; but that if there was any difficulty of that kind, if the trustee would not take the proper steps to enforce the claim, the remedy of the cestui que trust was to file his bill against the trustee for the execution of the trust or for the realisation of the trust fund and then to obtain the proper order for using the trustee's name, or for obtaining a Receiver to use the trustee's name, who would, on behalf of the whole estate, institute the proper action, or the proper suit in this Court."

1934. Hon'ble Das J. in **Gopal Jew (Supra)** however, proceeded to hold at page 390 of the judgment as under:

"In special circumstances, however, e.g., where the trustee is unwilling or refuses to sue or has precluded himself, by any act, omission or conduct, from suing, a cestui que trust may himself institute the action adding as Defendants every trustee and every other cestui que trust as the cases cited in the notes in Halsbury's Laws of England, 2nd Edn., Vol.33, paragraph 505 at pages 288 and 289 will show."

".....Can it be expected, in the circumstances, that the trustees, who perpetrated the fraud on the deity, will themselves come forward to take proceedings to get the consent decree set aside on the ground of their own fraud? It may be that in law there is nothing to prevent the

defaulting trustees from filing a suit as Plaintiffs, but from a practical point of view will not their presence in the category of Plaintiffs seriously jeopardise the chances of success of such a suit? Will it not be said that the solicitude now shown by them for the beneficiaries including a deity whose interest they had not thought of for all these years is a mere pretence. One of the major beneficiaries is a deity of whom after the death of the daughter and grand daughter of Sreegopal the trustees and their brothers and/or their sons will be the shebait. Will not the trustees, if they themselves bring a suit lay themselves open to a double charge of fraud, fraud on the deity in the first instance and fraud on the purchasers now? Is there no risk of there being personally made liable for costs? The trustees may be penitent, as both Bonwari and Madho say or pretend they are, or they may be unrepentant sinners as the Defendants maintain they are; but will not the considerations mentioned above weigh with them equally in either case? However genuinely repentant they may be, they may yet be not willing to face the Court as Plaintiffs for fear of being made to pay the costs or of prejudicing the deity. They may be willing or even anxious to render assistance to the beneficiaries, yet they may be reluctant to figure as Plaintiffs. On the other hand, if they are unrepentant and their sole object is to benefit themselves they will out of policy keep themselves behind the scenes. In either case they cannot for a moment be expected to take proceedings in their own name. Is the deity who is one of the beneficiaries to suffer? The law recognises the deity as a juridical entity capable of having legal rights. If a fraud

has been perpetrated on the deity and its right, such as is alleged in this suit, the deity is entitled to be reinstated in its original rights. Such reinstatement may indirectly benefit the very persons who perpetrated the fraud on the deity. It may be – indeed, I am strongly inclined to think it is – that the defaulting trustees are behind this litigation and have set up a son of one of them to file this suit for their own ends but their evil motive or rascality cannot effect our extinguish the deity's rights. As long as the deity is recognised as a legal entity capable of holding properties, its right must necessarily be recognised on its own merits. The Court cannot ignore the deity's rights or deny protection to the deity merely because of the misconduct of its unmeritorious trustees or shebaitis or of the possibility of those very unmeritorious persons indirectly reaping the benefit of such protection. The fact that the deity may be again defrauded can be no ground for declining to remedy the fraud that has already been perpetrated on its rights. In my judgement, in the exceptional circumstances of the present case and in view of the allegations in the plaint it must be held that the trustees are unwilling or have refused or at any rate by their act or conduct rendered themselves incompetent to maintain a suit for setting aside the decree in 1926 and the beneficiaries themselves must be allowed to take legal proceedings.

1935. The Court held in **Gopal Jew (Supra)** that the suit is maintainable but it chose to rely on Order 32 Rule 4(1) of the Code of Civil Procedure for the said purpose.

1936. Considering Order XXXII Rule 1 C.P.C., a Single

Judge of Andhra Pradesh High Court in **Duvvuri Papi Reddi and others Vs. Duvvuri Rami Reddi AIR 1969 AP 362**, held in para 14:

“It must however, be remembered that Order XXXII deals only with procedure. It does not confer on minors or persons of unsound mind any right of any sort. Under Rule 1 of Order XXXII, every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor. Where the suit is instituted without the next friend, according to Rule 2, the defendant is entitled to apply to have the plaint taken off the file, with costs to be paid by the pleader or other persons by whom it was presented. After hearing the objections, the Court is empowered to pass such order as it thinks fit under Rule 2. Order XXXII, Rule 1 states that along with such a suit an application by the next friend should be filed for the purpose of appointing him as the next friend it is necessarily implied”

1937. Some of the judgments, which we have already referred, show that the same were given by holding that a Deity does not suffer any disability as it is not minor, in order to argue that Order XXXII, Rule 1 has no application, drawing a parallel with Section 6 of the Limitation Act. An attempt was made that the Deity having been held not a minor for the purpose of Section 6 of the Limitation Act and therefore for the purpose of Order XXXII, Rule 1 C.P.C. also it cannot be treated to be a minor and that provision will have no application.

1938. Relying on Privy Council's decision in **Damodar Das Vs. Adhikari Lakhani Das (supra)** and a Division Bench decision of Patna High Court in **Naurangi Lal Ram Charan**

Das AIR 1930 Patna 455 an attempt was made to argue that a Hindu idol/deity cannot be included within the term "minor". In the context of Section 6 of the Limitation Act this view was taken by the Patna High Court in **Naurangi Lal (supra)**, hence it was argued that on the same principle Order 32 Rule 1 has no application in this case and an idol cannot be allowed to be sued through next friend treating it to be a minor but with great respect we find that the issue is already concluded by the decision of the Apex Court in **Bishwanath vs. Sri Thakur Radha Ballabhji (supra)**. We also find that the Patna High Court referred to an earlier decision of this Court in **Chitar Mal Vs. Panchu Lal AIR 1926 All.392** and the Oudh Chief Court in **Prakash Das Vs. Janki Ballabha Saran AIR 1926 Oudh 444** holding that property can be acquired as against an idol by adverse possession which will run from the date of the alienation inasmuch as an idol does not suffer from any disability under the Limitation Act and in reference thereof it was held that the idol cannot be treated to be a 'minor' so as to suffer a disability under Section 6 of the Limitation Act.

1939. To the same effect is a Division Bench decision of Orissa High Court in **Radhakrishna Das Vs. Radha Ramana Swami & others AIR (36) 1949 Orissa 1**. In that case also there was a family idol of Thakur Radharamna Swami. It belonged to the family of Ranganath Deb Goswami whose father executed a deed on 21st November 1909, transferring his Shebait right as inam lands endowed for the service of the deity and the idol itself to Mahant of the Gangamatha Math at Puri and put him in possession of the plaintiff deity. The Government of Madras resumed the inam grant on 4th November 1921 on the ground it has been alienated. Hence, the purpose of grant has failed.

Ranganath Deb Goswami requested the Government to hand over the net assessment of the village so that Seva Pooja of the deity may be continued. The Mahant of Gangamatha Math at Puri raised an objection. The Government left the parties to establish their rights in a Civil Court and collection from village were kept in the treasury subject to final adjudication of the title. Ranganath Deb Goswami filed a suit against the Mahant of Gangamatha Math at Puri praying for a declaration that the plaintiff idol has not been removed from the Goswami Math to Gangamatha Math, as falsely stated in the deed executed on 21st November 1909. The suit was decided against Goswami Math as a result whereof the inam village was re-granted to Gantamatha Math. Thereafter, a suit was filed by zamindars of Takkali as next friend of the idol seeking a declaration that the retention of idol at Gangamatha Math by its Mahant is wrongful and a continuing wrong, the idol be restored to its original place, i.e., Goswami Math. The next friend of the idol claimed to be the successor of the original founder of the endowment, i.e., Goswami Math and as such interested in the location of the idol at proper place and claimed that it is the will of the idol to be returned at the original place and to be worshipped thereat. The cause of action was claimed to be a continuing one. The Trial Court formulated several issues and with respect to the validity of the transfer from Goswami Math to Gangamatha Math observed that the said transfer is not illegal and cannot be questioned by the next friend of the idol. He held the retention not illegal and the suit was held barred by limitation. The judgment was reversed in appeal. The High Court allowed the appeal and restored the judgment of the Trial Court in the background of the above facts. High Court found that there was

no difference in the customary mode of worship in Goswami Math and Gangamatha Math. The plea of different of customary mode of worship was found a pure myth and unsubstantiated. Secondly, it held that the lower Appellate Court erred in observing that the Mahant of Goswami Math being a married person was capable of conducting worship though the Mahant of Gangamatha Math, Sanyasi, could not have been capable thereof. The Court observed that this finding is erroneous and the lower Appellate Court has proceeded on some unfortunate confusion between an "ascetic" and a 'Sanyasi. The aforesaid words have been explained by the Court as under:

"There has been an unfortunate confusion in the lower Courts between an "ascetic" and a 'Sanyasi.' The only difference that I can find between defendants 1 and 2 is that the former is a perpetual Brahmachari or Virakta of the Vaishnab sect while the latter is a Gruhi or married man. Both worship deities, both perform the annual ceremonies of their Gurus or ancestors, and also perform other Vaidio Karmas. Sanyasi should have no Gods or temple. Their only vocation is the contemplation of the absolute truth and not the worship of any God. A Brahmachari or student, according to Golap Chandra Sarkar is of two descriptions, namely, Upakarvana or ordinary student and Naishtika or life long student. The former became a house-holder in due course, while the latter was a student for life, devoted to the study of science and theology, felt no inclination for marriage, did not like to become a house-holder, and chose to life, as a perpetual student, the austere life of celibacy. There are persons belonging to certain religious sects of modern origin such

as the Vaishnabs that do in some respect resemble lifelong students and itinerant ascetics. They are connected with the well-known Maths or Mahants.... Most of the Vaishnabite Maths of Bengal, Bihar and Orissa were founded by Bengalee Brahmins and Kayasthas who were the disciples and followers of Chaitanya and they were not merely founded by celibates but by house-holders. The three Prabhus who are the chief spiritual preceptors or masters of this order are Obaitanya, who is believed to be the incarnation of Lord Krishna, Adwaitanand and Nityanand. Adwaitanand's descendants residing at Santipur are now chief spiritual preceptors along with the male and female descendants of Nityananda. Besides these three Prabhus, the Vaishnabs of this order acknowledge six Goains as their original and chief teachers and founders, in some instances of the families now existing, to whom as well as to the Gokulashta Gosains, hereditary veneration is due. These six are Rupa, Sanatan, Jeeva, Raghunath Bhat, Baghunath Das, and Gopal Bhat. They appear to have settled at Brundaban and Mathura. The post of spiritual Guide is not confined only to the Brahmins: some of the well-known Gosains' belong to the Vaidya caste. Chaitanya, the founder of these cults, nominated Adwaitacharya or Adwaitanand and Nityanand to preside over the Bengal Vaishnabs, and Bupa and Sanatan over those of Mathura: See Wilson's works, vol. I. It is said that defendant 1 claims descent through Gadadhar Prabhu and defendant 2 through Nityanand Prabhu who were both followers of Lord Chaitanya. A reference to Chaityanya Charitamruta and Baishnab Abidhana shows that

Gadadhar who was also known as Pandit Prabhu Gadadhar Pandit and Godai, was the disoiple of Pandarik Bidyanidhi who was himself a disciple of Advaitanand. Gadadhar came to Orissa along with Sri Chaitanya and lived the life of a perpetual Brahmachari till his death in 1533. Gangamudri was an Oriya lady and was a disciple of Gadadhar's branch. Gadadhar was a great scholar and wrote commentaries on the Gita. Besides he was a life-long associate of Lord Chaitanya and is regarded by the Vaishnabs as one of the Pancha Tatva. The appellant's Math is obviously named after Gangamudri, who was a Vaishnab herself and is known as the Gangamatha Math."

1940. Coming to the question of limitation, the Court in **Radhakrishna Das Vs. Radha Ramana Swami (supra)** has dealt with this issue in paras 13 and 19 at length. Certain propositions which it has accepted as well settled are:

- (a) As a general rule according to Hindu law, property given for the maintenance of religious worship is inalienable. (Reliance is placed on Mac Naughton's "**Precedents of Hindu Law**" Vol. II, p. 305; **Sri Sri Ishwar Lakshi Durga Vs. Surendra Nath Sarhar 45 C.W.N. 665** and **Surendra Narayan Sarbadhikari Vs. Bholanath Roy Choudhuri AIR (30) 1943 Cal. 613**)
- (b) The manager of an endowment has the same powers as a guardian of an infant to incur loans for necessary purposes and such loans will bind the idol's estate.
- (c) Where the temple is a public temple, the dedication may be such that the family itself could not put an end to it, but in the case of a family idol the consensus of the whole family might give the estate another direction.

(Reliance is placed on **Kunwar Darganath Vs. Ramchunder 4 I.A. 52 (P.C.)** and **Tulsidas Vs. Sidahinath (9) I.C. 650**)

(d) It is only in an ideal sense that property can be said to belong to an idol, and the possession and management of it must in the nature of things be entrusted to some person as the Shebait or Manager. (Reliance is placed on **Prosunno Kumari Debya v. Gulabahand (supra)** and **Kunwar Darganath Vs. Ramchunder (supra)**).

(e) Person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its properties, at least to as great a degree as the manager of an infant heir.

(f) A Shebait can borrow for legal necessity and for necessities of the deity and bind the estate of the deity.

(g) Right to be worshipped at a particular place or by a person may be regarded as intangible property (Reliance is placed on **Mahamaya Devi Vs. Hari Das Haldar AIR (2) 1915 Cal. 161**)

1941. Having said so, the Court observed that in the eyes of law, idols are property and placed reliance on **Subbaraya Gurukkal Vs. Chellappa Mudali 4 Mad. 315**. It referred to a Calcutta High Court decision in **Bali Panda Vs. Jadumani 7 I.C. 475**, wherein it was held that being a juridical person, the idol is not movable property though it is property for which a suit is governed by Article 120 Limitation Act. Having referred to the above two decisions, the Orissa High Court proceeded not to record any final opinion as to whether the idol can be regarded as movable or immovable property as is evident from para 13 of the judgment. However for our purpose, we find that

this question needs some consideration. If an idol can be held to be a property, it will be a judicial proposition to treat it as a juridical person capable of holding the property as a right to sue or be sued or other consequences in law which are available to a legal person. It is inconceivable that a legal person, i.e., idol itself is a property and can also hold property. What appears to us is that the man made idols made of precious metals may have their value in the economic sense, not in the form of image but on account of the preciousness of the metal of which it consists. In modern days, the Hindu religious idols of ancient period have also become precious and antique market internationally though it is a crime under some statutes of this Country. Therefore, beyond India, antique Hindu idols by the persons of other religions may have economic worth for different reasons but for the worshippers it is a matter of faith and belief and not the economic worth. Normally, a Hindu worshipper cannot think of selling an idol being worshipped by all Hindus treating it to be a property consisting of gold, silver or any other metal since it is against the civilized motion of the Hindu society who believe and have faith in the religion. But if the idol has lost its efficacy as deity for one or the other reason and the precious metal of which it was made for one or the other reason has converted into form of that metal itself, obviously it will be a property of the value that metal would be. In short, what we intend to say is that a consecrated man made idol, irrespective of preciousness of the metal of which it is made, is not treated to be property in any manner by the worshippers of that deity and, therefore, it cannot be said to be a property as a matter of legal proposition. But the right to worship the idol and possession of the deity for the purpose of its management, *sewa*, *pooja* etc. constitute the rights

of Shebait, which is an office, and can be said to be an intangible property right. The High Court further said that Thakur Ji can be the subject of possession and adverse possession. This wide proposition again is difficult to accept. A person, whether legal or natural, by itself can be subject of possession or adverse possession is a bit difficult to understand. The property of an idol or deity may be subject of possession and adverse possession in law if it is so permissible but the deity itself, in our view, cannot be said to be subject of possession and adverse possession in the manner it is being said and here also what we have observed with respect to the concept of idol as property can be read here also.

1942. Then comes the next proposition. The Orissa High Court held, *"An idol is no doubt in the position of an infant as it can act only through a sebayat or a manager."* Having said so, it proceeded further to observe that there is no authority to show that this infant can be treated to be a perpetual infant so that transaction by or against him will not be governed by Limitatin Act. It further proceed to hold that *" The doctrine that an idol is a perpetual minor is an extravagant doctrine as it is open to the sebayat, or any person interested in an endowment, to bring a suit to recover the idol's property for devottar purposes."* (Reliance for the said proposition has been placed on **Damodar Das Vs. Lakhani Das (supra)** and **Surendra Krishna Roy Vs. Bhubaneswari Thakurani AIR (2) 1933 Cal. 295**). The Court further observed:

- (i) An idol can also acquire rights by adverse possession just as much as there can be adverse possession against the idol. [**Anand Chandra Vs. Brojalal (supra)**]
- (ii) A suit by the idol or the manager of the idol on

behalf of the idol for recovery of possession must be brought within 12 years from the date of alienation.

(iii) An idol is as much subject to the law of limitation as a natural person and cannot claim exemption on the ground that he is a perpetual infant, nor is a Hindu deity to be regarded as a minor for all purposes. (reliance is placed on **Anantakrishna v. Prayag Das I.L.R (1937) 1 Cal. 84**)

(iv) A idol cannot claim exemption from the law of limitation. (reliance is placed on **Surendrakrishna Roy Vs. Ishree Sree Bhubneswari Thakurani (supra)** as confirmed by Privy Council **Bhubaneswari Thakurani Vs. Brojanath Dey AIR (24) 1937 PC 185**)

1943. Reliance is also placed on a Division Bench decision on Orissa High Court in **Jagannath vs. Tirthnanda Das AIR 1952 Orissa 312** where following **Talluri Venkata Seshayya and others Vs. Thadikonda Kotiswara Rao (supra)** the Court expressed its opinion against treating idol as perpetual minor and said in para 11:

".....But it is well-settled that an idol cannot be regarded as a perpetual minor and the special protection given to a minor does not apply to an idol. The protection of a minor against the negligent actings of a guardian is a special one and statutory provision has been made for safeguarding a minor's interest."

1944. In **Tarit Bhusan Rai and another Vs. Sri Sri Iswar Sridhar Salagram Shila Thakur (supra)** the Court said:

"In view of the religious customs of the Hindus which have been recognised by Courts of law a Hindu idol like a juristic person under the English system has been vested with the capacity of holding properties and with the

powers of suing or being sued (Ibid). A juristic person under the English system has no body or soul. It has no rights except those which are attributed to it on behalf of some human beings. The lump of metal, stone, wood or clay forming the image of a Hindu idol is not a mere moveable chattel. It is conceived by the Hindus as a living being having its own interests apart from the interests of its worshippers. It is a juristic person of a peculiar type.

The points of similarity between a minor and a Hindu idol are :(1) Both have the capacity of owning property. (2) Both are incapable of managing their properties and protecting their own interests. (3) The properties of both are managed and protected by another human being. The manager of a minor is his legal guardian and the manager of an idol is its shebait. (4) The powers of their managers are similar. (5) Both have got the right to sue. (6) The bar of S. 11 and Order 9, R. 9, Civil P.C., applies to both of them.

The points of difference between the two are: (1) A Hindu idol is a juristic or artificial person but a minor is a natural person. (2) A Hindu idol exists for its own interest as well as for the interests of its worshippers but a minor does not exist for the interests of anybody else. (3) The Contract Act (Substantive law) has taken away the legal capacity of a minor to contract but the legal capacity of a Hindu idol to contract has not been affected by this Act or by any other statute. (4) The Limitation Act (an adjective law) has exempted a minor from the operation of a bar of limitation but this protection has not been extended to a Hindu idol.

*From the above it is clear that there is some analogy between a minor and a Hindu idol but the latter is neither a minor nor a perpetual minor. Although in law an idol has the power of suing it has no physical capacity to sue. This absence of physical capacity is perhaps referred to by the Judicial Committee when they said in 31 I.A. 203 **that the right of suit is not vested in the idol. Who is then entitled to exercise the idol's power of suing?** This is a matter of substantive law:*

Its (idol's) interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would in such circumstances on analogy be given to the manager of the estate of an infant heir: 52 I.A. 245.

“The manager of the estate of an infant heir” apparently means the legal guardian of an infant. The powers of the legal guardian of an infant include the power to sue on behalf of the infant. The shebait of a Hindu idol is its manager in law. On the analogy of the power of the legal guardian of an infant the shebait of a Hindu idol has the right to sue on behalf of the idol, for the protection of its interests. In this sense it may be said as was said by the Judicial Committee in 31 I.A. 203 that the right of suit vests in the shebait.” (page 103)

“A Hindu idol as has been already stated is a juristic person having its own interests apart from the interests of its worshippers. 31 I.A. 203 and 52 I.A. 245 are authorities for the proposition that its power of suing for protecting its own interests is to be exercised by it through its de jure or de facto shebait. The worshippers of the idol are interested

in the idol and as such are interested in the property dedicated to it for its maintenance. Their right to sue for the protection of the idol's property is founded upon their own interest viz., the right of worship apart from and independent of the idol's right to sue for the protection of its own interests and properties. They have no right to exercise the idol's power of suing.” (page 104)

“The introduction of the idol and its recognition as a juristic person are more a matter for the procedure and the procedure in India recognises the idol as having a locus standi in judicio.” (page 119)

1945. All these propositions as laid down, wide as they are, we find difficult to subscribe. Once it is held that an idol is in position of an infant, we fail to understand as to how it is infant or minor for one purpose and not for another. In our sense whether a minor is entitled to act, not to act or protect it, that would apply without any distinction to alike minor who is looked after by his/her guardian, may be natural or otherwise and manner in which his property can be dealt with by such guardian all will apply to a deity also. To that extent, deity, once a minor, will continue to be treated as minor for all purposes and we find no authority to show as to how and in what circumstances and why there can be a distinction between the status of deity as minor and natural person as minor. If by nature of thing, a deity is such kind of minor which can never attain majority, this by itself would not deprive it from protections or otherwise which are available to a natural minor. One can have no dispute about the proposition that minor's estate can be encumbrance by a person, who is entitled to manage his affairs, may be a guardian in case of natural minor and Shebait in case

of idol so long such encumbrance is necessary for the benefit of the minor or the idol, as the case may be. The proposition that an idol can claim somebody's property under possession adversely and his property also can be subject to same consequences has to be understood in the facts of the things. Obviously, an idol cannot move on its own. If there comes a question of unauthorized possession of some other's property by an idol, this would have to be through some natural person. The benefit may ultimately go to the idol if such unauthorized possession completes the statutory period of limitation to be converted into a title, but that does not mean that it has been done by the idol on its own inasmuch if a suit for eviction is to be filed before expiry of period of limitation, that will be against the idol represented through a Shebait or the natural person who is responsible for such possession. Similarly, the property of an idol, if unauthorizedly possessed by a person there can be two types of cases; where a caretaker, i.e., Shebait or whatever name it is called is available, but does not take any action allowing the unauthorized possession by another person to continue for the period of limitation resulting in extension of rights of the minor to the property, if inaction on the part of Shebait or caretaker, as the case may be, is not found to be collusive, fraudulent or deliberate mismanagement of the property of the minor, one may raise the plea of limitation but we have serious doubt in successful representation of such right for the reason that for claiming adverse possession an open hostile possession to the knowledge of owner is an integral constituent of the plea of adverse possession. Such a knowledge to the owner of the property, i.e., idol cannot be perceived for the reason such a knowledge to the minor's inaction on his part is not recognised

in law. It is this distinction which has been pointed out by the Privy Council in the case of **Masjid Shahid Ganj v. Shiromani Gurudwira Parbandhak Committee, Amritsar, 67 Ind. App. 251 at p.264 (P.C.)** where the plea of legal person qua a mosque has been turned down by the Privy Council observing that unlike a Hindu idol a mosque cannot be held to be a juristic personality or a legal person in law. The Court held the Mosque as property and, therefore, capable of adverse possession. The property of a juristic personality cannot be said to be inalienable in all circumstances, for example, it can be transferred by Shebait for managing funds for managing the affairs of the idols and so on, but not in all circumstances. This distinction has to be understood in order to appreciate the concept of idol, deity, legal personality etc. of Hindu law as recognised by British India Courts before independence. Regarding the juristic personality of the idol, virtually there was no difference but regarding the statute of idol as a minor or perpetual minor, there appears to be some difference among various Courts. The Apex Court in **Bishwanath Vs. Shri Thakur Radhaballabhji (supra)** has made it clear that a Hindu idol enjoy status of a minor. There is no restriction in such declaration that such concept of minor of the idol should be understood in a restricted manner and it would be a minor only for certain purposes and not for other purposes. In the light of the above discussion, respectfully we are of the view that the wider observations of the Orissa and Calcutta High Courts cannot be concurred by us.

1946. The matter thus now stand settled by the Apex Court in **Bishwanath & another Vs. Sri Thakur Radha Ballabhli & others (supra)** holding the Deity a minor, all the judgments which have taken a different view of the High Courts or Privy

Council cannot be treated to be a good law or a binding precedent.

1947. This question that a Deity being minor can be represented by a next friend has been reiterated by the Apex Court in another case i.e. in **Vemareddi Ramaraghava Reddi Vs. Kondaru Seshu Reddi (supra)** at page 440 the Court said:

"The legal position is also well-established that the worshipper of a Hindu temple is entitled, in certain circumstances, to bring a suit for declaration that the alienation of the temple properties by the de jure Shebait is invalid and not binding upon the temple. If a Shebait has improperly alienated trust property a suit can be brought by any person interested for a declaration that such alienation is not binding upon the deity but no decree for recovery of possession can be made in such a suit unless the plaintiff in the suit has the present right to the possession. Worshippers of temples are in the position of cestui que trustent (Sic) or beneficiaries in a spiritual sense.

.....

The possession and management of the property with the right to sue in respect thereof are, in the normal course, vested in the Shebait, but where, however, the Shebait is negligent or where the Shebait himself is the guilty party against whom the deity needs relief it is open to the worshippers or other persons interested in the religious endowment to file suits for the protection of the trust properties. It is open, in such a case, to the deity to file a suit through some person as next friend for recovery of possession of the property improperly alienated or for

other relief. Such a next friend may be a person who is a worshipper of the deity or as a prospective Shebait is legally interested in the endowment."

1948. An attempt was made to bring in Section 92 C.P.C. where the interest of Deity is not properly observed but we find that this issue also stands settled by the Apex Court in **Bishwanath & another Vs. Sri Thakur Radha Ballabhli & others (supra)** holding that Section 92 in such a matter has no application. The Court in para 9, 10, 11 and 12 held as under:

"9. Three legal concepts are well settled : (1) An idol of a Hindu temple is a juridical person; (2) when there is a Shebait, ordinarily no person other than the Shebait can represent the idol; and (3) worshippers of an idol are its beneficiaries, though only in a spiritual sense. It has also been held that persons who go in only for the purpose of devotion have according to Hindu law and religion, a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage see Kalyana Venkataramana Ayyangar v. Kasturi Ranga Ayyangar, ILR 40 Mad 212 at p. 225: (AIR 1917 Mad 112 at p. 118). In the present case, the plaintiff is not only a mere worshipper but is found to have been assisting the 2nd defendant in the management of the temple.

10. The question is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor and when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be

clothed with an ad hoc power of representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment; see *Radhabai v. Chimnaji*, (1878) ILR 3 Bom 27, *Zafaryab Ali v. Bakhtawar Singh*, (1883) ILR 5 All 497 *Chidambaranatha Thambirarn v. P. S. Nallasiva Mudaliar*, 6 Mad LW 666 : (AIR 1918 Mad 464), *Dasondhay v. Muhammad Abu Nasar*, (1911) ILR 33 All 660 at p. 664: (AIR 1917 Mad 112) (FB), *Radha Krishnaji v. Rameshwar Prasad Singh*, AIR 1934 Pat 584, *Manmohan Haldar v. Dibbendu Prosad Roy*, AIR 1949 Cal 199.

11. There are two decisions of the Privy Council, namely, *Pramatha Nath Mullick v. Pradyumna Kumar Mullick*, 52 Ind App 245: (AIR 1925 PC 139) and

Kanhaiya Lal v. Hamid Ali, 60 Ind App 263: (AIR 1933 PC 198 (1)), wherein the Board remanded the case to the High Court in order that the High Court might appoint a disinterested person to represent the idol. No doubt in both the cases no question of any deity filing a suit for its protection arose, but the decisions are authorities for the position that apart from a Shebait, under certain circumstances, the idol can be represented by disinterested persons. B. K. Mukherjea in his book "The Hindu Law of Religious and Charitable Trust" 2nd Edn., summarizes the legal position by way of the following propositions, among others, at p. 249 :

"(1) An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has to act through human agency, and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might, therefore, be said to be merged in that of the Shebait.

(2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol, then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol."

This view is justified by reason as well by decisions.

12. *Two cases have been cited before us which*

took a contrary view. In Kunj Behari Chandra v. Shyam Chand Jiu, AIR 1938 Pat 384, it was held by Agarwala, J., that in the case of a public endowment, a part of the trust property which had been alienated by the Shebait or lost in consequence of his action could be recovered only in a suit instituted by a Shebait. The only remedy which the members of the public have, where the property had been alienated by a person who was a Shebait for the time being was to secure the removal of the Shebait by proceedings under S. 92 of the Code of Civil Procedure and then to secure the appointment of another Shebait who would then have authority to represent the idol in a suit to recover the idol's properties. So too, a Division Bench of the Orissa High Court in Artatran Alekhagadi Brahma v. Sudersan Mohapatra. AIR 1954 Orissa 11, came to the same conclusion. For the reasons given above, with great respect, we hold that the said two decisions do not represent the correct law on the subject.”

1949. We, therefore, answer Issue No. 1 (Suit-5) insofar as it relates to plaintiff no. 2 (Suit-5) that it is juridical persona and can sue or be sued through a next friend. However, this is subject to our further answer to the issues relating to birthplace of Lord Rama at disputed site in affirmance which we shall discuss separately.

1950. We could have answered about plaintiff no. 1 (Suit-5) also at this very stage but we intend first to consider the Issues No. 12 (Suit-4) and 3 (a) (Suit-5) and to find out their effect, if any, on the status of plaintiff 1 (Suit-5) and then shall give our final opinion thereon. The issue whether the idol in question and the object of worship were placed inside the disputed property

or the building in the night of 22nd/23rd December, 1949 has to be considered in the light of the concept of the "building" or the "mosque" to the parties in the suit concerned.

1951. In para 2 of the plaint (Suit-4) the mosque has been denoted by the letters "A, B, C, D" which covers the entire area of outer and inner courtyard including the building (excluding the extreme south portion which is denoted by the word "Chabutara" on the west-south side and behind Ram Chabutara on east-south side on the map prepared by Sri Shiv Shankar Lal, Commissioner on 25.05.1950). No distinction has been made by the plaintiff (Suit-4) about the disputed building within the inner courtyard and the area and structure comprising the outer courtyard.

1952. This pleading has made the issue slightly complicated for the reason that onus lie initially upon the plaintiffs (Suit-4) to show that no idols whatsoever existed upto or before 22.12.1949 in this entire area A, B, C, D which they claim to be the "area of mosque". In fact to the same effect is their pleading in para 1 of the written statement in Suit-5 where defendant no. 4 (Sunni Board) says that, *"As a matter of fact there has never been any installation of the deity within the premises of disputed place of worship known as Babari Mosque and the idol in question was stealthily and surreptitiously kept in the mosque in the night of 22nd/23rd December, 1949."* The defendant no. 4 also deny the very existence of "Charan" or "Sita Rasoi" within the premises of Babari mosque but then in para 22 of the written statement (Suit-5) it says, *"there is no **Charan** or **Sita Rasoi** within the premises of Babari Mosjid and the place known as **Sita Rasoi** is situated outer side the premises of the said mosque."*

1953. Sri Deoki Nandan Agarwal, who initially filed Suit-5 and was plaintiff no. 3 therein, made a statement under Order X, Rule 2 C.P.C. that the idols were kept under central dome inside the building in the night of 22nd/23rd December, 1949. He, however, admits his absence at the site on that day and stated that he got this information from Mahant Paramhans Ram Das, OPW-1. Sri Deoki Nandan Agarwal, however, added that the above placement inside the building of the idols was done after due ceremony. The above statement of Sri D.N. Agarwal could not have been controverted by the learned counsel for the plaintiffs (Suit-4). Though the process of *Pran Pratishtha* was tried to be inquired from OPW-1 during cross examination by learned counsels appearing for the Muslim parties in Suit-5 as is evident from pages 46, 58, 78 and 124, but no question has been asked from OPW-1 as to whether idol in question were placed under the dome with or without ceremony as stated by Sri Deoki Nandan Agarwal, plaintiff no. 3 (Suit-5) in his statement under Order X Rule 2 C.P.C. Therefore, the said statement remained uncontroverted particularly for the reason that none of the witnesses, i.e., PW 1 to 32 has claimed that he was present when the alleged incident of 22nd/23rd December, 1949 took place and none could say anything on this aspect either way.

1954. OPW-1, Mahant Paramhans Ram was also examined. He supported the version of placement of idol under the central dome, inside the disputed building, in the inner courtyard, in the night of 22nd/23rd December, 1949. OPW-1 has commenced his deposition in December 1999 and at that time his age was 90 years. On page 41 and 42, he stated about the incident of 1934 and said that a dome was damaged at that time:

“1934 की घटना में शिखर का आधा भाग (मध्य/बीच के शिखर) का टूटा था। बीच वाले शिखर का आधा भाग चारों तरफ से टूटा था। बीच वाले

शिखर के अतिरिक्त वहाँ स्थिति निर्माण का कोई अन्य भाग नहीं टूटा था।”
(पेज 41)

"In 1934 incident, the half portion of the dome(the middle/central dome) was broken. The half part of the middle dome was broken from all sides. Except for the central dome, no other part of the construction situated there was broken." (ETC)

1955. On page 42 he said that when central dome was damaged in 1934, no idol of Ram Lala was present thereunder. He also said that people used to worship the place as also the pillars whereunder the images were affixed:

“जिस समय शिखर गिरा उस समय शिखर के नीचे रामलला की कोई मूर्ति नहीं थी शिखर की नीचे की भूमि पर पूजा पाठ होता था शिखर के नीचे जो खम्भे थे उसमें जो मूर्तियां लगी थी उनका लोग पूजा अर्चना करते थे उन खम्भों में देवी-देवताओं की मूर्तियां थीं। मूर्तियों में हनुमान आदि देवों की मूर्तियां थी। मध्य शिखर के नीचे कोई खम्भा नहीं था। मध्य शिखर के नीचे प्रसूति भूमि, जहां पर भगवान राम का जन्म हुआ था वह स्थान था। मध्य शिखर के नीचे का जो भाग गर्भ गृह के रूप में था वह स्थान तथा उसके चारों तरफ उस स्थान को मैं गर्भगृह का स्थान मानता हूँ। तीनों गुम्बजों के नीचे की भूमि तथा परिक्रमा मार्ग की सम्पूर्ण भूमि गर्भगृह के अन्तर्गत थी।” (पेज 42)

“When the dome collapsed, there was no idol of Ram Lala beneath it. ‘Pooja-Paath’ used to be performed on the land beneath the dome. People used to offer ‘Pooja-Archana’ to the idols carved out in the pillars beneath the dome; those pillars had idols of male and female deities engraved in these pillars. The idols included those of demigods like Hanuman and so on. There was no pillar beneath the middle dome. ‘Prasuti Bhumi’ - the land where Lord Rama was born – was beneath the middle

dome. I take the part beneath the middle pillar – which was in the shape of the sanctum sanctorum – as also the place surrounding it, to be the sanctum sanctorum. The sanctum sanctorum encompassed the land beneath the three domes and the entire land of the circumambulation path.” (E.T.C.)

1956. Then, about the placement of idols in 1949, he said:

“मूर्ति रखने का सन् शायद 1949 था।” (पेज 108)

“The idols were placed probably in the year 1949.” (E.T.C)

“जब मूर्ति रखी गई, तब ब्रह्ममुहूर्त था। ब्रह्ममुहूर्त का समय 12.00 बजे के पश्चात अर्थात् रात्रि में तीन बजे के बाद ब्रह्म मुहूर्त होता है।”

(पेज 108)

“It was ‘Brahm Muhurt’ when the idols were installed. ‘Brahm Muhurt’ is the time after mid night i.e. at 3 AM.” (E.T.C)

“जिस दिन मूर्ति रखी गई उसके आठ नौ रोज पहले से वहाँ पर जलसा चल रहा था। जलसा से मेरा तात्पर्य रामायण पाठ तथा अखण्ड कीर्तन से है। भवन के अन्दर तथा बाहर दोनों स्थानों पर रामायण पाठ हो रहा था। भवन के अन्दर भी लोग बैठे थे। उस समय जो लोहे के सीखचे दीवार में लगे थे, उसमें कोई ताला नहीं लगा था। उन फाटकों में यह ताला मूर्ति रखने के एक – दो माह बाद लगाया गया अथवा साल भर बाद लगाया गया, यह मैं नहीं कह सकता। यह कहना गलत है कि 22 दिसम्बर 1949 की रात में विवादित भवन के अन्दर के भाग में कोई पाठ नहीं हुआ।” (पेज 109)

“A function was going on for last 8-9 days, prior to the day of installation of the idols. By function I mean, recitation of Ramayana and Akhand (non-stop) ‘Kirtan’. The recitation of Ramayana was taking place at both outside and inside of the structure. People were there inside the structure as well. At that time, no lock had been put at the iron grills in the walls. I cannot tell whether

locks were put on those gates about one or two months or an year after installation of the idols. It is wrong to say that no recitation took place in the inner part of the disputed structure in the night of 22nd December, 1949.”

(E.T.C)

“22/23 दिसम्बर, 1949 को मैं प्रातः 7-8.00 बजे तक वहाँ पर रहा । वहाँ पर पुलिस पहले से थी तथा बराबर आती –जाती थी ।

जिस दिन चमत्कार की घटना हुई, उस समय चमत्कार के रूप में प्रकाश के देखे जाने के बाद ही अर्थात् लगभग 3.00 बजे रात में चबूतरे से मूर्ति को हटाकर गर्भगृह में स्थापित कर दिया गया ।

प्रश्न— जिस समय आप चमत्कार की बात कर रहे हैं, उस समय आप विवादित भवन के अन्दर थे अथवा बाहरी सहन में थे?

उत्तर— उस समय मैं बाहरी आंगन (आउटर कोर्टयार्ड) में था ।” (पेज 110)

“I remained there till 7-8 AM on 22/23 December, 1949. Police was already present there and kept visiting regularly.

On the day of the miraculous incident i.e. just after seeing the light as a miracle, the idols were removed from the platform and installed in the 'Garbh-grih' (sanctum sanctorum) at about 3 AM.

Question:- Where were you at the time of the said miracle, whether inside the disputed structure or in the outer courtyard?

Answer:- At that time I was in outer courtyard.”(E.T.C)

“23 दिसम्बर 1949 को जो मूर्ति चबूतरे से उठाकर शिखर के नीचे गर्भगृह में रखी गई, वह पहले से ही प्राण-प्रतिष्ठित मूर्ति थी, उसकी प्राण प्रतिष्ठा मेरे सामने नहीं हुई। साक्षी ने स्वयं कहा कि चबूतरे पर जो भी मूर्तिया थी उनकी प्राण प्रतिष्ठा पहले से हुई थी ।” (पेज 124)

"The idol placed in the sanctum sanctorum beneath the dome after being removed from the chabutara on 23rd December, 1949, was deified from before; its deification did not take place in my presence. The witness himself stated-Whichever idols were placed on the chabutara were deified from before." (E.T.C.)

‘जिस स्थान को गर्भगृह बताता हूँ वह स्थान मेरे विश्वास के अनुसार तथा समस्त हिन्दुओं के अनुसार रामचन्द्र जी का जन्मस्थान है। 23 दिसम्बर 1949 को चबूतरे से उठाकर जिस स्थान पर मूर्ति रखी गयी उसी को ही मैं जन्मस्थान मानता हूँ तथा मूर्ति रखने के पूर्व भी उसी स्थान को मैं जन्मभूमि मानता था।’

(पेज 142)

“The place termed as 'Garbh-grih' (sanctum sanctorum) by me, is the birthplace of Ramchandra according to my belief and all the Hindus. The very place where the idols were placed on 23rd December, 1949, after being removed from the platform, is considered as Janmsthan by me and even before installation of the idols, that place was considered Janmbhumi by me.”

(E.T.C)

‘जो मूर्ति चबूतरे से उठाकर बीच के शिखर के नीचे रख दी गयी उसमें एक बड़ी तथा एक छोटी मूर्ति थी दोनों मूर्तियां रामलला जी की थीं।’ (पेज 143)

“The idols, which were removed from the platform and placed beneath the central dome, had one big and one small idol. Both the idols were of Ramlala.” (E.T.C)

1957. The above statement of OPW-1 shows that idols were already there on the Chabutara which was in the outer courtyard prior to 1949 and were only shifted from that Ram Chabutara (outer courtyard) to the building under the central dome (inner courtyard). About the existence of idol on Ram Chabutara, he

deposed on page 55 and 75:

“अनादि काल से रामचबूतरा इसीप्रकार रामलला की मूर्ति रामचबूतरे पर अनादि काल से स्थापित है।” (पेज 55)

"From time immemorial, the Ram Chabutara (has been) like this, the idol of Lord Ramlala has existed over the Ram Chabutara from time immemorial." (ETC)

“जब मैं प्रथमवार अयोध्या आया तो उसके बाद से तथा उपरोक्त प्रण करने के बीच की अवधि में रामचबूतरे पर मैंने बराबर रामलला के दर्शन किया।”
(पेज 75)

"Between my first arrival at Ayodhya and the aforesaid resolution, I regularly had darshan of Ramlala at Ramchabutara." (E.T.C)

1958. Further, he claims to be an eye witness of shifting of idol from Chabutara to the inner courtyard, i.e., under the central dome.

1959. Sri D.N. Agrawal, plaintiff no. 3 (Suit-5) in his statement under Order X Rule 2 dated 30.04.1992 has said that the idols were kept under the central dome inside the building in the night of 22nd/23rd December, 1949 after due ceremonies. There is no evidence produced on behalf of the defendant no. 4 or 5 to disprove the above statement of plaintiff no. 3 or that of OPW No. 1.

1960. In fact none of the witnesses of plaintiffs (Suit-4), i.e., defendant no. 4 (Suit-5) was present in the night of 22nd/23rd December, 1949 on the disputed site when the alleged incident took place. They had no occasion to say either way as to whether the placement of idol was in accordance with due ceremonies of Hindu scriptures or not, whether the same was shifted from Ram Chabutara to the Central Dome or brought from outside. Though in the written statement of defendant no. 5 (Suit-5), para 28, it is said, *"However, Namaj has been offered in*

the mosque in question after 23rd December 1949 also and Ajan has also been called." This statement, however, has not been supported by any of the witnesses produced by the plaintiffs (Suit-4) and defendant no. 4 (Suit-5). On the contrary, it is an admitted position that since 23rd December, 1949 no muslim person has entered the disputed premises (inner and outer courtyard) as also that the idols placed inside the building under the central dome are being continuously worshipped by Hindus.

1961. With respect to the term "mosque" used in plaint (Suit-4), statement by the counsel for the plaintiffs (Suit-4) was made on 28.08.1963 under Order X Rule 2 CPC that "*mosque lies in A B C D as shown in the plaint map (sketch map).*"

1962. Another statement dated 20.01.1964 under Order X Rule 2 CPC made by Mohd. Ayub counsel for plaintiff (Suit-4) before the Civil Judge, says:

“बाबरी मस्जिद के रेलिंग के बाहर और सदर फाटक के बाउण्ड्रीवाल के अन्दर पूरब दक्खिन की तरफ एक 17 x 21 फीट का चबूतरा है जिस पर लकड़ी के स्टैक्चर का एक वुडन टैम्पल बना है जिसमें कोई भी हिन्दू की मूर्तियां न कभी थी न अब तक है। वह जगह भी मुसलमानों की मास्क का हिस्सा है। बाबरी मस्जिद के सदरी फाटक से अन्दर दाखिल होने पर उसके दाहिनी तरफ जो भी तामिरात है वह दिसम्बर 1949 के पहले वहां पर कभी नहीं थी। उन्हें दिसम्बर 1949 के बाद किसी ने तामीर कर लिया होगा। बाबरी मस्जिद के मेन बिल्डिंग के उत्तर तरफ चाहरदीवारी के अन्दर भी दिसम्बर 1949 तक कभी कोई तामीरात वराकम इमारत या चबूतरा वगैरह कभी नहीं रहे। उस जगह पर जो चबूतरा सीता रसोई के नाम से मुद्दालहम कहते हैं उसे दिसम्बर 1949 के बाद ही मुद्दालहम ने या किसी ने बनाया है।”

"on the outer side of railing of Babri mosque and inside the boundary of main gate towards south-east, there is a platform measuring 17/21 feet over which a wooden temple is built in wooden structure. No idols of Hindus ever

existed nor exist inside the same. The place is also a part of mosque of Muslims. . . .On entering through the main gate of Babri mosque, the construction lying on right side, were never in existence prior to December, 1949. The same must have been constructed by someone after December 1949. Towards north of main building of Babri Mosque inside the boundary wall, upto December 1949 A.D. there was never any construction or building or Chabutara etc. Over that place, the Chabutara termed as Sita Rasoi by the defendants has been constructed either by defendants or some else after December 1949." (E.T.C.)

1963. In para 5 of the plaint (Suit-4), the plaintiffs have tried to make a distinction between mosque and the building by stating that in the mosque but outside the main building of the mosque there was "Chabutara". It is thus evident that the case of the plaintiffs (Suit-4) is that inside the mosque (which they denote as A B C D) which means the inner and outer courtyard of the building, there was no idol prior to 22nd December, 1949 and it was placed surreptitiously in the night of 22nd/23rd December 1949.

1964. Most of the witnesses produced by Hindu parties have clearly stated that idols were kept on Ram Chabutara even before 1885 and that was being continuously worshipped by Hindus. Sita Rasoi and Bhandar in the outer courtyard also existed prior to 1885 and in any case before 22.12.1949.

1965. OPW 1 and OPW 2 have said that the idol of Ram Lala kept on Ram Ram Chabutara in the outer courtyard was placed in the inner courtyard under the central dome on 22nd/23rd December, 1949. This pre-supposes and admits the position that the idols of Ram Lala existed in the mosque denoted by the

letters A B C D in Suit-4 since much before 22nd December, 1949 and was not kept in the mosque as denoted by the letters A B C D for the first time in the night of 22nd/23rd December, 1949. The premises known to the plaintiffs (Suit-4) as mosque already had the idols of Lord Ram Lala and in the night of 22nd/23rd December, 1949, was shifted from outer courtyard to inner courtyard. In the statement under order Order X Rule 2 CPC the plaintiffs through counsel have tried to dispute even the structures named as "Sita Rasoi" and "Bhandar" in the outer courtyard till 22.12.1949 though many of their witnesses have admitted their existence prior to the said date.

1966. It is an admitted case of the plaintiffs (Suit-4) that in Suit-1885 a map was prepared by the Court's Commissioner which is Exhibit A 25 (Suit-1). There, in the outer courtyard, three structures were shown, one on the north-west side termed as "Sita Rasoi", another on the east side but right to the eastern entry gate termed as "Chappar" or "Bhandar" and third on the east-south side which was called "Ram Chabutara" and which was the subject matter of Suit-1885. This map was never doubted in Suit 1885 by defendant no. 2 therein.

1967. PW 1, on page 24 of his statement, while admitting the said Chabutara measuring about 17x21 feet did not deny presence of idols thereon.

“इस चबूतरे पर हिन्दू देवताओं की मूर्ति आने जाने वालों को दिखायी नहीं देती। यह नहीं बता सकते कि चबूतरे पर मूर्तियां किसी लकड़ी के सिंहासन पर थी या नहीं मैं नहीं बता सकता।”

"Idols of Hindu deities on this Chabutara are not visible to the visitors. I cannot tell whether idols were seated on any wooden throne or not." (E.T.C.)

1968. Thus, in the pleadings, they have tried to dispute the very existence of any structure of worship of Hindus even in the

outer courtyard since their stand is that the idols were kept for the first time in the Mosque on 22nd/23rd December, 1949 and while saying so, they have treated the Mosque as a whole, i.e. denoted by letters ABCD in the map appended to plaint (Suit-4) which comprised of the entire area of inner courtyard and outer courtyard. This stand, we find, stood contradicted by their witnesses who have admitted not only the existence of certain structures in the outer courtyard but also visit of Hindus to those structures and is palpably wrong.

1969. The extract of relevant statement of some other witnesses of plaintiffs (Suit-4) are as under:

(a)PW-1, Mohd. Hashim

“पूरब के बाहरी दरवाजे से दक्षिण की तरफ जो चबूतरा है वह 17 x 21 फिट है। इसकी ऊँचाई एक मीटर है। इसके ऊपर छप्पर पड़ा है।”

(पेज 24)

"Towards the south of the outside gate in the east lies a chabutra measuring 17x24 feet. Its height is 1 metre. It has a thatched roofing." (E.T.C.)

“जब अयूब साहब के यहाँ लखनऊ नोटिस बनवाने आये थे तब तक यह छप्पर चबूतरे पर कायम था। मैंने नोटिस में छप्पर की बात इसलिए नहीं लिखवाई क्योंकि 1885 में दूसरे लोग मुकदमा हार चुके थे। (पेपर नं० 44क जो नोटिस अंग्रेजी में है उसको हिन्दी में तरजुमा करके गवाह को सुनाया गया और पूछा कि इस नोटिस में लिखा है कि चबूतरे पर लकड़ी का तम्बू नुमा स्टक्चर है यह सही है या नहीं। गवाह ने उत्तर दिया) यह अन्दर से था और जो नोटिस में लिखा है वह सही लिखा है। . . इसके बारे में मुझे नहीं मालूम कि चबूतरा 17 ग 21 वाला कब से कायम है। . . इस चबूतरे के पूरब उत्तर की तरफ एक पेड़ था।” (पेज 25-26)

“The chabutra had this thatched roofing till I went to the house of Ayub Sahib in Lucknow to get notice prepared. I did not get the thatched roofing mentioned in the notice because other people had lost the case in 1885. (Paper no.

44Ka being a notice in English was read out to the witness after being translated into Hindi and a question was put to him as to whether or not it was mentioned in this notice that there is a wooden tent shaped structure on the chabutra. On being so queried, the witness replied) It was so from within, and what is written in the notice, is correct.In this behalf I do not know from when the chabutra, with the dimension of 17x21, exist. Towards the east-north of this chabutra lay a tree." (E.T.C.)

“प्रश्न— पश्चिम की तरफ जब मस्जिद के लिए जाते थे तो चबूतरे को इसलिए नहीं देखते थे कि हिन्दू लोग पूजा करते थे?

उत्तर— हम वहदानियत और निरंकार को मानने वाले हैं इसलिए कोई तस्वीर देखना नहीं पसंद करते।

प्रश्न— क्या आपको मालूम था कि चबूतरे पर तस्वीर या मूर्ति है जिससे आप उस तरफ नहीं देखते थे?

उत्तर— चबूतरे की बाबत मुकदमा हारा हुआ था इसलिए हम कोई तस्वीर नहीं देते थे।” (पेज 26)

"Question:- While going to the mosque towards the west, did you not see the chabutra because Hindus worshipped there?

Answer:- We believe in 'vahdaniyat' and 'nirankar' (formless God); that's why I do not want to see any picture.

Question:- Did you know there to be a picture or idol, due to which you did not see towards that side?

Answer:- We had lost the case in connection with the chabutra, hence we did not attach any importance to it." (E.T.C.)

“जो पहले मैंने कहा था पुजारी चबूतरे पर बैठते थे वह गलत है वहाँ पर कुछ लोग बैठते थे ओर यह बात सही है यह आम आदमी हिन्दू थे पर पुजारी या साधु नहीं थे ये लोग अयोध्या के नहीं थे।मैंने सिर्फ एक नजर देखा और सिर्फ एक बार देखा” (पेज 27)

“My earlier statement that priests used to sit on the chabutra, is wrong. Some people used to sit there, and this fact is true. These ordinary people were Hindus, but not priests or saints. I threw just one glance and saw only once.” (E.T.C.)

“चबूतरे के उत्तर एक नीम का दरख्त था। सन् 1949 में सीतारसोई फर्श के बराबर थी सीतारसोई पर चूल्हा चौकी बेलना चूने गारे का बना था वर्ष 1949 में। शुरु में हम लोग भी उसको करीब से देखते थे उस समय कोई तनाव नहीं था। उसको आम लोग सीता रसोई कहते थे। हमने यह नहीं देखा कि आम लोग सीता रसोई का दर्शन करने जाते थे।” (पेज 27)

*“There was a neem tree to the north of chabutra. . . In 1949, Sita Rasoi was on a level with the floor. The 'chulha' (hearth), 'chauki' and 'belna' (rolling pin) at Sita Rasoi, was made of lime and brick powder in the year 1949. . . In the beginning, we also looked at it from a close range. There was no tension at that time. **People in general called it Sita Rasoi.** We did not see general public going to have darshan of Sita Rasoi.”(E.T.C.)*

“पूर्वी फाटक से अन्दर आने पर बाहरी दीवाल के अन्दर उत्तर तरफ एक लम्बा सा छप्पर था वह भण्डार पर था या नहीं यह नहीं बता सकता। यह लम्बा सा छप्पर नीम के पेड़ के नीचे था लोग उस छप्पर में रहते थे पर मुझे नहीं मालूम कौन लोग रहते थे। इस छप्पर के नीचे हिन्दू लोग रहते थे मुसलमान लोग नहीं रहते थे। कुर्क शुदा स्थान के पश्चिम की तरफ जो परिक्रमा बनी थी वह परिक्रमा के लिए नहीं दीवाल की मरम्मत के लिए बनी थी।” (पेज 31-32)

“On coming inside through the eastern gate there was a spacious shed towards the north inside the outside wall. I cannot tell whether it was a store house or not. This

long shed was beneath the neem tree. People lived in the shed but I do not know who they were. Those who lived under this shed were Hindus, not Muslims. The Parikrama (circumambulation), which was built towards the west of the attached place, was for the repair of the wall, not for parikrama." (E.T.C.)

“कुर्क शुदा जायदाद की बाहरी दीवाल के अन्दर दो छप्पर थे एक चबूतरा पर था और दूसरा पूर्वी दीवाल से सटकर नीम के पेड़ के नीचे था।” (पेज 32)

"Inside the exterior wall of the attached property were two sheds and a chabutra (rectangular terrace). Another chabutra was adjacent to the eastern wall and was beneath the neem tree." (E.T.C.)

“फोटो नं. 56 जायदाद मुतदाविया के बाहरी दीवार के पूर्वी गेट से अंदर जाने की बाद दक्षिण की तरफ जो 21 x 17 का चबूतरा है की है । लेकिन उसमें 1949 के बाद तब्दीलियां की गयी थीं। फोटो नं. 57 उस लकड़ी के टेंटनुमा चबूतरे पर बनायी गयी चीज है जिसका जिक्र पहले आया है लेकिन उसे 1949 के बाद खूबसूरत बना दिया गया। पहले ये मामूली तरह से बना हुआ था बाद में इसे खूबसूरत बनाया गया था। पहले नहीं था बाद में बना होगा।”

(पेज 62)

"Photograph no. 56 represents 21 x 17 chabutra which is seen in the southern side on going inside through the eastern gate of the outer wall of the disputed property. But changes were effected after 1949. Photograph no. 57 represents an object made on wooden tent-shaped chabutra which has found mention earlier but it was beautified after 1949. Earlier it had been constructed in an ordinary manner but later it was beautified. It did not exist earlier. It may have been constructed later." (E.T.C.)

“उस याचिका में मैंने 1885 के महन्त रघुबर दास के मुकदमें का तमाम जिक्र किया था। रघुबर दास अयोध्या के रहने वाले थे लेकिन मैं नहीं कह सकता कि निर्मोही अखाड़ा से उनका क्या ताल्लुक था।
 महन्त रघुबर दास बाबरी मस्जिद में बीच की दीवार के साथ जो चबूतरा था उसे मंदिर बनाने के दावेदार थे। मुझे मालूम नहीं कि रघुबर दास इस चबूतरा पर गैर कानूनी ढंग से काबिज थे। असगर अली उस मुकदमें में प्रतिवादी थे। यह ठीक है कि उस मुकदमें में असगर अली ने जवाबदावा दायर किया था और यह दलील दी थी कि 1857 की गदर में महन्त रघुबर दास ने जबरदस्ती कब्जा करके चबूतरा बनाकर उस पर एक लकड़ी का मंदिर बना दिया और उस पर यानी खाली चबूतरे पर पूजा-पाठ बतौर मंदिर के की जा रही है। हमने उस दावे को नहीं पढ़ा इसलिए नहीं कह सकते कि असगर अली ने अपने जवाब दावे में लिखाया हो कि पूरब के दरवाजे से अन्दर आकर उत्तर की तरफ बैरागियों ने अपना भण्डार बना लिया हो या सीता रसोई बना ली हो या चकला, बेलन और चूल्हा बनाकर पूजा-पाठ करते हों।” (पेज 67-68)

“In that petition, I had considerably made mention of the 1885 case of Mahanta Raghubar Das. Raghubar Das was a resident of Ayodhya but I cannot say what relation he had with the Nirmohi Akhara. Mahanta Raghubar Das was claimant for the construction of a temple on the chabutra which stood along the central wall in the Babri mosque. I do not know whether Raghubar Das was an illegal occupant of this chabutra. Asgar Ali was a respondent in that case. It is true that Asgar Ali had filed reply in the said litigation and contended that in the 1857 revolt Mahanta Raghubar Das had forcibly captured and constructed a chabutra and had made a wooden temple thereon. On that, that is, on the vacant chabutra, pooja-paath is being performed as in a temple. I did not go through that claim; hence, I cannot say whether Asgar Ali

had mentioned in his counter claim that on entering through the eastern gate the Bairagis (recluses) had constructed a store house towards the north or had constructed Sita Rasoi or they used to perform pooja-paath by constructing chakla (rolling disc), belan (rolling pin) and chulha (hearth).” (E.T.C.)

“फिर कहा कि 1885 का दावा पूरे एरिया का था जिसे महंत रघुबर दास हार गये थे। मुझे उस मुतनाजा एरिया का रकबा मालूम नहीं है सीता रसोई के बारे में उस मुकदमें में कोई झगड़ा नहीं था वह मुकदमा सिर्फ चबूतरा के बारे में था जिसे वह मंदिर बनाना चाहते थे।” (पेज 72)

“(Again stated) The 1885 claim was for the whole area and Mahanta Raghubar Das lost it. I do not know the dimension of the disputed area. There was no dispute over Sita Rasoi in that case. This case was only in respect of the chabuttra which he wanted to change into a temple.” (E.T.C.)

“जो जगह चबूतरा की सूरत में हिन्दू लोगों के कब्जे में है फिर कहा वहाँ हिन्दुओं का कोई कब्जा नहीं है तमाम जगह मस्जिद की है।” (पेज 113)

"The place being in the shape of chabuttra is in the possession of Hindus. (Then stated) Hindus have no possession over there; most of the place belongs to the mosque.” (E.T.C.)

“योग्य वकील साहब ने गवाह का ध्यान उसके बयान 6.8.96 वाले की ओर दिलाया जहाँ उसने कहा था “चबूतरे पर छप्पर और तम्बूनुमा लकड़ी के मंदिर पर बाहर के एक दो लोग हिन्दुओं के रहा करते”, सुनकर गवाह ने जबाब दिया मैंने ऐसा बयान नहीं दिया मैंने यह कहा था कि पब्लिक के लोग बैठते थे और मैंने छप्पर के बारे में बयान दिया था मंदिर के बारे में नहीं कहा था।” (पेज 126)

“When the learned counsel drew the attention of the witness to his 6.08.1996 statement wherein he had stated

one or two Hindus used to reside at the shed and tent-like wooden temple on the chabutra, the witness responded, saying that he had not given any such statement and that the public used to sit there and that he had given a statement about the shed but not about the temple.”(E.T.C.)

“यह गलत है कि कुर्क होने के पहले भी अन्दर पूजा या दर्शन के लिए किसी पर पाबन्दी नहीं थीं 1885 के बाद वहाँ पूजा पर जाने का कोई मतलब ही नहीं था।” (पेज 163)

“It is wrong that before the attachment there had been no restriction on anybody's offering prayer or having darshan inside. There were no cause at all to go there to perform pooja after 1885.” (E.T.C.)

‘मैंने मिसल दावा नम्बर 1/89 में लगा हुए नक्शा जो लट्ठा पर तैयार किया गया है, देख लिया है, यह 1885 वाले मुकदमें की मिसल से लिया गया है, उसकी सही नकल है और यह मुसद्दका है, यह एक्जि0 ए-25 है। यह नक्शा सही है’ खुद कहा कि इसी नक्शे का बुनियाद पर हमारे हक में डिक्री 1885 में पास हुई थीं।” (पेज 166)

"I have seen the map prepared on the cotton plot and filed on the record of claim no. 1/89. It is taken from the record of the 1985 case; it is its true copy and it is certified and it is exhibit no. A-25. This map is correct. (Himself stated) On the basis of this very map a decree was passed in 1885 in our favour.” (E.T.C.)

“सिर्फ यही चबूतरा 1885 के मुकदमा में सम्मिलित मुतनाजिया था, विवादित था। इस नक्शे में जो बाकी जायदाद या दूसरी विशेष चीजें दिखाई गई हैं, उनके बारे में कोई तनाजा या विवाद नहीं था। यह ठीक है कि महन्त रघुबर दास ने 1885 वाले मुकदमें में इस चबूतरे पर मन्दिर बनाने की इजाजत माँगी थी।” (पेज 167)

"Only this very chabutra was involved and disputed

in the 1885 case. There was no dispute over the rest of property or other particular things shown in this map. It is true that Mahanta Raghubar Das had by means of the 1885 case sought permission for construction of temple on this chabutra." (E.T.C.)

(b)PW-2, Hazi Mahboob Ahmed

“सीता रसोई का चुल्हा चौका बेलना हम लान में देखा करते थे जब हम मस्जिद में जाते थे। . . . लोग कहते थे कि यह सीता रसोई है। मैंने वहाँ पर किसी को दर्शन करते जाते नहीं देखा।” (पेज 54)

“When we went to the mosque, we saw chulha (hearth), chauka, belna (rolling pin) of Sita rasoi (Sita's kitchen). People said that it was Sita Rasoi. I did not see anybody going there for darshan." (E.T.C.)

‘यह मालूम है मुझे कि बाहर का लान, चबूतरा और सीता रसोई का मुकदमा 1884 में चला था।’ (पेज 62)

“I know that a case went on in 1884 in connection with the outside lawn, chabutra and Sita Rasoi." (E.T.C.)

“प्रश्न:- क्या यह समझा जाये कि सीता रसोई चबूतरा और छप्पर से मुसलमानों को कोई ताल्लुक नहीं था?

उत्तर- जी नहीं, वह जमीन हमारी थीं

वहाँ उस लान में हिन्दू लोग आते जाते जरूर थे। मैं नहीं बता सकता कि वह क्या करने आते जाते थे।’ (पेज 89)

“Question:- Should I have the impression that Muslims had no concern with Sita Rasoi, Chabutra and shed ?

Answer:- No, Sir. That land was ours.

The Hindus certainly frequented the lawn there. I cannot say what was the purpose of their doing so."(E.T.C.)

“सीता रसोई वहां से कितनी दूरी पर थी मैं नहीं बता सकता

लेकिन वह वहीँ पर थी और लान की लम्बाई और चौड़ाई मैं पहले ही बता चुका हूँ।" (पेज 98)

"But I cannot tell how much away Sita Rasoi was from there. But it was at that very place and I have already told the length and width of the lawn." (E.T.C.)

“जब हम मस्जिद में दाखिल होते थे तो सहन में बायी तरफ एक चबूतरा था। वह चबूतरा कम्पाउण्ड के बीच में था बायी तरफ। यह चबूतरा 21 X 17 स्कवायर फुट के करीब था।” (पेज 115)

"When we entered the mosque, there was a chabutra (rectangular terrace) to the left of court-yard. The chabutra was in the middle of the compound and was towards the left. This chabutra was nearly 21x17 square feet." (E.T.C.)

“इस चबूतरे पर कुछ नहीं होता था यह खाली पड़ा रहता था कभी कभी लोग इस पर बैठे नजर आते थे। इस पर एक फुस का छप्पर भी रखा गया था।” (पेज 115)

"Nothing was done on this chabutra. It remained vacant. People were sometimes seen sitting on it. It also had a thatched roof." (E.T.C.)

(c)PW-3, Farooq Ahmad

“अयोध्या में हिन्दू मेले होते हैं जैसे कि रामनवमी, परिक्रमा मेला और सावन मेला, इन मेलों पर हिन्दू लोग इकट्ठा होते हैं ये लोग मस्जिद भी देखने आया करते हैं। इस चबूतरे को देखने की गरज से बहुत से हिन्दू और मुस्लिम लोग सभी जाते हैं। ऊपर बताये गये मेलों के वक्त इकट्ठा होने वाले हिन्दू लोग खास तौर से इस चबूतरे पर नहीं जाते क्योंकि वहाँ कोई चढ़ावा नहीं है। मेले के वक्त भी हर मजहब के लोग चबूतरा देखने आते थे। . . . यह गलत है कि इस छप्पर में लकड़ी का और चॉदी का मढ़ा हुआ तम्बूनुमा कोई मंदिर भी बना हुआ हो।” (पेज 29)

"Hindu fairs are held at Ayodhya such as Ramnavami, Parikrama Mela and Sawan Mela. Hindus

gather in these fairs. They also come over to see the mosque. Many Hindus and Muslims used to come over to see this platform (Chabutara). The Hindus assembling at time of the said fairs, did not particularly visit this platform (Chabutara) because there was no offering (chadhawa). Even on occasion of the fairs, people of all religions used to come to see the platform (Chabutara). It is wrong that there was any tent like temple covered by silver and made of wood, under this thatched roof."

(E.T.C)

"रंगीन फोटो का एलबम की ओर दिलाया फोटो नं0 57 को देखकर गवाह ने जबाब दिया यह फोटो उसी चबूतरे और छप्पर का है जिसका जिक्र चल रहा है लेकिन इसमें बहुत सी ऐसी चीजें दिखायी गयी हैं जो उन दिनों वहाँ पर नहीं थी।" (पेज 30)

"(On looking at photograph no. 57 of the colored photo album, the witness stated) **this photograph is of the same platform (Chabutara) and thatched roof**, which are currently being discussed, but it has many such things in it which were not there in those days." (E.T.C)

"राम नाम का जब कीर्तन होता था तो हम भी खड़े हो जाते थे राम नाम ले लेते थे राम अल्लाह और खुदा सब एक ही हैं।" (पेज 36)

"**Whenever the Kirtan in the name of Rama was performed, we also used to stand up, take the name of Rama. Rama, Allah and Khuda are all same.**" (E.T.C)

"ये ठीक है कि इस एलबम में लगाए गए तमाम फोटो हमारे वकील साहब की मौजूदगी में खींचे गए थे। ये तमाम फोटोज विवादित जमीन और जायदाद के हैं।" (पेज 61)

"**It is true that all the photographs contained in this album, had been taken in the presence of my counsel. All these photographs are of the disputed land and**

property.” (E.T.C)

“जो चकला बेलन और चूल्हा के निशानात बने थे, वह हमने 1949 से पहले भी देखे थे।” (पेज 95)

“The existing marks of chakla, belan and hearth (chulha), had been seen over there by me even before 1949.” (E.T.C)

(d)PW-4, Mohd. Yasin

“मेरी होश में इन जगहों पर यानी मस्जिद के बाहरी सहन में कभी कोई हिन्दू नहीं आता था। मैंने किसी हिन्दू को न कभी चकला बेलना के पास देखा और न ही ऊपर बताये गये उत्तरी या दक्खिनी छप्पर के पास देखा।” (पेज 18)

“In my memory, no Hindu ever came to these places i.e. in the outer courtyard of the mosque. I never saw any Hindu near the Chakla-Belna nor near the aforementioned northern or southern thatched roof.”

(E.T.C)

(e)PW-6, Mohd. Yunus Siddiqui

“यह मैंने जान लिया था कि यह चबूतरा 1885 से चला आ रहा था।” (पेज 11)

“I came to know that this chabuttra had been in existence since 1885.”(E.T.C.)

(f)PW-7, Sri Hashmat Ullah Ansari

“इस बाहरी सहन में जहाँ ये चबूतरे थे कभी नमाज नहीं पढ़ी गयी।” (पेज 30)

“Namaz was never offered at the place where these Chabutras (raised platforms) were built in this outer courtyard.” (E.T.C.)

“यह ऊपर बताया गया चबूतरा मस्जिद में शामिल नहीं था। इस चबूतरे पर दूसरे लोग यानी हिन्दू लोग बुत रखने से पहले भजन-कीर्तन बगैरह किया करते थे।” (पेज 85)

“This Chabuttra, mentioned above, did not form

part of the mosque. Other people, that is, Hindus, before laying idol, used to perform 'Bhajan-Kirtan', etc. on this Chabutra." (E.T.C.)

(g)PW-8, Sri Abdul Aziz

“वहाँ पर एक चबूतरा था जो दक्खिन की तरफ था उस पर कोई लकड़ी का सिंहासन नहीं था वह चबूतरा खाली था। पूर्वी फाटक से अन्दर दाखिल होने पर यह चबूतरा बाये हाथ की ओर आता था।” (पेज 43)

“There was a platform towards south. It did not have any wooden throne over it. The platform was vacant. On entering through the eastern gate, this platform lay on the left side.” (E.T.C)

(h)PW-23, Mohd Qasim Ansari

“यह नक्शा भी ठीक है पर इसमें जो राम चबूतरा या सीता रसोई या अन्य बातें लिखी हैं उसे मैं नहीं मानता। इस नक्शे में जहाँ चबूतरा दिखाया गया है वह चबूतरा तो था पर इसमें जो राम चबूतरा लिखा गया है वह गलत है इसी प्रकार इस नक्शे में दिखायी जगह तो उस समय भी थी पर इसमें जो नाम दिखाया गया है वह गलत है।” (पेज 42)

“This map is also correct, but I do not take to be correct Ram Chabutra or Sita Rasoi or other things that are marked herein. **There was certainly a Chabutra but marking it as Ram Chabutra herein is incorrect. In this very manner, the place shown in this map existed at that time also but the name shown herein is incorrect.**” (E.T.C.)

1970. Almost all the witnesses produced on behalf of the Hindu parties, other than those who have appeared as experts, have stated that they were worshipping the idols of Lord Rama at Ram Chabutara since much earlier from 1949 besides Sita Rasoi where there were images of Chakla, Belan, Chulha etc. Only witnesses of Nirmohi Akhara, i.e., DW 1 to DW 3/20 have

also added and claimed that they also worshipped the idols inside the building under central dome in the inner courtyard since Nirmohi Akhara is claiming the building as temple throughout and existence of idols therein simultaneously.

1971. Be that as it may, in view of the overwhelming evidence as also the evidence of Muslim side, we have no manner of doubt that in the outer courtyard, there existed at least three structures; (1) A Chabutara, called as 'Ram Chabutara'; (2) A Chhappar, termed as 'Bhandara' on north east side of gate of outer boundary wall and a place called as 'Sita Rasoi' or 'Kaushalya Rasoi' or "Chhathi Pooja Sthal" on the north west side. All these three places existed since prior to 1885 inasmuch in Suit-1885 Commissioner's map denoted all these places and existence thereof in the map is not disputed, though the terminology used is sought to be disputed by some of witnesses of the Muslim parties. Further in the map prepared by Sri Shiv Shankar Lal, Pleader, submitted to the Court along with his report on 25.5.1980, these three places have been shown. In the objections filed by the defendants no. 1 to 5 (Suit-1) at that time, we find that there is no allegation regarding wrong preparation of the map but what was objected is that in respect to certain parts, nomenclature given by Sri Shiv Shankar Lal was not acceptable to them. In this context, it was observed by the Civil Judge, Faizabad in his order dated 20.11.1950 admitting Commissioner's report as evidence, that the nomenclature given by Sri Shiv Shankar Lal shall not be final and shall be considered in the light of the evidence adduced by the parties.

1972. Now in Suit-4 the pleadings of the plaintiffs are that the idols and object of worship were placed inside the "building" in the night intervening 22nd/ 23rd December, 1949 as

alleged in para 11 of the plaint and the term "building" according to the averments made in the plaint means the area denoted by letters ABCD in the map appended to the plaint. This area covers the entire disputed area, i.e., outer courtyard and inner courtyard. It is not their case that the idols though existed inside the said building but were kept under the three dome structure for the first time on 22nd/23rd December 1949. In view of the fact that three non-Islamic structures were continuing in the outer courtyard for the last several decades and used to be visited by the Hindus for worship, onus lies upon them to prove that in this entire building which they claim to be the area covered by the letters ABCD in the map appended to the plaint (Suit-4) no idol at all ever existed before 23rd December 1949. They have miserably failed to prove it.

1973. The case of the plaintiffs (Suit-5) and other Hindu defendants (except Nirmohi Akhara) is very clear that the idols were already present on Ram Chabutara in the outer courtyard and in the night of the 22nd/23rd December 1949, the same were placed under the central dome of three dome structures in the inner courtyard. There is enough evidence to prove, as per the above discussion, that the idols kept at Ram Chabutara were being worshipped by Hindus since a long time. No doubt or dispute has ever been raised earlier about the consecration of those idols, nor in the present cases it is pleaded that those idols (at Ram Chabutara) were not consecrated in accordance with the Shastrik procedure.

1974. Sri Deoki Nandan Agarwal in his statement under Order X Rule 2 has also said that idol which was kept under the central dome in the three dome structure in the inner courtyard on 22nd/23rd December 1949 was a *Chal Vighrah* and this

statement he has made again on the basis of the information received from OPW 1. We find from a perusal of the cross examination of OPW 1 that on this aspect and in respect to the idol so placed, no question has been asked whether the statement of Sri Deoki Nandan Agarwal on this aspect is correct or not and whether OPW 1 gave this information to him or not. This statement of plaintiff 3, Sri D.N. Agarwal, therefore, remained uncontroverted.

1975. The existence of Ram Chabutara and Sita Rasoi in the precinct of disputed site since long in our view cannot be doubted though a serious attempt has been made on this aspect also. We presume at this stage that the building in dispute was constructed in 1528 AD at the command of Babar by Mir Baqi. The dividing wall having windows etc. was not constructed at that time. This partition was made after 1855 AD as they claimed. The suggestion of pro mosque parties is that the alleged Chabutara came into existence sometime between 1855 to 1860 and despite some orders passed by the authorities of the then Government, for removal of the said Chabutara the same continued to exist and was not removed, but this also, we find, has not been proved.

1976. The fact remains that it is now a established fact which is not challenged by the Muslim parties that the Chabutara on the south eastern side of the disputed building has been continuing atleast from 1857 and onwards. Though an attempt has been made to dispute whether any idol was kept on the said Chabutara and whether worship was continuously going on thereat but this also has not been proved. On the contrary, we find that there is abundant evidence to show that Hindus were worshipping the said Chabutara believing that it symbolises and

depicts the birthplace of Lord Rama and that some idol(s) also existed thereat.

1977. There are documentary as well as oral evidence available on record some of which we discuss hereinafter.

1978. The application dated 25.09.1866, **Exhibit A-13 (Suit-1) (Register 6, page 173-177)** submitted by Mohd. Afzal, Mutawalli Masjid Babari situated at Oudh says:

“करीब महीना के अर्सा होता हैं कि तुलसीदास वगैरा बैरागियान जनम स्थान ने एक छोटी सी कोठरी ब-इरादा रखने मूरत वगैरा के चोरी से पहर भर के अर्सा में अन्दरून इहाता तय्यार करली शबाशब हमा चबूतरा बैरागियान ने बनवालिया उसके बन जाने से किस कदर फसाद बढ़ गया अब छोटी कोठरी बनाई है अर्ज हाल करके उम्मीदवार इंसाफ हूं कि वास्ते गिराने कोठरी मजकूर के हुक्म हुजूर सादिर हो कि फसाद बैरागियान से मस्जिद महफूज़ रहे वाजिब था अर्ज किया।”

*"About a months back the respondents Tulsidas etc. with the intention of planting idols etc in it have constructed a Kothri in an illegal way, within the compound of the Masjid.....**Bairagiyan got the Chabootra constructed overnight.** Because of this construction, there occurred so much rioting in the local populace. Now a small Kothri has been constructed. it is requested that before the riot is created by Bairagis this Kothri may kindly be dismantled and the Masjid may be protected from the fury of Bairagis."* (E.T.C.)

1979. **Exhibit 30 (Suit-1) (Register 5 page 107-116-C)** is a copy of an application of 1877 seeking execution of the order dated 7th November 1873 for removal of the idol, i.e., Charan Paduka said to have been created in the disputed building. A perusal of the said document shows that despite the order having been passed on 7th November 1873 the same continued to exist and was not removed. In para 6 it says:

یعنی ابھی تک وہ مورتی مطابق حکم حضور نہیں اٹھای گئی۔
.....چنانچہ اندر احاطہ مذکور کے جو چولہ بنایا ہے اور رسوی کرتا
ہے کہ یہ امر پہلے کبھی نہ ہوا وہاں فقط ایک چھوٹا چولہا واسطے
پوجہ کے لائق تھا۔ اسکو بھی اسنے واجہے کر لیا ہے۔

”یانی अभी तक वह मूर्त मुताबिक हुकम हुजूर नहीं उठाई गईचुनांचे
अन्दर अहाता मज़कूर के चूलहा बनाता है और रसोई करता है कि यह
अम्स पहले कभी न हुआ वहां फ़कत एक छोटा सा चूलहा वास्ते पूजा के
साबिक में था उस को भी उस ने वसीअ कर लिया है।“

*"That is to say that as per orders the idol has not yet been
removed. So he has made a Chulha within the said
compound which has never been done before. There was a
small Chulah for puja which he has got extended." (E.T.C.)*

1980. Besides, it also shows that in 1877 there also existed a Chulha in the aforesaid premises, complaint whereof was also made.

1981. Exhibit 15 Suit 1 (Register 5 Page 41-43) : It is a copy of the report dated Nil of Deputy Commissioner Faizabad submitted pursuant to the Commissioner Faizabad's order dated 14th May, 1877 passed in Misc. Appeal No.56, Mohd. Asghar Vs. Khem Dass. This report appears to have been called by the Commissioner in respect to a complaint made against raising of a doorway in the northern wall of the disputed building. The justification thereof was to provide a separate room on fair day to visitors to the Janam Asthan. The document being old there appears to be certain mistakes may be on account of legibility. It reads as under:

*“A doorway has recently been opened in the wall of
the Janum-Ashtan not at all in Baber's mosque, but in the
wall which in front is divided from the mosque by a railing.
This opening was necessary to give a separate route on fair
days to visitors to the Janum-Asthan. There was one*

opening only, so the cruch (sic:rush) was very great and life was endangered. I marked out the spot for the opening myself so there is no need to depute any Europe officer. This petition is merely an attempt to annoy the Hindu by making it dependent on the pleasure of the mosque people to open or close the 2nd door in which the Mohammedans can have no interest.

2. *No objection was made to the opening of this second door.*

3. *On the 10th November 1873 Baldeo Das was ordered in writing by the Deputy Commissioner to remove an image place on the janam-Asthan platform. A report was made by someone (probably a police officer) that he had gone to the house of Baldeo dass and found that the latter had gone to Gonda. The order was explained to Gyandas and other priests who said could not carry out the order. The order passed on this (15) was that if the other party (i.e. the complainant) would name person on whom an order of removal could be served-such should be served.*

(c) There apparently the matter rested. There is no later on the file."

1982. Pursuant to this report, the Commissioner decided the appeal on 13th December, 1877, and rejected the same. The copy of the said order is **Exhibit 16 (Suit-1) (Page 45 Register 5)** and it reads as under:

"As the door in question was opened by the Deputy Commissioner in the interests of the public safety I decline to interfere. Appeal dismissed."

1983. **Exhibit 34 (Suit-1) (Register 5 page 131)** is a copy of the order dated 12.01.1884 passed by Assistant Commissioner,

Faizabad. It says as under:

“..... The outer door will be left open. No lock will be allowed upon it. It is absolutely essential to observe the strictest neutrality and maintain the status quo.”

1984. This shows that in order to prevent any obstruction to anyone from entering the disputed premises he directed for not keeping lock on the doors and left the same open.

1985. Exhibit 17 (Suit-1)(Page 47-53 Register 5) is a copy of a judgment dated 18th June, 1883 passed by Sri Hari Kishan, Sub-Judge, Faizabad in Suit No.1374/943 of 1883 dismissing the claim of Syed Mohd. Asghar filed against Raghubar Dass claiming rent for user of *Chabutara* and *Takht* which admits the possession of Raghubar Das but failed to sustain his claim for rent.

1986. The aforesaid documents disprove the claim of Muslims. It appears that Mohd. Asghar in Suit No. 1374/943 of 1883 produced a witness namely Ganga Prasad, Qanungo, who made some statement in favour of Mohd. Asghar but the same was disbelieved by the Sub Judge. He also severely castigated the conduct of the said Qanungo, an official of the Government, making statement in favour of a private party in a private dispute which was not supported by any documentary evidence though the nature of the dispute warranted some documentary evidence.

1987. Exhibit 18 (Suit-1)(Page 55-57 Register 5) is an application dated 2nd November, 1883 of Mohd. Asghar showing himself as Mutawalli and Khatib Masjid Babari situated at Oudh complaining that he is entitled to get the wall of the mosque white-washed but is being obstructed by Raghubar Das though

he has right only to the extent of *Chabutara* and *Raso* but the wall and the gate etc. is part of the mosque and the complainant is entitled to get it white-washed. The order passed on the said application is Exhibit 27 (Suit-1) (Page 95-97 Register 5). The Assistant Commissioner Faizabad passed the following order dated 22nd January, 1884:

آج مقدمہ می فرد فریقین پیش۔ ہوا فریقین کو حکم
صاحب ڈپٹی کمیشنر سے اطلاع دی گی اور رگھوبر داس کو فہمائش کی
گی کہ اندورنی بہ بیرونی احاطہ و دروازہ مسجد کی مرمت وغیرہ نہ
کریں اور محمد اصغر کو سمجھا دیا گیا کہ بیرونی دروازہ کفل نہ
لگایا جاوے یہ نہایت ضروری ہے کہ عمل در آمد قدیم بحال رکھا جاوے
اور کوئی دست اندازی و مداخلت نہ کی جاوے۔

حکم ہوا کی

'کاغذات' ہذا داخل دفتر ہو المرقوم

“आज मुकदमा बहाजिरी फरीकैन पेश हुआ फरीकैन को हुकम साहब
डिप्टी कमिश्नर से इत्तिला दी गई और रघुबर दास को फहमाइश की गई
कि अन्दरुनी व बैरुनी अहाता व दरवाजा मसजिद की मरममत वगैरह न
करें और मुहम्मद असगर को समझा दिया गया कि बैरुनी दरवाजा कुफल
न लगाया जावें यह निहायत जरुरी है कि अमल दरामद कदीम बहात रखा
जावें और कोई दस्त अन्दाजी व मदाखलत न की जावे ।

हुकम हुआ कि

कागजात हाजा दाखिल दफ्तर हो अल्मरकूम”

(Hindi Transliteration)

Today the case was put up in the presence of the parties, who have been informed of the orders of the Deputy Commissioner and Raghubar Das has been restricted not to repair the inner or outer portion of the Masjid and Mohammad Asghar has been admonished that the outer gate of the Masjid should not be locked. This was important that long tradition should be maintained and no intervention should be done in it. Ordered these papers

should be consigned to office." (E.T.C.)

1988. Exhibit A-25 (Suit-1) (Register 7, page 277-281) is a copy of a map prepared and submitted on 06.12.1885 by Sri Gopal Sahai Amin, Court's Commissioner appointed by Sub-Judge, Faizabad in Suit-1885 of the disputed place. It mentions in the outer courtyard, existence of Sita Rasoi and Ram Chabutara and this has continued to exist in the outer courtyard even in 1950 as is evident from the map prepared by Sri Shiv Shankar Lal Pleader, Commissioner appointed by Civil Judge, Faizabad in Suit-1 submitted on 25.05.1950.

1989. So far as the existence of Sita Rasoi which was on the north west side in the outer courtyard is concerned, nothing has come on record to show as to when it was actually constructed. On the contrary, the record shows that it existed prior to 1885. Its actual time and period when it was constructed is unascertainable. It is beyond comprehension that Mir Baqi or anyone else, while constructing a mosque at the disputed place could have spared some Hindu structure(s) to continue, may be smaller in size, in the precinct of mosque so as to be worshipped by Hindus inside the premises of mosque. We put this question to Sri Jilani also and he frankly stated that no Muslim would allow idol worship in the precinct of a mosque.

1990. Considering the evidentiary admissions in **Avadh Kishore Dass Vs. Ram Gopal (supra)** the Court said:

"It is true that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong, but they do raise an estoppel and shift the burden of proof on to the person making them or his representative-in-interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted."

(para 23)

1991. In **Sitaramacharya Vs. Gururajacharya, 1997(2) SCC 548** the Court said:

“Under Section 18 of the Evidence Act the admission made by the party would be relevant evidence. Section 31 provides that "admissions are not conclusive proof of the matters admitted but they may operate as estoppel under the provisions hereinafter contained". In view of the admissions referred to earlier they appear to be unequivocal and the finding recorded by the appellate Court is cryptic. On the other hand, the trial Court has gone into the evidence on issues in extenso and considered the evidence and the appellate Court has not adverted to any of those valid and relevant consideration made by the trial Court. The High Court has dismissed the second appeal holding that they are findings of fact recorded by the appellate Court on appreciation of evidence. We think that the view taken by the High Court is not correct in law. The admissions in the written statement in the earlier proceedings, though not conclusive, in the absence of any reasonable and acceptable explanation, it is a telling evidence heavily loaded against the respondent.” (para 6)

1992. In **United India Insurance Co. Ltd. and another Vs. Samir Chandra Chaudhary, 2005(5) SCC 784** the Court said:

“Admission is the best piece of evidence against the persons making admission. As was observed by this Court in Avadh Kishore Das v. Ram Gopal and Ors., AIR (1979) SC 861 in the backdrop of Section 31 of Indian Evidence Act, 1872 (in short the `Evidence Act') it is true that evidentiary admissions are not conclusive proof of the facts

admitted and may be explained or shown to be wrong; but they do raise an estoppel and shift the burden of proof placing it on the person making the admission or his representative-in-interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted. As observed by Phipson in his Law of Evidence (1963 Edition, Para 678) as the weight of an admission depends on the circumstances under which it was made, these circumstances may always be proved to impeach or enhance its credibility. The effect of admission is that it shifts the onus on the person admitting the fact on the principle that what a party himself admits to be true may reasonably be presumed to be so, and until the presumption is rebutted, the fact admitted must be taken to be established. An admission is the best evidence that an opposing party can rely upon, and though not conclusive is decisive of matter, unless successfully withdrawn or proved erroneous. (See Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi and Ors., AIR (1960) SC 100).” (para 11)

1993. In **Mahendra Manilal Nanavati Vs. Sushila Mahendra Nanavati**, AIR 1965 SC 364 the Court said:

“The provisions of the Evidence Act and the Code of Civil Procedure provide for Courts accepting the admissions made by parties and requiring no further proof in support of the facts admitted.” (para 22)

“23. Section 58 of the Evidence Act inter alia provides that no fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing or which by any rule of pleading in force at the time they

are deemed to have admitted by their pleading. Rule 5 of O. VIII, C.P.C., provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleadings of the defendant, shall be taken to be admitted except as against a person under disability.”

“24. Both these provisions, however, vest discretion in the Court to require any fact so admitted to be proved otherwise than by such admission. Rule 6 of O. XII of the Code allows a party to apply to the Court at any stage of a suit for such judgment or order as upon the admissions of fact made either on the pleadings or otherwise he may be entitled to, and empowers the Court to make such order or give such judgment on the application as it may think just. There is therefore no good reason for the view that the Court cannot act upon the admissions of the parties in proceedings under the Act.”

“25. Section 23 of the Act requires the Court to be satisfied on certain matters before it is to pass a decree. The satisfaction of the Court is to be on the matter on record as it is on that matter that it has to conclude whether a certain fact has been proved or not. The satisfaction can be based on the admissions of the parties. It can be based on the evidence, oral or documentary, led in the case. The evidence may be direct or circumstantial.”

“29. . . it is quite competent for the Court to arrive at the necessary satisfaction even on the basis of the admissions of the parties alone. Admissions are to be ignored on grounds of prudence only when the Court, in the circumstances of a case, is of opinion that the

admissions of the parties may be collusive. If there be no ground for such a view, it would be proper for the Court to act on those admissions without forcing the parties to lead other evidence to establish the facts admitted, unless of course the admissions are contradicted by the facts proved or a doubt is created by the proved facts as regards the correctness of the facts admitted.”

1994. In **State of Bihar and others Vs. Sri Radha Krishna Singh and others**, AIR 1983 SC 684 various aspects of the Evidence Act came to be considered. With respect to genealogy the Court said:

“18. the plaint genealogy is the very fabric and foundation of the edifice on which is built the plaintiff's case. This is the starting point of the case of the plaintiff which has been hotly contested by the appellant. In such cases, as there is a tendency on the part of an interested person or a party in order to grab, establish or prove an alleged claim, to concoct, fabricate or procure false genealogy to suit their ends, the courts in relying on the genealogy put forward must guard themselves against falling into the trap laid by a series of documents or a labyrinth of seemingly old genealogies to support their rival claims.”

“19. The principles governing such cases may be summarized thus:

(1) Genealogies admitted or proved to be old and relied on in previous cases are doubtless relevant and in some cases may even be conclusive of the facts proved but there are several considerations which must be kept in mind by the

courts before accepting or relying on the genealogies:

- (a) Source of the genealogy and its dependability.*
- (b) Admissibility of the genealogy under the Evidence Act*
- (c) A proper use of the said genealogies in decisions or judgments on which reliance is placed.*
- (d) Age of genealogies.*
- (e) Litigations where such genealogies have been accepted or rejected.*

(2) On the question of admissibility the following tests must be adopted:

- (a) The genealogies of the families concerned must fall within the four-corners of s.32 (5) or s. 13 of the Evidence Act.*
- (b) They must not be hit by the doctrine of post litem motam.*
- (c) The genealogies or the claim cannot be proved by recitals, depositions or facts narrated in the judgment which have been held by a long course of decisions to be inadmissible.*
- (d) Where genealogy is proved by oral evidence, the said evidence must clearly show special means of knowledge disclosing the exact source, time and the circumstances under which the knowledge is acquired, and this must be clearly and conclusively proved,."*

"24. It is well settled that when a case of a party is based on a genealogy consisting of links, it is incumbent on the party to prove every link thereof and even if one link is found to be missing then in the eye of law the genealogy cannot be said to have been fully proved."

1995. With respect to Section 5 of the Evidence Act the

Court said:

“32. *Ex.J. being an entry in a Register made by a public officer in the discharge of his duties squarely falls within the four corners of s. 35 of the Evidence Act and is, therefore, doubtless admissible. In this connection, the learned Judge observed thus:*

" There can thus be no doubt that it is admissible under section 35 of the Evidence Act."

33. *We agree with the unanimous view of the High Court that Ex. J is admissible. all the conditions of s. 35 of the Evidence Act are fully complied with and fulfilled. It is a different matter that even though a document may be admissible in evidence its probative value may be almost zero and this is the main aspect of the case which we propose to highlight when we deal with the legal value of this document."*

“35. *In our opinion, Ex. J. squarely falls within the four corners of s. 35 of the Evidence Act which requires the following conditions to be fulfilled before a document can be admissible under this section.*

(1) the document must be in the nature of an entry in any public or other official book, register or record,

(2) it must state a fact in issue or a relevant fact,

(3) the entry must be made by a public servant in the discharge of his official duties or in performance of his duties especially enjoined by the law of the country in which the relevant entry is kept."

“36. *he was entrusted with the task of and enjoined the duty of ascertaining the possession of various landlords*

for the purpose of taking suitable steps in the matter. . . . The question as to whether the relevant fact is proved or not is quite a different matter which has nothing to do with the admissibility of the document but which assumes importance only when we consider the probative value of a particular document. . . . Thus, all the aforesaid conditions of s. 35 are fully complied with in this case.”

“38. In P.C. Purushothama Reddiar v. S. Perumal, (1972) 2 SCR 646 this Court while considering the effect of s. 35 of the Evidence Act observed as follows:-

“. . . . The first part of s. 35 of the Evidence Act says that an entry in any public record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty is relevant evidence. Quite clearly the reports in question were made by public servants in discharge of their official duty.”

1996. With respect to admissibility of document and probative value the Court in **State of Bihar and others Vs. Sri Radha Krishna Singh (supra)** said:

“40. We may not be understood, while holding that Ex.J is admissible, to mean that all its recitals are correct or that it has very great probative value merely because It happens to be an ancient document. Admissibility of a document is one thing and its probative value quite another—these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight or its probative value may be nil.”

“47. We would like to mention here that even if a document may be admissible or an ancient one, it cannot carry the same weight or probative value as a document

which is prepared either under a statute, ordinance or an Act which requires certain conditions to be fulfilled. This was the case in both Ghulam Rasul Khan's (AIR 1925 PC 170) and Shyam Pratap Singh's cases (AIR 1946 PC 103) (supra)."

1997. In various gazetteers also this has been noticed. The entry of Hindu public before December, 1949 inside the building premises has not been disputed even by the witnesses of plaintiffs (Suit-4).

1998. Considering as to how a fact can be said to have been proved in **T. Shankar Prasad Vs. State of A.P., 2004(3) SCC 753** the Court said that direct evidence is one of the modes through which a fact can be proved but that is not the only mode envisaged in the Evidence Act. In para 11, 12, 13 and 14 the Court said:

"11. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in Hawkins v. Powells Tillery Steam Coal Co. Ltd. (1911 (1) KB 988) observed as follows:

"Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion".

12. The said observation has stood the test of time and can now be followed as the standard of proof. In reaching the conclusion the Court can use the process of inferences to be drawn from facts produced or proved. Such

inferences are akin to presumptions in law. Law gives absolute discretion to the Court to presume the existence of any fact which it thinks likely to have happened. In that process the Court may have regard to common course of natural events, human conduct, public or private business vis-à-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act.

13. *Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the Court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in law of evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the Court can draw an inference and that would remain until such inference is either disproved or dispelled.*

14. *For the purpose of reaching one conclusion the Court can rely on a factual presumption. Unless the presumption is disproved or dispelled or rebutted the Court can treat the presumption as tantamounting to proof. However, as a caution of prudence we have to observe that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion. This Court has indicated so in *Suresh Budharmal Kalani v. State of Maharashtra* (1998 (7) SCC 337):*

"A presumption can be drawn only from facts—and not from other presumptions—by a

process of probable and logical reasoning".

1999. Though plaintiffs (Suit-3) have pleaded that the idols in question were already there under the central dome of the disputed building inside the inner courtyard for time immemorial and nothing happened in the night of 22nd/23rd December, 1949 but the plaintiffs (Suit-4 and 5) have categorically pleaded that the idol(s) were placed in the disputed building in the night of 22nd/23rd December, 1949. We propose to find out whether plaintiffs (Suit-3) have discharged burden of showing idols under the central dome prior to 22nd/23rd December, 1949.

2000. Sri Deoki Nandan Agarwal who earlier represented the plaintiffs 1 and 2 (Suit-5) as their next friend made a statement under Order X Rule 2 C.P.C. on 30.04.1992 and said:

"In the early hours of December 23, 1949, the idol of Bhagwan Sri Ram Lala, which was already on Ram Chabutra was transferred to the place where He presently sits, that is, under the central dome of the disputed building. I was not personally present at that time at the place. This information was conveyed to me by Paramhans Ram Chandra Das of Digamber Akhara. This transfer of the idol was done by Paramhans Ram Chandra Das and Baba Abhi Ram Das and certain other persons whose names I do not remember at the moment...."

2001. DW 2/1-2 has also said on page 12, 42 and 128:

"सन् 1949 में विवादित परिसर का बीच वाला भाग अर्थात् गर्भगृह कुर्क हुआ था। गर्भगृह से तात्पर्य तीन गुम्बद वाले भवन के नीचे का भाग तथा उसके सामने की सहन एवं सीखचे वाली दीवार तक का भाग था। कुर्कशुदा सम्पत्ति के पूरब तरफ़ रामजन्मभूमि का भण्डार तथा राम चबूतरा था। उत्तर तरफ़ चार चरण चिन्ह तथा चौका बेलन वाला स्थान था।" (पेज 12)

“In 1949 the central portion of the disputed premises, i.e, sanctum (Garbh Grih) was attached. Garbh Grih meant the portion below the three domed building and the appurtenant land in front thereof upto the grill wall. Towards east of the attached property, the store of Ram Janmbhumi and Ram Chabutara existed. Towards north, the places of four-footprints and Chauka-Belan (Utensils used in Indian kitchen) existed.” (ETC)

“जब तक बाबरी मस्जिद ध्वस्त नहीं हुई थी, तब तक उसी भवन से लगा हुआ 17 फिट X 21 फिट लम्बा-चौड़ा रामचबूतरा मौजूद था। विवादित ढाँचे के साथ-साथ वह रामचबूतरा भी ध्वस्त हो गया।” (पेज 42)

“Till the Babri mosque was not demolished, there was an appurtenant 17 feet x 21 feet Ramchabutara. Along with the disputed structure, the Ramchabutara was also demolished.” (E.T.C)

“मैंने यह लिखा है कि 1859 ई० में वाजिद अली शाह के समय में रामचबूतरा व सीता रसोई के नष्ट होने के प्रयास होते रहे, यद्यपि कोई सफलता नहीं मिली। इस अंश को मैंने पढ़ने के आधार पर लिखा है। यह अंश मैंने किस किताब में पढ़ा था, यह मुझे याद नहीं है। मुझे यह याद नहीं है कि नवाब वाजिद अली शाह का कार्यकाल 1858 ई० में समाप्त हो गया था या नहीं। मुझे न तो इस बात की जानकारी है और न इस संबंध में याद है कि 1859 ई० में वाजिद अली शाह नवाब थे या नहीं। यह कहना गलत है कि 1859 ई० में रामचबूतरा व सीता रसोई के नष्ट करने के प्रयास से संबंधित कोई घटना नहीं हुई।” (पेज 128)

“I have written that in 1859, during the time of Wajid Ali Shah, attempts had been made to vandalise Ram Chabutara and Sita Rasoi but to no avail. I have written this portion on the basis of my study. I do not remember in which book I had read this portion. I do not remember whether the reign of Wajid Ali Shah had come to an end or not in 1858. I neither know nor remember whether Wajid

Ali Shah was Nawab or not in 1859. It is wrong to say that no incident occurred in 1859 which involved attempts to damage Ram Chabutra and Sita Rasoi.” (E.T.C)

2002. The State authorities have filed their written statement in Suit-1 and 3 wherein they have also taken this stand that the idols were kept under the central dome of the disputed building in the night of 22nd/23rd December, 1949. Though this fact has been seriously disputed by plaintiffs (Suit-3) and a large number of witnesses have been produced by them to demolish this fact but we find a self contradiction in those statements and for reasons more than one as we shall discuss now, the statements of most of such witnesses produced on behalf of plaintiff (Suit-3) are uncreditworthy.

2003. Plaintiffs (Suit-3) have examined twenty witnesses i.e. D.W.-3/1 to 3/20. Almost all the witnesses have filed their affidavits under Order XVIII Rule 4 C.P.C., as permitted by this Court, to depose their statement in-chief and all these affidavits are virtually similar, containing prototype statements with minor corrections or variations here and there.

2004. The basic submission is that the building has all along been worshipped by Hindus, managed by the priest and agents of Nirmohi Akhara and idols were already there under the central dome of the disputed building much before 1949. Hindus were regularly worshipping by entering into the disputed building, i.e., inner courtyard prior to 1949. They have also denied any incident of 22/23rd December, 1949 with respect to placement of the idols inside the building under the central dome since it was already there.

2005. For the purpose of Suit-3, the disputed site means only "the inner courtyard". The aforesaid Suit-3 has not been filed

with respect to any part of the premises constituting part of the outer courtyard. Therefore, qua Suit-3, the "disputed site" or "disputed area" or "disputed building" means only the "inner courtyard" and the building existed thereat. As per the plaint statement in Suit-3, the temple of Lord Rama existed at the disputed site since time immemorial. They denied any battle of Babar with the then ruler at Ayodhya, construction by Babar or his agent in 1528 AD, riot or dispute of 1934 as also the alleged incident of placement of idol in the night of 22/23 December, 1949 in the disputed building. It is in support of these averments, twenty witnesses have been produced on behalf of the plaintiff (Suit-3). In fact, in the plaint, nothing has been said about 1528 or 1934 except that no Muslim was ever allowed or admitted to enter atleast ever since the year 1934, as is evident from para 5 thereof but in replication, these incidents have been disputed.

2006. The respondents no.6 to 8 in their written statement gave the date of construction of the disputed building as mosque in 1528 AD by Babar, its maintenance through the grant received from the then Emperor and thereafter by State authorities etc. and continued Namaz till 16th December, 1949. In reply thereto, the replication filed by the plaintiff states that no property was constructed by Babar as mosque but throughout it has been a temple of Lord Rama and that the plaintiffs are in possession of the said temple since time immemorial from the date of the construction of the temple.

2007. Clarifying their stand, Sri Sarab Jeet Lal Verma, Advocate appearing on behalf of the plaintiffs (Suit-3) before the Civil Judge made a statement on 17th May, 1963 under Order X Rule 2 C.P.C. that the property in suit is believed to be the

birth place of Lord Ram Chandra and so there is a temple of Lord Ram Chandra on it. The management and control of this temple is that of plaintiffs and property is not dedicated to the idol though the temple is made on the land which is the birth place of lord Ram. It is owned by the plaintiffs and the temple was made by the plaintiffs. He further clarified that the suit is confined to the property shown by letters E F G H I J K L in the map appended to the plaint (Suit-3).

2008. All the witnesses of plaintiff (Suit-3) have been cross-examined at very great length to contradict them and to extract truth from it. In **T. Shankar Prasad Vs. State of A.P. (supra)** in respect to the testimony of a witness cross-examined and contradicted with the leave of the Court by the party calling him with reference to Section 154 of the Evidence Act the Court said:

“It is for the judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a party of his testimony. If the judge finds that in the process the credit of the witness has not been completely shaken, he may after reading and considering the evidence of the said witness, accept in the light of the other evidence on record that part of his testimony which he found to be creditworthy and act upon it.” (para 24)

2009. It is now in the context of the above stand of the plaintiffs (Suit-3) we would examine the statements made by their witnesses.

2010. DW 3/1 Mahant Bhaskar Das, Sarpanch Shri Manch Ramanandiya Nirmohi Akhara, Ramghat, Ayodhya

besides other, firstly said in para 9 of the affidavit that Ram Janam Bhumi and all the surrounding, small and big temples and religious place like Chathi Poojan Sthal, Ram Chabutara Mandir Sthan, Shashthamukhi Shankar Bhagwan, Ganesh Ji, Seeta Koop Mandir, Gufa Mandir, Sumitra Mandir, Lomash Samadhi etc. are all the property of Nirmohi Akhara. It is in their possession and management for last several hundred years prior to the attachment and they have continued to look after the same till acquisition.

2011. Then in para 10 of the affidavit he has specifically said that from 1946 to 1949, in the internal part of the main temple, Nirmohi Akhara through its Pujaries have continued worship including other religious places like Ram Chabutara, Shashtha Mukhi Shankar Bhagwan Sthal and Chathi Poojan Sthal and that no Namaz has been offered in the disputed site from 1946 to 1949. In para 81 he said that Bhagwan Ram Lala is inside the disputed building prior to 1934, and, since 1934, Nirmohi Akhara is continuously having its possession. It, however, admits in para 48 that there was police surveillance at the eastern gate of Mandir Ram Janam Bhoomi prior to 22/23 December, 1949 and Police Chauki was also established in the north-east corner of temple. In para 56, he has admitted that Raghubar Das was the Mahant of Nirmohi Akhara prior to 1885 and had filed a case in respect to *Ram Chabutara* in his own name and not on behalf of Nirmohi Akhara. In para 62, however, he has denied about shifting of idol from Ram *Chabutara* on 22/23 December, 1949.

2012. Having said so, he has made very interesting statements in cross examination. Firstly he has admitted that a mosque was constructed in 1528 AD after demolition of Sri

Ram Janam Bhoomi temple in page 47:

“प्र०—बाबरी मस्जिद का निर्माण कब हुआ था?

उ०— सन् 1528 में श्रीराम जन्मभूमि मंदिर तोड़ करके मस्जिद बनाई गई थी।” (पेज 47)

"Question:- When was Babri mosque built?"

Answer:- The mosque was built in the year 1528 by demolishing Sri Ramjanmbhumi temple. (ETC)

“यह झगड़ा शुरु से चलता था जब से सन् 1528 से वहां विवादित भवन बना यह बातें मैंने अपने पूर्वजों से सुनी हैं, कहीं पढ़ी नहीं हैं। यह झगड़ा 76 बार हुआ है। यह झगड़ा बाबर के ज़माने से अंग्रेजों के ज़माने तक हुआ है और आखिरी बार यह झगड़ा सन् 1934 में हुआ था।”

"This conflict used to take place since beginning, when the disputed structure was built over there in the year 1528. I have heard this from my ancestors, but have not read it anywhere. This conflict broke out on 76 occasions. This conflict has continued from the time of Babar to the British period and it last broke out in the year 1934." (E.T.C.)

“विक्रमादित्य द्वारा बनवाये गये भवनों को ढाई हजार वर्ष चूँकि हो गये हैं, इस कारण वे स्वयं गिर गये थे और जन्मभूमि मंदिर सन् 1528 में गिरवाया गया था। जो भवन सन् 1528 में तोड़वाया गया था, वह मूल रूप से विक्रमादित्य द्वारा बनवाया गया था और बीच-बीच में उसका जीर्णोद्धार होता रहा था।

यह कहना गलत है कि सन् 1528 में जब विवादित भवन बनवाया गया, तब किसी मंदिर को तोड़कर नहीं बनवाया गया था। यह भी कहना गलत है कि उस समय वहां कोई मंदिर नहीं था। मैंने सन् 1528 में मंदिर तोड़कर विवादित भवन बनवाने वाली बात व विक्रमादित्य द्वारा जन्मभूमि मंदिर बनवाये जाने की बात पूर्वजों से सुनी थी, कहीं पढ़ी नहीं थी।”

(पेज 119)

"Since the buildings built by Vikramaditya were 2500 years old, they collapsed on their own and the Janmbhumi temple was demolished in the year 1528. The building which

was demolished in the year 1528, was originally built by Vikramaditya with intervening renovations from time to time.

It is wrong to say that when the disputed structure was built in the year 1528, it had not been built by demolishing any temple. It is also wrong to say that no temple existed over there at that time. The factum of building of disputed structure in the year 1528 by demolishing a temple, and the building of Janmbhumi temple by Vikramaditya, were heard by me from my ancestors, and I have not read it anywhere."

(E.T.C)

2013. This statement of the witness is directly contrary to the pleading and the basic case of the plaintiffs (Suit-3).

2014. Moreover having said so that is about construction of mosque nowhere he has said as to when the above mosque ceased to be a mosque and when worship by Hindus started in the disputed building. He however has confined the period of worship by Hindus prior to 1934. On page 47, 63, 98, 108 and 109, he has said:

“प्र०— उपरोक्त मस्जिद कब तक कायम रही थी?

उ०— सन् 1934 के पहले से वहां पर पूजा-पाठ होता चला आ रहा है।” (पेज 47)

Question:- Till when did the aforesaid mosque exist?

Answer:- Prayer-worship has been continuing over there from before the year 1934." (E.T.C)

“निर्मोही अखाड़ा ने पहली बार विवादित भवन के लिए पुजारी सन् 1934 से पहले नियुक्त किया था परन्तु यह याद नहीं है कि सन् 1934 से कितने पहले विवादित भवन के लिए निर्मोही अखाड़े ने पुजारी नियुक्त किया था।” (पेज 63)

"The first priest for the disputed structure was appointed before the year 1934 by the Nirmohi Akhara,

but (I) do not remember as to how much before the year 1934, was the priest appointed by the Nirmohi Akhara for the disputed structure." (E.T.C)

“सन् 1934 के पहले से वहां मूर्ति रखी थी, जिसे अखाड़े के किसी महन्त ने प्रतिष्ठित कराया था।

वहां पर रामलला जी की मूर्ति, लक्ष्मण जी की मूर्ति, हनुमान जी की मूर्ति, सालिग राम भगवान आदि की मूर्तियां रखी थी। ये सब मूर्तियां सन् 1934 के पहले से विवादित भवन के अन्दर रखी थी। विवादित भवन के मध्य वाले गुंबद के नीचे सीढ़ियों पर ये मूर्तियां रखी हुई थी।” (पेज 98)

"Idol existed over there from before the year 1934, which had been installed by some Mahant of the Akhara.

The idols of Ramlala, Laxman Ji, Hanuman Ji and Lord Saligram existed over there. All these idols were inside the disputed structure from before the year 1934. These idols existed at the stairs beneath the middle dome of the disputed structure." (E.T.C)

“विवादित भवन में मूर्ति सन् 1934 के पहले रखी गई थी, परन्तु किस सन् में रखी गई थी अथवा किसने रखी थी यह मुझे ज्ञान नहीं है।” (पेज 108)

"The idol had been installed in the disputed structure prior to the year 1934, but I have no knowledge as to when was it installed or by whom." (E.T.C)

“मैंने यह बात अपने पूर्वजों से सुनी है कि सन् 1934 के पहले वहाँ मूर्ति रखी हुई थी। मैं यह भी नहीं बता पाऊँगा कि तीन गुम्बद वाले विवादित भवन के निर्माण यानी सन् 1528 के कितने समय बाद विवादित भवन में मूर्ति रखी गई थी।”

(पेज 109)

"I had heard it from my ancestors that the idols existed over there from before the year 1934. I will also not be able to tell how many years after the construction

of the three domed disputed structure i.e. after the year 1528, were the idols installed in the disputed structure."

(E.T.C)

2015. So far as his own visit to the disputed site is concerned, he claimed it since 1946, at page 46:

"मैं विवादित स्थल पर सन् 1946 से जाता रहा हूँ और वहाँ पर मैं रहता भी था। मैं वहाँ पर मंदिर पर पूजा-पाठ करता था, बहैसियत पुजारी।" (पेज 46)

"I have been going to the disputed site from the year 1946 and I also used to stay over there. I used to carry out prayer-worship in the temple over there as a priest."

(E.T.C)

2016. The visit of Muslims at the disputed site is also disputed by him since 1946 at page 53 and 127:

"सन् 1946 में मुसलमान लोग विवादित भवन पर नहीं आते-जाते थे। मैंने सन् 1946 में किसी मुसलमान को विवादित भवन में आते-जाते नहीं देखा। दिसम्बर सन् 1949 तक विवादित भवन में नमाज नहीं हुई।"

(पेज 53)

"In the year 1946, the Muslims did not visit the disputed structure. In the year 1946, I did not see any Muslim visit the disputed structure. Namaz was not offered in the disputed structure till December, 1949." (E.T.C)

"सन् 1946 में जो लोग दर्शन करने आते थे, वह विवादित भवन के अन्दर आकर दर्शन करते थे। सन् 1946 में सीखचों वाली दीवार के दोनों दरवाजे दर्शनार्थियों के लिए खुले रहते थे और मन्दिर सुबह 8 बजे से 12 बजे तक और सायं चार बजे से नौ-साढ़े नौ बजे रात तक खुला रहता है।" (पेज 127)

"The people who used to come to have darshan in the year 1946, used to have darshan from inside the disputed structure. In the year 1946, both the gates of the grill wall used to remain open for the devotees and the temple

used to remain open between 8 am to 12 noon and 4 pm to 9/9.30 pm." (E.T.C)

2017. His statement apart the affairs of Nirmohi Akhara has attained importance for he is Panch of Nirmohi Akhara since 1950 and presently Sarpanch and Mukhtare Aam:

‘मैं सन् 1950 में निर्मोही अखाड़े का पंच हुआ था और महन्त रघुनाथ दास जी का मुख्तारेआम भी था। सन् 1950 से मैं बराबर पंच चला आ रहा हूँ। उसके बाद उप-सरपंच हुआ था और आज से कई साल पहले मैं उसका सरपंच हो गया और आज भी मैं निर्मोही अखाड़े का सरपंच व मुख्तारेआम हूँ। मैं निर्मोही अखाड़े के महन्त जगन्नाथ दास जी का मुख्तारेआम हूँ।’ (पेज 72)

"I became the 'Panch' of Nirmohi Akhara in the year 1950 as also the 'Mukhtar-e-aam' (power of attorney holder) of Mahant Raghunath Das. I have regularly continued as a 'Panch' from the year 1950. Thereafter, I became its 'Up-Sarpanch' and today for last many years, I am its 'Sarpanch', and even today I am 'Sarpanch' and 'Mukhtar-e-aam' of Nirmohi Akhara. I am the 'Mukhtar-e-aam' of Nirmohi Akhara's Mahant Jagannath Das."

(E.T.C)

2018. Regarding the incident of 22/23 December, 1949, he said at page 77/78 and 80:

“22/23 दिसम्बर सन् 1949 की रात को विवादित भवन में कोई घटना नहीं हुई थी। यदि कोई यह कहता है कि 22/23 दिसम्बर 1949 की रात को विवादित भवन में कोई घटना हुई, तो वह गलत कहता है। मैं 22/23 दिसम्बर सन् 1949 की रात को विवादित परिसर में ही मौजूद था। मैं रात्रि में साढ़े ग्यारह बजे सोता हूँ और साढ़े चार बजे उठ जाता हूँ, उस रात यानी 22/23 दिसम्बर सन् 1949 की रात को उसी प्रकार सोया हूँगा। उस समय यानी उस रात को मैं गुम्बद के नीचे वाले स्थान पर सोया था।” (पेज 77-78)

"No incident occurred in the disputed structure in

the night of 22/23 December, 1949. If somebody claims that some incidents occurred in the disputed structure in the night of 22/23 December, 1949, then he is stating wrongly. In the night of 22/23 December, 1949 I was present in the disputed premises. I go to bed at 11.30 PM and get up at 4.30 AM. I must have slept so in that night i.e. in the night of 22/23 December, 1949. At that time i.e. in that night, I had slept at the place beneath the dome."

(E.T.C)

“यदि उस रिपोर्ट में यह लिखा हो कि 22/23 दिसम्बर सन् 1949 की रात में कुछ लोगों ने मस्जिद में दाखिल होकर मस्जिद नापाक किया, तो यह बात गलत लिखी है। जिन रामशकल दास जी का नाम इस रिपोर्ट में लिखा है, वही मेरे साथ 22/23 दिसम्बर सन् 1949 की रात को गुम्बद वाले भवन में सोये थे और जिन सुदर्शन दास जी का नाम इस रिपोर्ट में लिखा है वह वही सुदर्शनदास जी हैं, जो उस रात सन्त निवास में सोये थे और अभयरामदासजी वहीं हैं, जो 22/23 दिसम्बर सन् 1949 की रात कथा मण्डप में सोये थे और जिन रामदासजी का नाम रिपोर्ट में आया है, वह उस समय रामचबूतरे के पुजारी थे और उस रात विवादित परिसर में ही सोये थे।” (पेज 80)

*"If it is so mentioned in that report that in the night of 22/23 December, 1949, some people had entered the mosque and de-sanctified the mosque, then the said fact has been mentioned wrongly. **The Ramshakal Das named in this report, had slept along-with me in the domed structure in the night of 22/23 December, 1949** , and the Sudarshan Das named in this report, is the same Sudarshan Das who had slept in the saints' accommodation in that night and Abhay Ram Das is the same person who had slept in the 'Katha Mandap' in the night of 22/23 December, 1949 and the **Ram Das Ji** named*

in the report, was the priest of Ramchabutara at that time and he had slept in the disputed premises in that night."

(E.T.C)

2019. The contradictions and incorrectness in his statement is evident from the following:

"यह सिंहासन विवादित भवन में सन् 1950 के पहले से था। यह सिंहासन विवादित भवन में सन् 1950 के दस साल पहले से था। यह सिंहासन विवादित भवन में सन् 1950 में था परन्तु इसकी कुर्की नहीं हुई थी।" (पेज 104)

"This throne existed in the disputed structure from before the year 1950. This throne was present in the disputed structure, from ten years before the year 1950. This throne was in the disputed structure in the year 1950, but it had not been attached." (E.T.C)

"सन् 1986 के पहले इन चित्रों में दिख रहा सिंहासन विवादित स्थल पर नहीं था। यह हो सकता है कि यह सिंहासन सन् 1986 में विवादित भवन का ताला खुलने के बाद वहां रखा गया हो।"

(पेज 147)

"Before 1986, the throne, visible in these photographs, did not exist at the disputed site. This throne may have been placed in the disputed building after its lock was opened in 1986." (E.T.C.)

"विवादित भवन में रामलला जी की दो मूर्तियां थीं। . . . ये दोनों मूर्तियां सन् 1934 के पहले से चली आ रही हैं।" (पेज 107)

"There were two idols of Ramlala in the disputed structure Both these idols were in existence from before the year 1934." (E.T.C)

"अभिराम दास जी विवादित भवन के पुजारी भी थे फिर कहा कि—अभिराम दास जी निर्मोही अखाड़े के पुजारी नहीं थे।" (पेज 123)

"Abhiram Das. was also the priest of the disputed structure. Then stated that Abhiram Das was not

the priest of Nirmohi Akhara." (E.T.C)

“त्रुटिवश मैंने रामलला जी की दो मूर्तियों के बारे में बता दिया था। जबकि एक राम लला जी की मूर्ति थी और एक लक्ष्मण लला जी की मूर्ति थी।

रामलला जी की एवं लक्ष्मण लला जी की दो मूर्तियाँ सन् 1934 के पहले से चली आ रही थी।” (पेज 127)

"Inadvertently I had stated about two idols of Ramlala, when there was one idol of Ramlala and one of Laxmanlala.

The two idols of Ramlala and Laxmanlala, have been in existence from before the year 1934." (E.T.C)

“मुख्य परीक्षा के शपथ-पत्र का पैराग्राफ 25 दिखाया गया, जिसे देखकर गवाह ने कहा कि इस पैराग्राफ में जो कुछ लिखा है, वह सही लिखा है।

उपरोक्त पैराग्राफ 25 गवाह को दिखाया गया और यह पूछा गया कि इस पैराग्राफ में लिखी बात कि श्याम-श्वेत एलबम का चित्र सं० 81 एवं 82 में दिख रहा सिंहासन चबूतरे का है अर्थात् रामचबूतरे का है?

उपरोक्त को देखकर गवाह ने कहा कि इस पैराग्राफ में चित्र की संख्या गलत लिख गयी है।

इस पैराग्राफ में जो मैंने चित्र सं०-81 एवं 82 का हवाला दिया है, उसका उल्लेख गलत हो गया है, जो टाइप की गलती है। इसी पैराग्राफ 25 को गवाह को दिखाकर पूछा गया कि इस पैराग्राफ में जो फोटो नं०-83 एवं 84 के संबंध में आपने उल्लेख किया है, वह किसी ऊपरी भाग का उल्लेख है? उपरोक्त को देखकर गवाह ने कहा कि मेरा पैराग्राफ 25 का कथन गलत हो गया है।” (पेज 137)

“Paragraph 25 of affidavit filed at the examination-in-chief was shown to the witness following which he stated – Whatsoever is stated in this paragraph, is correctly written.

The aforesaid paragraph 25 was shown to the witness and a query was put to him as to whether the

throne, visible in photographs 81 and 82 of the black-white album represented chabutra or Ram Chabutra.

Seeing the aforesaid photographs, the witness stated that photographs in this paragraph had been wrongly numbered.

*In this paragraph, **photographs 81 and 82 have been quoted wrongly; that is due to typographical error.** This very paragraph 25 was shown to the witness and he was queried as to which upper portion found place in his description about photographs 83 and 84 of this paragraph. Looking at the aforesaid, the witness stated that **his statement in paragraph 25 had gone wrong.**”(E.T.C.)*

“उनके मुख्य परीक्षा शपथ-पत्र के इसी पैराग्राफ के 24 का अंश “जन्म भूमि जिसके सामने दुकान बताशे वाला, 29-30 चबूतरा है”, दिखाया गया और पूछा कि इससे आपका क्या तात्पर्य है तो गवाह ने कहा कि यह भी गलत लिख गया है। यह पूरा अंश टाइप की गलती से लिख गया है।” (पेज 138)

*“A portion of this very paragraph 24 of affidavit filed at examination-in chief – which portion runs as ‘Janmbhumi, opposite to which lie a Batasha-selling shop and 29-30 chabutras – was shown to the witness and he was queried as to what he meant by the said words. Thereupon the witness stated – **It is also incorrectly written. This portion in its entirety has come to be written due to typographical error.**” (E.T.C.)*

2020. Regarding the period of construction of *Ram Chabutara*, he said :

“इस मूर्ति को अकबर के जमाने में निर्माही अखाड़े के महन्त ने रखा था, उस का नाम मुझे नहीं मालूम। यह बात मैंने अपने पूर्वजों से सुनी है, कहीं पढ़ा नहीं है। रामचबूतरे पर जितनी भी मूर्तियाँ थीं, वह सब मुगल बादशाह अकबर के जमाने में रखी गई थीं।

बादशाह अकबर के जमाने में भी यह रामचबूतरा 17 फिट x 21 फिट का था, और उस जमाने में भी इस पर उसी तरह का छप्पर पड़ा हुआ था, जैसा कि सन् 1950 में पड़ा हुआ था।" (पेज 109-110)

"This idol was installed in the period of Akbar by Mahant of Nirmohi Akhara, I do not know his name. I have heard this from my ancestors, and have not read it anywhere. All the idols at the Ramchabutara, had been installed in the period of Mughal emperor Akbar. In the period of emperor Akbar also, this Ramchabutara was of the dimension 17 feet x 21 feet and in that period also, it had a similar thatch, as was there in the year 1950."

(E.T.C.)

“इस राम चबूतरे के सम्बन्ध में एक दावा सन् 1885 में दाखिल हुआ था। यह दावा महन्त रघुबर दास जी ने दाखिल किया था, जो निर्मोही अखाड़े में महन्त थे। यह दावा सब-जज फैजाबाद की अदालत में दाखिल हुआ था और पहले इस मुकदमें का निर्णय रघुबर दास जी के पक्ष में हुआ था। बाद में वे अपील में हार गए। इसकी अपील रघुबर दास जी ने नहीं की थी। ज़िला जज की अपील में उस निर्णय के बाद दूसरी अपील लखनऊ में दाखिल नहीं हुई।” (पेज 109-110)

"A suit had been filed regarding this Ramchabutara in the year 1885. This suit had been filed by Mahant Raghubar Das, who was Mahant of Nirmohi Akhara. This suit had been filed in the court of Sub-Judge, Faizabad, and earlier this suit was decided in favour of Raghubar Das. Subsequently, he lost in appeal. This appeal had not been preferred by Raghubar Das. No Second Appeal was filed at Lucknow against the decision of District Judge in that appeal." (E.T.C.)

“उस समय राम चबूतरे को जन्म स्थान कहा जाता था, जन्मभूमि नहीं कहा जाता था। उसे जन्मभूमि आज से सौ वर्ष पहले से कहा जाने लगा। उस समय भी इस राम चबूतरे का क्षेत्रफल 17 x 21

फिट ही था।" (पेज 110)

"At that time, Ramchabutara was called Janmsthan and not Janmbhumi. It started being referred as Janmbhumi about 100 years ago. At that time also, the area of this Ramchabutara was 17 x 21 feet." (E.T.C)

2021. About the grated dividing wall between the outer and inner courtyard, he has said:

“यह सीखचों वाली दीवार वाजिद अली शाह के जमाने में बनी थी, जो सन् 1885 व 1950 में भी कायम रही थी। नवाब वाजिद अली शाह के जमाने में सीखचे वाली दीवार बनने की बात मैंने सुनी है, कहीं पढ़ी नहीं है। मैंने यह सुना है कि वाजिद अली शाह के जमाने में वहाँ पर बराबर झगड़ा हुआ करता था और इस कारण यह सीखचों वाली दीवार बनवाई गई थी कि झगड़ा शान्त हो जाए, परन्तु यह झगड़ा शान्त नहीं हुआ। यह झगड़ा हिन्दुओं और मुसलमानों में हुआ करता था।” (पेज 110-111)

"This grill wall was built in the period of Wajid Ali Shah, which existed in the year 1885 and 1950 as well. I have only heard about the fact of construction of grill wall in the period of Nawab Wajid Ali Shah, and have not read it anywhere. I have heard that in the period of Wajid Ali Shah, there were regular conflicts over there and the grill wall was built only to end the conflicts, but the conflicts did not end. These conflicts used to break out between Hindus and Muslims." (E.T.C)

2022. Though on the one hand he claims that Namaz has never been offered from the days of Babar in the disputed building but about existence of idol of Ram Lala in the disputed building, he said that it is since prior to 1934 but exact date and period is not known to him:

“बाबर के जमाने से आज तक विवादित भवन में कभी नमाज नहीं हो पाई थी। रामलला जी विवादित भवन में सन् 1934 के पहले से हैं,

परन्तु यह जानकारी मुझे नहीं है कि वे सन् 1934 के कितने पहले से वहां थे। मुझे यह भी जानकारी नहीं है कि बाबर के जमाने से सन् 1934 के पहले तक वहां रामलला जी थे या नहीं।”

(पेज 112–113)

"Namaz has never been possible in the disputed structure till date from the times of Babar. Ramlala has existed in the disputed structure from before the year 1934, but I do not have knowledge of the fact as to for how long before the year 1934, was He present over there. I also do not have knowledge of the fact whether Ramlala existed over there or not from the times of Babar to the year 1934." (E.T.C)

2023. He admitted the riots of 1934 but says that it did not cause any damage to the disputed building and only the outer wall was damaged:

“सन् 1934 के दंगे में विवादित भवन को कोई नुकसान नहीं पहुँचा था, केवल विवादित परिसर की बाहरी चहारदीवारी को क्षति पहुँची थी।”

(पेज 127)

“In the 1934 riot, no damage was caused to the disputed structure but damage was caused only to the outer boundary wall of the disputed premises.” (E.T.C.)

“सीखचों वाली दीवार जो पहले लकड़ी की थी, उसे लोहे की बनवाया गया था। सीखचों वाली दीवार में लोहे के सीखचे सन् 1934 में लगवाए गए थे और यह लोहे के सीखचे जो दंगा टैक्स वसूल हुआ हुआ था, उसी से लगवाए गए थे, परन्तु मुझे यह जानकारी नहीं है कि ये किसने लगवाए थे। सीखचों वाली दीवार के दरवाजे सन् 1934 के पहले से लोहे के थे या बाद में लोहे के हुए थे, इसकी जानकारी मुझे नहीं है।” (पेज 128)

“The grill wall which had earlier been made of wood, was built using iron. Iron-grills came to be used in the grill wall in 1934 and the expenses incurred on

fixing these iron-grills had come from riot taxes which had been realised; but I do not know as to who had carried out this work. I do not know whether the gates of the grill wall came to be made of iron prior to or subsequent to 1934.”(E.T.C.)

2024. Regarding preparation of his affidavit, he said:

‘प्रश्न— तो क्या आपके मुख्य परीक्षा के शपथ-पत्र के पैरा 24 में उल्लिखित चित्र सं० आपने केवल अनुमान से लिख दिये हैं?’

उत्तर— मेरे वकील साहब श्री रंजीत लाल वर्मा ने मुआयना करके अपने से इस पैराग्राफ में चित्रों के नम्बर डाल दिये हैं।” (पेज 146)

“Question: Have you mentioned the number of the photograph in paragraph 24 of the affidavit filed at the examination-in-chief only on the basis of guess-work?

Answer: My counsel, Sri Ranjeet Lal Verma, after carrying out inspection, has numbered photographs of this paragraph on his own.” (E.T.C.)

‘‘मेरे इस शपथ-पत्र का कुछ भाग मेरे वकील साहब के ज्ञान पर आधारित है, परन्तु वह कौन सा भाग है, यह मुझे याद नहीं है और मैं इसे बता भी नहीं पाऊँगा।” (पेज 231)

“Some portion of this affidavit of mine is based on the knowledge of my counsel. But I do not remember which portion it is, I am also not in a position to tell about it.”(E.T.C.)

‘‘यह शपथ-पत्र 29.8.2003 को लिखाया गया, उसी दिन टाईप किया गया और उसी दिन सत्यापित किया गया। हलफनामा तैयार करते समय मुझे कोई कागज नहीं दिखाये गये थे।” (पेज 264)

“This affidavit was dictated on 29.08.2003 and it was typed and verified on the same day. While preparing the affidavit I was shown none of the papers.”(E.T.C.)

2025. Then on page 152, when he was asked whether the

claim that the God has manifested (Prakat) in the night of 22nd December, 1949 as stated in the book "Sri Ram Janam Bhoomi Ka Rakt Ranjit Itihas" written by late Pt. Ram Gopal Pandey Shaarad on page 95 is incorrect, he could not say that this is incorrect and did not happen and instead gave a vague reply :

“पूछा गया कि – इस पुस्तक के पृष्ठ-95 पर जिस घटना का उल्लेख 22.12.1949 के सम्बन्ध में किया गया है, क्या वह गलत है? उपरोक्त को देखकर गवाह ने कहा कि – भगवान का अवतार जब हुआ, तब प्रगट ही हुए और बार-बार जब जरूरत हुई तब प्रगट हुए, इसमें 22/23 सन् 1949 का प्रश्न नहीं है और इसमें जो कुछ भी लिखा है वह गलत है।” (पेज 152)

“Page 95 of this book was shown to the witness and he was queried as to whether the description of an incident therein in reference to 22.12.1949, is incorrect. Looking at the aforesaid page the witness stated – Whenever God incarnated Himself, He certainly appeared, and He appeared on frequent occasions as per requirement. It does not concern 22nd - 23rd December, 1949, whatsoever is written herein, is incorrect.”(E.T.C.)

2026. About Mahant Raghubar Das, he said:

“महंत रघुबर दास जी का जमाना सन् 1880 से 1890 के लगभग तक का रहा होगा। उस समय अर्थात् 1880 के लगभग उपरोक्त ठेका महंत रघुवर दास जी ही उठाते थे। महंत रघुबर दास जी के जमाने के इस ठेके से संबंधित कागज इस न्यायालय में इन मुकदमात में दाखिल हैं। महंत रघुबर दास जी के बाद जो महंत निर्मोही अखाड़े के हुए थे, उनके जमाने के कागज भी इन मुकदमात में दाखिल हैं।” (पेज 164)

“The period of Mahant Raghubar Das would have been from 1880 to circa 1890. It was Mahant Raghubar Das Ji who used to take the aforesaid contract at that time, that is, around 1880. Papers related to this contract

belonging to the time of Mahant Raghubar Das are filed in this case before this Court. Papers belonging to the period of successor to Mahant Raghubar Das Ji as Mahanta of Nirmohi Akhara, are also filed in this case.”(E.T.C.)

“महंत रघुवर दास जी वही हैं, जिन्होंने सन् 1885 वाला दावा दाखिल किया था।” (पेज 199)

“Mahant Raghubar Das is that very person who filed the 1885 claim.”(E.T.C.)

“प्रश्न— महंत रघुनाथ दास जी रामचबूतरे के महंत थे अथवा पुजारी थे?

उत्तर— वे रामचबूतरे के महंत थे।” (पेज 165)

"Question:- Whether Mahant Raghunath Das Ji was Mahant or 'Pujari' (priest) of Ramchabutara?

Answer:- He was Mahant of Ramchabutara." (E.T.C)

2027. About the police surveillance he said:

“यह पूछा गया कि 22/23 दिसम्बर सन् 1949 के पहले विवादित भवन पर पुलिस का पहरा क्यों रहता था? उपरोक्त को देखकर गवाह ने कहा कि पहरा इस कारण लगता था कि मुसलमान लोग एवं मुस्लिम पुलिस कर्मचारी वहाँ की मूर्ति हटा देना चाहते थे। यह पहरा एक—आध साल से चल रहा था। यह पहरा सरकार की तरफ से लगा था, पहरा लगाने की दरखास्त नहीं दी थी। यह पहरा सन् 1947 में आजादी मिलने के बाद से लगा था।” (पेज 179)

“When asked why the disputed building used to be under the police watch prior to 22nd-23rd December, 1949, the witness stated that the deployment of the police as guards was due to the reason that Muslim public and Muslim cops and officials wanted to remove idols from there. This deployment of police as guards had been for a year or so. This deployment was at the behest of the government; no application had been moved for such police deployment. This deployment of police as guards

had been since 1947, that is, since the time of independence.”(E.T.C.)

2028. About Nawah Path and Bhandara inside the building, he made certain contradictions:

“विवादित भवन के अन्दर नवाह पाठ और भण्डारा सन् 1949 के पहले मेरे सामने हुआ था, परन्तु कितनी बार हुआ था, यह मुझे याद नहीं।

विवादित परिसर के बीच वाले गुम्बद के नीचे वाले स्थान पर नवाह पाठ हुआ करता था।” (पेज 207–208)

“Nawah Paath and Bhandara (religious rituals) had taken place in my presence inside the disputed building before 1949; but I do not remember how many times such rituals had been performed therein.

Nawah Paath used to take place at a place below the central dome of the disputed premises.”(E.T.C.)

“मैंने विवादित भवन के अन्दर बीच वाले गुम्बद के नीचे नवाह पाठ होते देखा था।” (पेज 209)

“I had seen Nawah Paath being performed below the central dome inside the disputed building.”(E.T.C.)

“विवादित भवन के गुम्बद वाले भाग के बाहर और सीखचों वाली दीवार के अन्दर वाले सहन में नवाह पाठ नहीं होता था।” (पेज 210)

“Nawah Paath did not take place outside the dome portion of the disputed building and in the courtyard inside the grill-wall.” (E.T.C.)

“भण्डारा विवादित भवन के अन्दर कभी नहीं होता था।”

(पेज 211)

“'Bhandara' (collective feast) was never held inside the disputed premises.” (E.T.C)

“मैंने जो पृष्ठ 211 पर यह कहा कि भण्डारा विवादित भवन के अंदर कभी नहीं होता था, से मेरा मतलब यह था कि वहां भण्डारा कभी बनाया नहीं गया परन्तु भोजन कराया जाता था।” (पेज 215)

“When I on page 211 stated that Bhandara never took place inside the disputed building, I meant that Bhandara(food prepared for mass feeding) was never prepared there but food used to be served.”(E.T.C.)

“गुम्बद वाले भवन के बाहर सहन में भोजन कराया जाता था।”

(पेज 216)

“Food used to be served in the courtyard outside the domed building.”(E.T.C.)

2029. He admits that ownership or possession on the disputed building was not claimed in 1885 Suit but since 1934 Nirmohi Akhara is arranging worship continuously and therefore is claiming right of possession and ownership thereon:

“सन् 1885 के दावे में विवादित भवन पर अपना स्वत्व या अधिकार उन्होंने नहीं दिखाया था, लेकिन सन् 1934 से बराबर पूजा-पाठ निर्मोही अखाड़े के द्वारा वहां होता चला आ रहा है, इसलिए अब हम उस पर स्वत्व या अधिकार क्लेम कर रहे हैं।”

(पेज 229)

“They had not shown their title or right over the disputed building in the 1885 claim; but we are now laying our title or right over the same as Pooja-Paath has always been performed by the Nirmohi Akhara since 1934.”(E.T.C.)

2030. The idol of Ram Lala, placed in the disputed building, is Chal Vighrah:

“रामलला जी की जो मूर्ति विवादित भूमि में सिंहासन पर रखी थी उसे हम चल विग्रह कहेंगे।” (पेज 232)

“We will call the idol of Ramlala Ji, seated on the throne in the disputed building, 'Chal-vighrah' (movable form of deity).”(E.T.C.)

2031. About Pran Prathishtha, DW 3/1 says:

“आमतौर से प्राण, प्रतिष्ठा की विधि में कम से कम पाँच दिन लगते

हैं और कम से कम पाँच, पंडित मिलकर प्राण प्रतिष्ठा करते हैं। जहाँ पर प्राण प्रतिष्ठा करना होता है, उसके पास में मण्डप बनता है और वहाँ यज्ञ होता है, जिसमें जलाधिवास, अन्नाधिवास, शैय्याधिवास आदि प्रकरण होते हैं और हवन होता है, तथा नगर की परिक्रमा होती है, तब जहाँ पर मंदिर में मूर्ति स्थापित किया जाना होता है, वहाँ मूर्ति को स्थापित किया जाता है।”

(पेज 233)

“The ritual of 'Pranpratishtha' (vivification) normally takes at least five days and at least five Pandits (scholarly men) collectively perform 'Pranpratishtha'. 'Mandap' (canopy-like structure) is erected near the place where 'Pranpratishtha' is to be performed, and 'Yajna' (sacrifice) is performed there which comprise 'Jaladhiwas', 'Annadhiwas', 'Shaiyyadhiwas' etc.; and 'Hawan' is also performed and 'Parikrama' is also done of the town in whose temple idol is to be installed or is installed.”(E.T.C.)

2032. He explained about the temple on the north of the disputed site:

“गुदड़तड़ वाले मंदिर को जन्मभूमि मंदिर नहीं कहते हैं लेकिन जन्मभूमि मंदिर का प्राचीन नाम जन्म स्थान है, बाद में यह जन्मभूमि के नाम से प्रचलित हुआ और कागज़ातों में इसका नाम जन्मस्थान करके ही दर्ज है। सैकड़ों वर्ष पहले से इस जन्मस्थान को जन्मभूमि कहा जाने लगा। यह परिवर्तन कब, कैसे हुआ, इसकी कोई मुझे जानकारी नहीं है।”

(पेज 244)

“The Gudadtad temple is not called Janmbhumi temple but the old name of the Janmbhumi temple is Janmsthan, which later came to be known as Janmbhumi and its name is recorded only as Janmsthan in records. Hundreds of years ago, this Janmsthan came to be called Janmbhumi. I have no knowledge as to how and when this change came to be.”(E.T.C.)

2033. However, about maintenance of building, he could not

say anything very clearly:

“सन् 1946 से 29 दिसम्बर सन् 1949 के बीच विवादित भवन की चूनाकारी अथवा पुताई हुई थी। यह पुताई लगभग हर वर्ष होती थी। एक बार विवादित भवन में पुताई में कितना व्यय होता था, इसकी जानकारी मुझे नहीं है।” (पेज 253)

“Between 1946 and 29th December, 1949, the disputed building was lime-washed or white-washed. This white washing used to be done almost every year. I do not have the knowledge as to how much expenditure was incurred in white washing the disputed building once.”(E.T.C.)

2034. DW 3/2 Raja Ram Pandey claims to have visited disputed site for worship of Sri Ram Lala since 1930:

“मैं सन् 1930 से रामजन्मभूमि पर दर्शन करने जाता रहा हूँ। मैंने रामजन्मभूमि की परिक्रमा भी बराबर की है। यह सही है कि हनुमत द्वार वाली दीवार में ही दाहिनी तरफ वाराह भगवान की प्रतिमा ताखा में थी। ताखा, पूर्वी दीवार में दक्षिण की तरफ था।” (पेज 20)

“I have been going to have darshan at Ramjanmbhumi since 1930. I have always also performed circumambulation at Ramjanmbhumi. It is true that an idol of Lord Varah was on a niche to the right of the wall itself having the Hanumat Dwar. The niche was on the southern side in the eastern wall.”(E.T.C.)

“विवादित भवन में मैं जब से भी दर्शन करने जा रहा हूँ, उसी समय से मूर्ति वहाँ पर विराजमान है, पर कब से थी, इसका मुझे ज्ञान नहीं है। विवादित भवन में जब मैं पहली बार सन् 1939 में गया था, उस समय वहाँ भगवान विराजमान थे और मैं उनकी पूजा व दर्शन करके चला आया था। सन् 1930 के बाद से मैं विवादित भवन में भगवान/मूर्ति को विराजमान देख रहा हूँ।” (पेज 26)

“The idol is present there since the time I have

been going to have 'Darshan' at the disputed building. But I do not know since when it has been there. In 1939, when I first went to the disputed building, 'Bhagwan' was seated there and I returned from there after performing 'Pooja' and having 'Darshan' of Him. I have been seeing Bhagwan/idol of Bhagwan seated in the disputed building since 1930."(E.T.C.)

“मैंने हजारों बार कुर्की के पहले आधा घन्टा से एक घन्टा तक बीच वाले गुम्बद के नीचे बैठकर रामकीर्तन किया था।” (पेज 39)

“Prior to the attachment, I had thousands of times performed 'Ramkirtan' by sitting beneath the central dome for half an hour to an hour.”(E.T.C.)

2035. He denied construction of mosque by Babar in 1528:

“यह कहना गलत होगा कि बाबरी मस्जिद सन् 1528 में बनी थी।”
(पेज 25)

“It would be wrong to say that the Babri mosque was built in 1528 AD.”(E.T.C.)

2036. In the zeal of denying existence of any mosque at the disputed sight he gave different versions about his knowledge of the word "Babri Masjid":

“मैं सन् 1949 के बाद से बाबरी मस्जिद का नाम सुन रहा हूँ, उससे पहले मैंने बाबरी मस्जिद का नाम नहीं सुना था। सन् 1949 से जिस बाबरी मस्जिद के बारे में सुन रहा हूँ, वह अयोध्या में कहीं पर स्थित है या थी, इसकी मुझे जानकारी नहीं है। उसका मुकदमा चल रहा है, इसकी जानकारी मुझे है।” (पेज 62)

“I have been hearing of the Babri mosque since 1949; I had not heard of the Babri mosque earlier. I do not know where in Ayodhya the Babri mosuqe – about which I have been hearing since 1949 – is or was situated. I have the knowledge that a case in this connection is going on.”(E.T.C.)

“मन्नान साहब के जिरह करने पर मुझे यह मालूम हुआ था कि जिस भवन को मैं जन्मभूमि मन्दिर कहता हूँ उसी को मुसलमान लोग बाबरी मस्जिद कहते हैं।” (पेज 62)

“From Mannan Sahib's cross-examination I came to know that the building which I call Janmbhumi temple is called the Babri mosque by Muslims.” (E.T.C.)

“विवादित भवन की कुर्की के बारे में समाचार मैंने सन् 1949-50 में पढ़ा था। उन समाचारों में भी बाबरी मस्जिद का नाम नहीं आया था।”

(पेज 63)

“In 1949-50 I went through the news regarding the attachment of the disputed building. The words 'Babri mosque' had not occurred in those pieces of news.” (E.T.C.)

“मैंने ऐसा नहीं सुना कि वह ढाँचा बाबर के समय था, इस कारण लोग उसे गिराना चाहते थे। मैं उस विवादित भवन को मंदिर समझता था।” (पेज 72)

“I have not so heard that the structure was of the time of Babar, therefore, people wanted to demolish the same. As regarded that disputed building as temple.”

(E.T.C)

“मेरी मुसलमानों से मुलाकात होती रही थी और सन् 1992-93 में भी मुलाकात होती रहती थी, परन्तु किसी मुसलमान ने मुझसे यह नहीं कहा कि 6 दिसम्बर सन् 1992 को बाबरी मस्जिद गिरा दी गयी थी।” (पेज 73)

“I had been meeting Muslims and I used to have meetings with them in 1992-93 as well; but none of the Muslims told me that the Babri mosque had been demolished on 6th December, 1992. ” (E.T.C.)

“जब श्री अब्दुल मन्नान साहब की जिरह में बाबरी मस्जिद का नाम आया तब मैंने यह समझ लिया था कि यह उसी विवादित भवन से संबंधित है, जिसको मैं राम जन्म भूमि समझता रहा हूँ।” (पेज 74)

“When the name of Babri mosque appeared in the

cross-examination of Sri Abdul Mannan, I understood that the same related to the same disputed building which I have been regarding as Ramjanambhumi."

(E.T.C)

“मैं 22 सितम्बर सन् 2003 को लखनऊ हाईकोर्ट आया, तो एक कमरे पर मैंने लिखा हुआ पढ़ा “रामजन्मभूमि-बाबरी-मस्जिद”, तो मेरी समझ में आया कि “रामजन्मभूमि मन्दिर” का “बाबरी मस्जिद” से कोई सम्बन्ध है।” (पेज 152)

"On 22nd September, 2003 I came to Lucknow High Court and read 'Ramjanmbhumi-Babri Masjid' written outside a room, when I came to understand that 'Ramjanmbhumi temple' has some relation with 'Babri mosque'." (E.T.C)

2037. When faced with certain problem due to long drawn cross examination, he immediately took recourse to age old defence of "weak memory" and says:

“मेरी आयु 87 वर्ष हो गयी है और मेरा विवेक ठीक कार्य नहीं करता है, इस कारण मुझे याद नहीं रहता है कि मैंने कब क्या कहा। मेरे उपरोक्त बयानों में से आज वाला उपरोक्त बयान सही है, कल दिनांक 30.9.2003 वाला बयान त्रुटिवश दे गया हूँ।” (पेज 70)

“I have grown 87 years old and my discretion does not work in a proper manner. For this reason, I fail to remember which particular thing I stated at a particular time. Of the aforesaid statements, the above mentioned statement given by me today is correct; I have wrongly given the statement dated 30.09.2003.” (E.T.C.)

2038. About the period as to when the idols were kept in the disputed building he says:

“मुझे यह ज्ञान नहीं है कि विवादित तीन गुंबदों वाले भवन में मूर्तियां कब और किसने रखवाईं, परन्तु जब से मैं वहाँ जा रहा हूँ, तब से

उन्हें वहां देख रहा हूँ। उत्तर वाला फाटक केवल मेला में खुलता था।”

(पेज 76)

"I do not have knowledge of the fact as to who installed the idols in the three dome disputed structure and when, but ever since I have been going there, I have seen them over there. The northern gate used to open only during fairs." (E.T.C)

2039. Regarding the dividing wall between outer and inner courtyard as well as 1934 damage, he says:

‘जिस दीवार में लकड़ी के जंगले लगे होना मैं बता रहा हूँ, यह वही दीवार है, जिसमें सन् 1949 के पहले से लोहे के सीखचे लगे हुए थे। इस दीवार में लोहे के सीखचे सन् 1949 से लगे हैं, उससे पहले सन् 1930 से लकड़ी के जंगले लगे हुए थे, फिर कहा कि लकड़ी के जंगले सन् 1930 के पहले से लगे हुए थे। इसी दीवार को सन् 1934 में मामूली क्षति पहुँची थी। इस दीवार के अलावा विवादित भवन के अन्य किसी भाग को सन् 1934 में मैंने क्षतिग्रस्त नहीं देखा। विवादित स्थल के करीब सन् 1934 के दंगे में कोई भी मुसलमान नहीं मारा गया था, अयोध्या में 8-10 मुसलमान मारे गए थे। मेरी जानकारी में नहीं है कि विवादित भवन की जिस दीवार को क्षति पहुँची थी, उसकी मरम्मत कराई गई थी, या नहीं। उस दीवार को क्षतिग्रस्त रूप में मैं सन् 1949 तक देखता रहा।’ (पेज 88)

*"The wall in which I am stating about fixation of wooden 'Jangla' (grating), is the same wall in which iron grills were fixed prior to the year 1949. **The iron grills in this wall are fixed since 1949, prior to it were wooden 'Jangla' since 1930, then stated that the wooden 'Jangla' were fixed before the year 1930. This very wall had suffered minor damage in the year 1934. Apart from this wall, I did not see any other part of the disputed structure damaged in the year 1934. No Muslim was killed near the disputed structure in the riot of the year***

1934. 8-10 Muslims were killed in Ayodhya. It is not within my knowledge whether the wall of the disputed structure, which had suffered damage, had been repaired or not. I had seen that wall in a damaged state till the year 1949."

(E.T.C)

"यह कहना गलत है कि सन् 1934 के दंगे में विवादित भवन के शिखर उसकी पश्चिमी दीवार एवं फर्श आदि को क्षतिग्रस्त किया गया था।" (पेज 89)

"It is wrong to say that the dome, western wall and floor of the disputed structure had been damaged in the riot of the year 1934." (E.T.C)

(Note: This is contradictory to DW 3/1, page 127.)

"यह कहना भी गलत है कि जिस दीवार में लकड़ी के जंगले होना मैंने बताया है, उनमें कभी लकड़ी के जंगले नहीं लगे थे। यह भी कहना गलत है कि उक्त दीवार में सन् 1930 के पहले से ही लोहे के सीखचे/जंगले लगे थे।" (पेज 89)

"It is also wrong to say that the wall, in which the wooden windows are stated to have been fixed, never had wooden 'Jangla' . It is also wrong to say that iron grill/'Jangla' had been fixed in the said wall before the year 1930." (E.T.C)

2040. On the one hand he admits weak memory due to old age but on the other hand he is able to tell as to what actually happened when for the first time he went to visit the disputed site in 1930 and that too after almost 73 years:

"मेरे पिता जी प्रथम दिन जब मुझे लेकर विवादित भवन में दर्शन कराने गए तो फाटक पर ही उन्होंने बताया कि देखो इन खम्भों में हनुमान जी की मूर्ति लगी है और इसे हनुमत द्वार कहते हैं और उन्हीं के बताने के आधार पर मैंने यह बात कही है।" (पेज 150)

"On the first day when my father took me to the disputed structure for 'darshan', he told me at the gate-

look, these pillars contain the idol of Hanuman Ji and it is called Hanumatdwar and it is on basis of facts told by him that I have stated these facts." (E.T.C)

2041. DW 3/3, Satya Narain Tripathi claims to have visited the disputed building since 1941 several times and has seen the idol of Lord Ramlala in the Garbhgrih, i.e., under the central dome of the disputed building. He is not resident of Ayodhya but resides at Village Mahawan, Tahsil Bikapur, District Faizabad and was born on 08.09.1931. His village is about 35 kms from Ayodhya. He did not deny, as such, any incident whether took place in the night of 23/12/1949 on page 22.

“मुझे पता नहीं कि दिनांक 23.12.1949 की रात को कुछ लोगों ने घुस कर मूर्तियां रखी या नहीं।”

“I do not know whether or not some persons had entered and placed idols on the night of 23.12.1949. ”(E.T.C.)

2042. On page 37 he claims that the disputed building was constructed by Vikramaditya. On page 80 he said about the size of the three domes as under:

“विवादित भवन में तीन गुम्बद थे। तीनों गुम्बद एक ही आकर के थे।”

“There were three domes in the disputed building. All the three domes were of the same size.” (E.T.C.)

2043. This statement is ex facie incorrect since the central dome was bigger than the rest two and it is virtually the admitted position by all the parties. We also find it from the bare perusal of the photographs of the disputed building available to us. Most of the statement of this witness is based on assumption and hearsay, i.e., the information he has received. On the one hand he gave statement about his visit to the disputed site very accurately but regarding placement of various items thereat he

made contradictory statement. On page 24 he said that there were idols of Ramji, Lakshmanji and Hanumanji kept on Sinhasan which remained there from 1941 to 1992 (page 25) but then on page 26 he retracted from the said statement after looking to the photographs and said that it was not clear to him when he used to visit and in what manner the idols were kept.

2044. DW 3/4, Mahant Shiv Saran Das, a Bairagi of Ramanandi Sampraday, claims that he is visiting Ram Janambhumi since 1933 and has worshipped the idols of Lord Ramlala inside the disputed building under the central dome, i.e., Garbhgrih. On page 13 he, however, improved upon his statement by stating that he was born in 1920 and since 1930 to 1942 he remained at Ayodhya continuously.

“अयोध्या में मैं 10 वर्ष की आयु से सन् 1942 तक लगातार रहा हूँ। मेरा जन्म वर्ष 1920 में हुआ था। सन् 1930 में मैं दस वर्ष का था और सन् 1930 से सन् 1942 तक मैं लगातार अयोध्या में रहा और यह अवधि लगभग 12 वर्ष की होती है।”

“From the age of 10 years up to 1942, I have always been at Ayodhya. I was born in 1920. I was 10 years old in 1930, and I continued to reside at Ayodhya from 1930 to 1942, and this period is of nearly 12 years.”(E.T.C.)

2045. This statement is contradicted by him repeatedly.

“मैं अयोध्या सैकड़ों बार गया हूँ और वहाँ पर मैं रहा भी हूँ। अलीगंज में हमारे घर के सामने ही एक मस्जिद है। 11 वर्ष की अवस्था में मेरा यज्ञोपवीत हो गया था, उसके बाद मैंने घर छोड़ दिया था।” (पेज 28)

“I have been to Ayodhya hundreds of times and I have also resided there. There is a mosque right in front of our house at Aliganj. My 'Yogyopaveet' (sacrificial thread ceremony) was solemnised when I was 11 year old. After that I left the house.”(E.T.C.)

“12 वर्ष की अवस्था में मैं अयोध्या गया था और उसी समय से मैंने मूर्तियों ही देखी हैं। मुझे ध्यान नहीं है कि जब मैं 12 वर्ष की आयु का था, उस समय सन् कौन सा था। मैं अंदाज से भी सन् नहीं बता सकता।” (पेज 29)

“At the age of 12, I visited Ayodhya and since then I have seen the idols only. I do not remember which year was in the running when I was 12 years old. I cannot tell the year even by guess.” (E.T.C.)

“अयोध्या में मैं उस वक्त से रहा जब मैं महाराज जी का शिष्य बना। मैं महाराज जी का शिष्य सन् 1945 में बना। उसके बाद 5-6 साल तक मैं बड़ी छावनी में महाराज जी की सेवा करता था। उसके बाद अपने गुरु भाई राम मनोहर दास जी के साथ अहमदाबाद चला गया।” (पेज 34)

“I began to reside at Ayodhya since I became the disciple of Maharaj Ji. I became disciple of Maharaj Ji in 1945. After that, I served Maharaj Ji at Badi Chhavani (big cantonment) for 5-6 years. Thereafter I went to Ahmedabad with my Gurubhai (disciple of the same spiritual teacher), Ram Manohar Das Ji.” (E.T.C.)

“मैं 11 वर्ष की उम्र में गुजरात गया था। मैं वहाँ करीब 13 साल तक रहा।” (पेज 38)

“I went to Gujrat while being 11. I resided there for about 13 years.” (E.T.C.)

“मेरे महाराज जी बड़ी छावनी के श्री श्री 108 महन्त श्री स्वामी कौशल किशोर दास जी थे और वे 80 साल तक अयोध्या में रहे और उसी दौरान गद्दीशीन रहे। मैं श्री महन्त जी के साथ लगभग 10 साल अयोध्या में रहा। जहाँ श्री महन्त जी रहते थे, वहीं मैं भी रहता था। मैं उनके साथ सन् 1946 से सन् 1956 तक रहा। 1956 के बाद मैं अपने गुरुभाई के साथ श्री द्वारिका जी चला गया।” (पेज 40)

“Sri Sri 108 Mahant Sri Swami Kaushal Kishore Das Ji of Badi Chhavani was my Maharaj Ji (spiritual teacher)

and he resided at Ayodhya for 80 years and continued to assume the seat during that very period. I resided at Ayodhya along with Sri Mahant Ji for nearly 10 years. I resided wherever Sri Mahant Ji resided. I was with him from 1946 to 1956. After 1956 I went to Sri Dwarika Ji along with my Gurubhai.”(E.T.C.)

“सन् 1945-46 के उज्जैन के कुम्भ में श्री श्री 108 श्री स्वामी निर्मल दास जी महाराज ने मुझे नागा बनाया। उस समय मैं अहमदाबाद में ही रहता था।” (पेज 41)

“Sri Sri 108 Sri Swami Nirmal Das Ji Maharaj initiated me as a Naga at the Kumbh held in Ujjain in 1945-46. At that time I resided in Ahmedabad itself.”(E.T.C.)

“मैं यह नहीं बता पाऊँगा कि मैं अयोध्या में कितने वर्ष तक रहा, क्योंकि मुझे गिनती नहीं मालूम। मेरा यज्ञोपवीत 11 साल की उम्र में हुआ था और उसके दो माह बाद मैं अयोध्या चला गया और साधू बन गया था। यज्ञोपवीत 11 साल की आयु में ही होता है। यज्ञोपवीत में ब्राह्मण आते हैं। अयोध्या जाते ही मैं बड़ी छावनी में श्री श्री 108 श्री स्वामी कौशल किशोर दास जी का शिष्य हो गया। मेरी महन्त जी से पहली दफ़ा वहीं बड़ी छावनी में मुलाकात हुई थी और उनके शिष्य बनने के बाद मैं 10 साल वहाँ रहा था।” (पेज 41-42)

“I am not in the position to tell for how many years I resided at Ayodhya because I do not know the numbers. My Yagyopaveet was solemnised while I was 11, and two months after that I went to Ayodhya and became a saint. Yogyopaveet is performed only at the age of 11 years. Brahmans come to attend Yagyopaveet. Immediately after going to Ayodhya I became the disciple of Sri Sri 108 Sri Swami Kaushal Kishore Das Ji of Badi Chhavani. I had first met my Mahant Ji at that very Badi Chhavani and I resided there for 10 years after becoming his

disciple.”(E.T.C.)

“विवादित भवन जो तीन गुम्बद का था, वहाँ मैं सन् 1936 से जा रहा हूँ। जब मैं विवादित भवन में पहली बार सन् 1936 में गया था, तो बीच वाले गुम्बद के नीचे तक गया था।” (पेज 42)

“Since 1936, I have been going to the disputed building which had three domes. In 1936, when I first went to the disputed building, I went up to beneath the central dome.”(E.T.C.)

“सन् 1938 से सन् 1950 तक मैं अयोध्या में नहीं रहा, परन्तु अयोध्या आता था और इस दौरान जब मैं अयोध्या आता था, तो विवादित स्थल की तरफ नहीं जाता था और अगर जाता भी था तो बाहर से हाथ जोड़कर लौट आता था।” (पेज 54)

“I did not reside at Ayodhya from 1938 to 1950 but whenever I came to Ayodhya I did not go towards the disputed site and if I at all went there I returned from outside after saluting the place with folded hands.”

(E.T.C.)

मैं सन् 1938 तक अयोध्या में रहा था और उसके बाद सन् 1938 से सन् 1957 तक अहमदाबाद, मध्य प्रदेश, काठियावाड़, बम्बई आदि में भ्रमण करता रहा और सन् 1958 में मैं कैलाश पर्वत और मान सरोवर की यात्रा के लिए गया था।” (पेज 54)

“I resided at Ayodhya until 1938 and after that kept travelling to Ahmedabad, Madhya Pradesh, Kathiyavad, Bomaby, etc. from 1938 to 1957, and went on journey to Mountain Kailash and Mansarovar in 1958.”(E.T.C.)

“मैं विवादित भवन के नीचे वाले भाग में कम से कम सैकड़ों बार गया होऊँगा। स्वयं कहा कि मैं वहाँ पुजारी था, भंडारी था और भोग भी लगाता था। मैं श्री रामजन्म भूमि में पुजारी था। श्री राम जन्म भूमि से मेरा तात्पर्य तीन गुम्बद वाले विवादित भवन से ही है। मुझे सन् नहीं याद है कि किस सन् में मैं वहाँ पुजारी था, परन्तु राम जन्म भूमि जब राम जन्म भूमि

नहीं थी, उसे विवादित नहीं कहा जाता था, तब मैं वहाँ पुजारी था और भण्डारी भी था।” (पेज 66)

“I must have gone to the lower part of the disputed building at least hundreds of times. (Himself stated) I was a priest there; I was a Bhandari and I also performed 'Bhog' (offering of meal to deity). I was a priest at Sri Ramjanmbhumi. By Sri Ramjanmbhumi I mean three domed disputed building. I do not remember the year in which I was a priest there but at the time when Ramjanmbhumi was not Ramjanmbhumi and as such it was not fit to be termed as disputed, I was a priest as also a Bhandari there.”(E.T.C.)

“मैं तीन गुम्बद वाले विवादित भवन में पुजारी भी रहा। मुझे यह याद नहीं है कि मैं तीन गुम्बद वाले विवादित भवन में 10-20 बार गया था या 100-200 बार गया या कितनी बार गया। मुझे याद नहीं है कि तीन गुम्बद वाले विवादित भवन में मैं कितने दिन पुजारी के रूप में रहा हूँ। मैं तीन गुम्बद वाले विवादित भवन में पुजारी के रूप में 2-4 साल रहा।”

(पेज 74)

“I was also a priest in the three domed disputed building. I do not remember how many times—10-20 times or 100-200 times – I went to the three- domed disputed building. I do not remember for how many days I have been as a priest at the three- domed disputed building. I was a priest at the three- domed disputed building for 2-4 years.”(E.T.C.)

2046. He contradicted his own statement of page 74 on page 106.

“प्रश्न— आप अपने उपरोक्त स्वयं के बयान के अनुसार अयोध्या में सन् 1931 से सन् 1957 के बीच केवल 5-6 महीने लगातार रहे हैं। क्या यह सही है?

उत्तर— जी हाँ, यही सही है।

प्रश्न— तो मेरा यह कहना है कि आपका 5 फरवरी 2004 के पृष्ठ-74 का यह बयान कि आप "तीन गुम्बद वाले विवादित भवन में पुजारी के रूप में दो-चार साल" रहे ग़लत हो जाता है। इस सम्बन्ध में आपको क्या कहना है?

उत्तर— उपरोक्त को देखकर गवाह ने कहा कि मेरा यह बयान गलत हो गया है।"

"Question: As per the aforesaid statement of your own, you have been at Ayodhya continuously for only 5-6 months between 1931 and 1957. Is it true?

Answer: Yes, Sir. It is true.

Question: Then I have to say that your statement dated 5th February, 2004 – mentioned on page 74 and reading as 'You served as a priest at the three domed disputed building for 2-4 years' – goes wrong. What have you to say in this respect?

*Answer: Going through the aforesaid the witness stated – **this statement of mine has gone wrong.**"(E.T.C.)*

2047. He also contradicted the very averment made in para 8 of his affidavit about his visit to Ramjanmbhumi since 1933 and said:

"विद्वान् जिरहकर्ता अधिवक्ता द्वारा गवाह को उनके मुख्य परीक्षा के शपथ-पत्र के पैराग्राफ-8 का अंश "श्रीरामजन्मभूमि में 1933 ई० से दर्शन करने जाता रहा हूँ, "दिखाया गया और यह पूछा गया कि क्या यह क्या यह बयान भी गलत हो गया है, क्योंकि उस समय आप अयोध्या में थे ही नहीं? उपरोक्त को देखकर गवाह ने उत्तर दिया कि इसमें सन् 1933 गलत लिख गया है।"

"A portion of paragraph 8 in the affidavit filed at the examination-in-chief – which runs as 'I have been going for Darshan at Sri Ramjanmbhumi since 1933' – was shown to the witness by the learned cross-examining counsel and he was asked whether this statement of his has also turned

incorrect because he was not at all present in Ayodhya. Going through the aforesaid, the witness replied – The year 1933 has come to be wrongly written in it.” (E.T.C.)

2048. Then ultimately on page 108 he said:

“मुझे यह याद नहीं है कि मैं फरवरी सन् 1986 से पहले विवादित भवन में कभी गया या नहीं।”

“I do not remember whether I had ever gone or not to the disputed building before February, 1986.” (E.T.C.)

2049. He also contradicted his statement on page 13 about his continuous stay from 1930 to 1942 on page 102.

“विद्वान् जिरहकर्ता अधिवक्ता द्वारा गवाह को उनके दिनांक-14.11.2003 के पृष्ठ-13 के बयान का अंश “अयोध्या में मैं दस वर्ष की आयु से सन् 1942 तक लगातार रहा हूँ” और इसी पृष्ठ के बयान का अंश “और सन् 1930 से सन् 1942 तक मैं लगातार अयोध्या में रहा और यह अवधि लगभग 12 वर्ष की होती है” दिखाया गया और यह पूछा गया कि इन उपरोक्त दोनों बयानों में आपने जो सन् 1942 तक अयोध्या में लगातार रहने और 12 वर्ष रहने की बात कही है, क्या वह आपके ऊपर दिये गये बयान के मुताबिक गलत है? उपरोक्त को देखकर गवाह ने उत्तर दिया कि इसमें जो सन् 1930 से 1942 तक लगातार अयोध्या में रहने वाली बात लिखी है, वह मैं गलती से बता गया हूँ।”

“The witness was shown by the learned cross-examining counsel a portion of the former's statement dated 14.11.2003 – mentioned on page 13 and running as 'I have continuously been at Ayodhya from the age of 10 years until 1942' – as also a portion of the statement mentioned on this very page – which runs as 'And I resided continuously from 1930 to 1942 at Ayodhya and this period is of nearly 12 years' – and a question was put to him whether his version as in the aforesaid two statements to the effect that he resided at Ayodhya continuously up to 1942 and this period spanned 12 years, was incorrect as

*per the statement given by him. Going through the aforesaid, the witness replied that **the factum of his residing at Ayodhya continuously from 1930 to 1942 has wrongly been mentioned therein by him.**”(E.T.C.)*

2050. DW 3/5, Raghunath Prasad Pandey is resident of village Sariyawan, a place about 16-17 kms from the disputed place. Later on page 34 he however rectified his statement of para 1 of the affidavit saying that the actual distance is about 14-15 kms. He was born in October, 1930 and his father died when he was six years of age, i.e., 1936. He claims to have visited Ayodhya alongwith his mother from 1937 to 1948 and that the idols of Lord Ramlala were inside the building under the central dome, i.e., Garbhgrih. Later on when he was confronted with various photographs of the disputed building he got confused and made contradictory statement. In order to justify his statement about location of Sumitra Bhawan, he even disputed the map prepared by Court Commissioner, Sri Shiv Shankar Lal, which map has not been disputed by most of the witnesses of Nirmohi Akhara as well Akhara itself, and ultimately he admitted on page 84 that his statement is wrong.

“उपरोक्त को देखकर गवाह ने कहा कि मेरा उपरोक्त बयान गलत हो गया है। . . . उपरोक्त को देखकर गवाह ने उत्तर दिया कि मेरा उपरोक्त बयान गलत हो गया है, क्योंकि सन् 1991 में यह सुमित्रा भवन उ०प्र० सरकार द्वारा गिरा दिया गया था।”

*“Going through the aforesaid, the witness stated – **the aforesaid statement of mine has turned incorrect.** Going through the aforesaid the witness replied – **The aforesaid statement of mine has turned wrong because this Sumitra Bhawan was demolished by the Government of Uttar Pradesh in 1991.** ”(E.T.C.)*

2051. Most of his statement travelled in the facts of antiquity

and, therefore, wholly irrelevant and inadmissible since admittedly he had no personal knowledge of those facts. So far as the statement of his personal belief that the disputed place is where Lord Rama was born, the same being matter of faith and belief, no comment is called for but rest of his statement about the history of the period of Lord Rama etc. is wholly inadmissible. When asked about the source of his knowledge he says on page 101 that he has heard the stories from his teachers. On page 102 he says that three domed structure was constructed by Raja Vikramaditya. Then he modified it on page 105 stating that the building constructed by Vikramaditya was demolished and thereafter the disputed building was constructed and for this information refers to Ayodhya Mahatam. Sri R.L. Verma, Advocate for Nirmohi Akhara, did not dispute that Ayodhya Mahatam nowhere mentions that the building constructed by Raja Vikramaditya was demolished and thereafter the disputed building was constructed. The witness is an educated man having worked in Indian Railway since 1948 till 1988. However, on page 170 he claims to have heard the name of 'Babari mosque' for the first time on 18.11.2003.

“18 नवम्बर सन् 2003 को जब मैं यहाँ बयान देने आया था तब मैंने लखनऊ में पहली बार बाबरी मस्जिद का नाम सुना। उससे पहले मैंने कभी बाबरी मस्जिद का नाम नहीं सुना। मैंने 18 नवम्बर सन् 2003 को ही यह बात पहली बार सुनी थी कि मुसलमान लोग विवादित भवन को मस्जिद मानते हैं।”

"I first heard the name of Babri mosque in Lucknow when I came here to give my statement on 18th November, 2003. Prior to it, I had never heard the name of Babri mosque. On 18th November, 2003 itself I had heard for the first time that the Muslims considered the disputed structure to be a mosque." (E.T.C)

2052. Very interestingly he admits on page 172 that he has wrongly stated on page 45 that he read his affidavit after it was typed out but before its verification.

“प्रश्न— तो क्या आपके उपरोक्त पृष्ठ-45 के बयान में यह ग़लत लिख गया है कि आपने उपरोक्त शपथ-पत्र को टाईप होने के उपरांत और सत्यापित होने के पूर्व फैजाबाद में पढ़ा था?

उत्तर— जी हाँ, यह बात ग़लत हो गई है।”

"Question:- Then have you wrongly stated at the aforesaid page-45 of your statement that you had read the aforesaid affidavit at Faizabad, after it was typed out and before it was verified?

*Answer:- Yes, **this mistake has occurred.**" (E.T.C)*

2053. DW 3/6 Sitaram Yadav was born in 1943 and, therefore, virtually had no personal knowledge about the facts as they were, upto December 1949. Whatever he says is hearsay and inadmissible. We do not find that for the state of affairs as prevailed upto December, 1949 his statement can be treated to be relevant. Much of his averments are not relevant since he is basically a witness of fact produced to show firstly that the worship was going on inside the disputed building prior to December, 1949 and the idols of Lord Ramlala also existed thereat since before that and that all these things were in possession and management of Nirmohi Akhara which information also he has given based on information he has received, as he has no such personal knowledge.

2054. DW 3/7, Mahant Ramji Das was born on 13.04.1923 at Katni (Madhya Pradesh) and has visited Ayodhya at the age of 11 and 12 years.

“विवादित स्थल को हिन्दू समुदाय के लोग अनादिकाल से श्री रामचन्द्र जी की जन्म भूमि मानकर पूजा करते हैं। भगवान राम का जब से जन्म हुआ, तब से उस स्थल की पूजा होती रही

है, उसके पहले भी उस स्थल की पूजा होती रही है।" (पेज 18)

"The followers of Hinduism have been worshipping the disputed site since time immemorial by considering it to be the birthplace of Sri Ramchandra. The said site has been worshiped since Lord Rama was born. The said place was worshiped even before that." (E.T.C)

“सन् 1934 से सन् 1992 तक मैंने विवादित स्थल को एवं उसके पास स्थित चौका, चूल्हा, बेलन, अर्थात् कौशल्या रसोई को उसी रूप में देखा है।” (पेज 20)

"From the year 1934 to 1992, I have seen the disputed site and the 'Chauka', 'Chulha' (hearth), 'Belan' i.e. the Kaushalya Rasoi, in the same form." (E.T.C)

“हिन्दुओं की परम्परा, आस्था एवं विश्वास चला आ रहा है कि गुम्बद वाले विवादित भवन के बीच वाले गुम्बद के नीचे वाले भाग में रामचन्द्र जी का जन्म हुआ था और यही आस्था व विश्वास मेरा भी हैं श्री रामजन्म भूमि स्थल रामचन्द्र जी के समय से पूज्य है और बराबर पूजित होती चली आ रही है। मैं विवादित परिसर के पूर्वी मुख्य द्वार से होकर अंदर दर्शन करने जाता था। जन्मभूमि का दर्शन करने के उपरान्त जब बाहर निकलते थे तो दक्षिण की ओर से घूम कर परिक्रमा करते थे।” (पेज 22–23)

"The tradition, faith and belief of Hindus has been continuing that Ramchandra was born beneath the middle dome of the domed disputed structure and I also have the same faith and belief. The Sri Ramjanmbhumi site is reverable since the times of Ramchandra and has been continuously worshiped. I used to go through the eastern main gate of the disputed structure to have darshan. On coming out after having darshan, (I) used to circumambulate by turning southwards." (E.T.C)

“सन् 1934 में जब मैं अयोध्या गया था, तो उस समय मेरी आयु लगभग ग्यारह-बारह वर्ष थी। मुझे याद नहीं है कि मैं सन् 1934 में

अयोध्या गया या नहीं।" (पेज 27)

"In the year 1934, when I had gone to Ayodhya, at that time I was aged around 11-12 years. I do not remember whether I had gone to Ayodhya in the year 1934, or not."

(E.T.C)

“मुझे लोगों ने यह बताया था कि सन् 1934 के दंगे में विवादित भवन का एक शिखर टूटा था। विवादित भवन का शिखर के अलावा अन्य कोई भाग सन् 1934 के बलबे में नहीं टूटा था। सन् 1934 के बलबे के पन्द्रह-सोलह साल बाद इन लोगों ने विवादित शिखर के टूटने के बाबत बताया था। सन् 1934 के लगभग चौदह साल बाद मैं अयोध्या गया। इस चौदह वर्षों के दौरान भी मैं एक दो बार अयोध्या गया हूँ। सन् 1934 और सन् 1948 के दौरान जब मैं एक दो बार अयोध्या गया था, तो मैं बड़ा स्थान अयोध्या में ठहरा था। उस समय मैं बड़े स्थान के महंत का शिष्य नहीं हुआ था।" (पेज 28)

"I was told by people that in the riot of the year 1934, a dome of the disputed structure had fallen down. Apart from the dome of the disputed structure, no other part was damaged in the riot of the year 1934. About 15-16 years after the riot of the year 1934, these persons had told about the damage to the disputed dome. I went to Ayodhya about 14 years after the year 1934. In the period of 14 years as well, I had been to Ayodhya on couple of occasions. When I went to Ayodhya on couple of occasions between the year 1934 to 1948, I had stayed at 'Bada Sthan', Ayodhya. At that time, I had not become the disciple of the Mahant of 'Bada Sthan'." (E.T.C)

“मैं निश्चित रूप से यह नहीं बता सकता कि मैं सन् 1934 और 1948 के बीच में अयोध्या कितनी बार गया था। मुझे याद नहीं है कि सन् 1934 एवं सन् 1948 के बीच में जब मैं अयोध्या गया, उस समय मेरी आयु क्या थी। जब मैं अपने पिताजी के साथ गया था। मुझे यह याद नहीं है कि सन् 1934 के बाद पहली बार मैं अयोध्या कब गया था परन्तु जब मैं सन्

1934 के बाद पहली बार जब मैं अयोध्या गया था, तो तीन चार दिन रहा था।" (पेज 29)

"I cannot definitely tell as to on how many occasions had I gone to Ayodhya between the years 1934 to 1948. I do not remember as to what was my age, when I visited Ayodhya between the years 1934 to 1948. When I had gone along with my father. I do not remember as to when did I first go to Ayodhya after the year 1934, but when I first went to Ayodhya after the year 1934, I stayed for 3-4 days."

(E.T.C)

“विवादित भवन में मूर्ति सन् 1949 के पहले से ही थी।” (पेज 31)

"The idol existed in the disputed structure from before the year 1949." (E.T.C)

“सन् 1949 के बाद विवादित भवन से संबंधित कोई घटना नहीं हुई।” (पेज 36)

"After the year 1949, no incident occurred regarding the disputed structure." (E.T.C)

“मैंने अयोध्या में स्थायी निवास सन् 1948 से प्रारम्भ किया था।”

(पेज 37)

"I started living permanently in Ayodhya from the year 1948." (E.T.C)

“सन् 1948 के बाद मेरे पिता जी कभी अयोध्या नहीं गए। मेरे पिताजी का देहावसान सन् 1947-48 में हुआ था। मेरी माता जी का देहान्त सन् 1947 में हुआ था।”

"After the year 1948, my father never visited Ayodhya. My father expired in the year 1947-48. My mother expired in the year 1947." (E.T.C)

2055. Contrary to the stand of Nirmohi Akhara, on page 75 he admits the construction of Babar of the disputed building:

“विवादित भवन जिसे 6 दिसम्बर सन् 1992 को गिराया गया, बाबर द्वारा सीता-पाक की शक्ल में बनाया गया था, मस्जिद

की शकल में नहीं। विवादित भवन में अकबर के समय में मुसलमानों को जुमा की नमाज़ पढ़ने की इजाज़त थी और बाकी समय में हिन्दुओं को पूजा अर्चना की इजाज़त थी। साहित्य या इतिहास में इस बात का पता नहीं चलता है कि बाबर से अकबर के बीच में विवादित भवन के अंदर मुसलमानों द्वारा नमाज़ पढ़ी जाती थी या नहीं या राम की पूजा-अर्चना होती थी या नहीं। जहाँ तक मेरी जानकारी है और जैसा मुझे बताया गया है, **विवादित भवन में सन् 1934 के दंगे के बाद कभी नमाज़ नहीं हुई**, बल्कि उसके बाद से वहाँ पूजा अर्चना बराबर होती रही। जो मेरी जानकारी है और जो जनश्रुति पर आधारित है, अकबर के समय से सन् 1934 तक विवादित भवन में जुमे की नमाज़ होती थी। बाकी दिन नमाज़ नहीं पढ़ी जाती थी।” (पेज 75)

"The disputed structure, which was demolished on 6th December, 1992, was built by Babar in the shape of 'Sita Pak', (and) not in shape of mosque. In the period of Akbar, Muslims had the permission to offer Jumma namaz in the disputed structure and for the remaining period, Hindus were permitted to carry out prayer-worship. It is not found in literature or history as to whether in the period between Babar to Akbar, namaz was offered by Muslims in the disputed structure or not, or whether the prayer-worship of Lord Rama was carried out or not. To the best of my knowledge and as told to me, namaz was never offered in the disputed structure after the riot of the year 1934 and instead prayer-worship was regularly carried out over there in the later days. As per my knowledge, which is based on hearsay, the Jumma namaz was offered at the disputed structure from the times of Akbar till the year 1934. Namaz was not offered on other days." (E.T.C)

“विवादित स्थल परिसर को सीता पाक के नाम से **बाबर द्वारा**

मन्दिर तोड़कर बनवाया गया था, मस्जिद नहीं और तभी से इसे सीता पाक और रामजन्मभूमि के नाम से जानते हैं।" (पेज 96).

"The site of the disputed structure was built by Babar under the name 'Sita Pak', (it was) not a mosque and since then it is known as 'Sita Pak' and Ramjanmbhumi."

(E.T.C)

“विवादित स्थल पर ही सीता पाक शब्द लिखे हुए थे, परन्तु बाबरी सीता पाक यानी बाबर के नाम के संदर्भ में नहीं और न ही बाबर के नाम से था। स्वयं कहा कि विवादित भवन पर रामचन्द्र जी का तारक यन्त्र का षटकोण यन्त्र बना हुआ था। स्वयं कहा कि बाबर ने विवादित भवन पर सीता पाक इसलिए लिखवाया था, क्योंकि जब-जब बाबर ने मस्जिद बनवाने का प्रयास किया, उसमें विफल रहा, हनुमान जी भवन को गिरा देते थे, तब साधू सन्तों की राय के मुताबिक बाबर ने उस पर सीता पाक लिखवाया और मीनारों को गिरवा दिया तथा आदेश दिया कि मुसलमान सिर्फ जुमे की नमाज़ पढ़ेंगे, बाकी दिन देव पूजा, ऋषि पाठ सब होगा।”

(पेज 96-97)

"The words 'Sita Pak' were inscribed at the disputed site itself, however, (it) was neither in reference to 'Babri Sita Pak' i.e. name of Babar nor with the name of Babar. Stated on his own that Lord Ramchandra's 'Shatkon Yantra' of 'Tarak Yantra' were there at the disputed structure. Stated on his own that Babar had got 'Sita Pak' inscribed at the disputed structure in view of the fact that whenever Babar attempted to build the mosque, he remained unsuccessful, (as) Hanuman Ji used to demolish the building, and then as per the advice of saints-sages, Babar got 'Sita Pak' inscribed over it and dismantled the minarets and ordered that Muslims would offer only the Jumma namaz and on the remaining days 'Dev Puja' (worship of deities), 'Rishi Path' (orations by sages) would all take place." (E.T.C)

2056. After long drawn cross-examination ultimately when

he found several mistakes in his affidavit, said on page 169:

“शपथ पत्र पर दस्तखत करते समय मैंने उसे नहीं पढ़ा था। मैंने इस शपथ पत्र को न्यायालय कक्ष में आने के बाद न्यायालय कक्ष में पढ़ा था।”

"I had not read the affidavit at time of signing it. I had read this affidavit after entering the Court room, in the Court room." (E.T.C)

2057. DW 3/8, Pt. Shyam Sunder Mishra born in 1914, has claimed to visit the disputed premises and worship Lord Rama inside the disputed building from the age of 14 years. However, on page 119 he says that the disputed building was attached on 23.12.1949 and this was told to him by Baldev Das and Bhaskar Das when he visited the premises for Darshan.

“23 दिसम्बर 1949 के प्रातःकाल बल्देव दास तथा भाष्कर दास ने विवादित भवन के कुर्क होने की बात मुझे बताया था। जब मैं सुबह दर्शन करने गया तो बल्देव दास तथा भाष्कर दास ने कुर्की होने के संबंध में मुझे बताया था। 23 दिसम्बर 1949 की सुबह से कोई भी व्यक्ति अन्दर दर्शन करने नहीं जा सकता था, बाहर से ही लोग दर्शन करते थे। दर्शन लोग रामलला की मूर्ति का करते थे।”

"In the morning of 23rd December, 1949 Baldev Das and Bhaskar Das had told me about attachment of the disputed structure. When I had gone in the morning to have darshan, Baldev Das and Bhasker Das had told me about the attachment. From the morning of 23rd December, 1949 no person could go inside to have darshan, (and) people used to have darshan from outside. People used to have darshan of the idol of Ramlala." (E.T.C)

2058. About his belief he said:

“विवादित स्थल पर शुरु से ही राम जन्म भूमि के रूप में पूजा होती रही है। शुरु से मेरा तात्पर्य यह है कि जब मैं 14 साल की उम्र से वहाँ आने लगा तब से मैंने उसे राम जन्म भूमि के रूप में देखा है। अपने

होश में आने अर्थात् 14 साल की उम्र के पहले विवादित स्थल पर पूजा होने अथवा न होने के बारे में मुझे कोई जानकारी नहीं है। विवादित स्थल पर श्री राम चन्द्र जी पैदा हुए थे। मैं यह नहीं बता पाऊँगा कि राम चन्द्र जी आज से कितने साल पहले पैदा हुए।”

"The disputed structure has been worshiped as Ramjanmbhumi from the very beginning. By 'very beginning', I mean that since I started coming there from the age of 14 years, I have seen it as Ramjanmbhumi. I have no knowledge about observance or non-observance of worship at the disputed site, prior to my attainment of maturity i.e. before the age of 14 years. Lord Shri Ramchandra was born at the disputed site. I will not be able to tell as to how many years ago, was Lord Ramchandra born." (E.T.C)

2059. DW 3/9, Ram Ashrey Yadav is 72 years of age, which brings his year of birth to about 1932. He claims to have visited the disputed place at the age of 12-14 or 15 years. Interestingly about his affidavit he say:

“मैंने आज इस न्यायालय में शपथ-पत्र दाखिल किया है। मैं स्वयं यह नहीं पढ़ पाया कि मेरे द्वारा दाखिल इस शपथ-पत्र में क्या लिखा है। इस शपथ-पत्र को मुंशी जी ने मुझे पढ़कर सुनाया था, परन्तु मुंशी जी का नाम मुझे नहीं मालूम है। मैंने अपने शपथ पत्र में, सुनने के बाद केवल दस्तखत कर दिये थे, परन्तु उसमें क्या लिखा है, यह मुझे नहीं मालूम। यह शपथ-पत्र तीन या चार पन्ने का था।” (पेज 6)

“Today, I have filed an affidavit in this Court. I was not able to read on my own as to what was written in the affidavit filed by me. This affidavit was read out to me by the 'Munshi' (advocate clerk), but I do not remember his name. I had only put my signature on the affidavit after hearing the same, but I do not know about its contents.

This affidavit ran into three or four pages." (E.T.C.)

2060. Then on page 8 he says:

“मैंने अभी तक जो सवाल के जवाब दिये हैं, वह सही भी हो सकते हैं और गलत भी। जो चीज़ हमें नहीं याद है, उसके बारे में सवाल का जवाब गलत भी हो सकता है। इस समय हमारा ब्लडप्रेसर हाई है, इस कारण हमारा दिमाग ठीक नहीं है। मैं फैजाबाद में 7-8 बजे सुबह गाड़ी में बैठा था, तब मैं ठीक था। रास्ते में मेरी तबियत खराब लगने लगी और बाराबंकी पहुंचते-पहुंचते मेरा ब्लडप्रेसर बढ़ा लगने लगा। इस समय मेरी तबियत खराब लग रही है और मेरा दिमाग काम नहीं कर रहा है और मैं चाहता हूँ कि आज के बजाय मेरा अन्य दिन बयान लिख लिया जाये।” (पेज 8)

“All my answers till now, may be right or wrong. My answer can be wrong as regards the facts I do not remember. Presently I have high blood pressure, as such my mind is not functioning properly. I was alright when I took the train at 7-8 AM at Faizabad. My health started deteriorating on the way and my blood pressure increased by the time I reached Barabanki. At present I am not feeling well and my mind is not working properly and I want that instead of today, my statement be recorded on some other day.” (E.T.C.)

2061. On his request the cross-examination was adjourned but on the next day also when he found difficulty in replying the cross-examination claiming his bad health he says:

“आज भी मेरा स्वास्थ्य ठीक नहीं है। तथा आज भी मुझे हाई ब्लड प्रेशर है।” (पेज 11)

“My health is not good even today and I have high blood pressure today as well.” (E.T.C.)

2062. Further on page 18 he said about his bad health:

“आज भी मेरी तबियत ठीक नहीं है।” (पेज 18)

“Today also I am not well.” (E.T.C.)

2063. Then he took the plea of weak memory.

“मेरा दिमाग 8-10 माह के ठीक से काम नहीं कर रहा है। मेरी याददाश्त कमजोर हो गयी है। आज के बयान में धनपत यादव की मृत्यु 2-3 वर्ष पूर्व होना मैंने इसलिए बताया है क्योंकि दिमाग की कमजोरी के कारण, वह ठीक से काम नहीं कर रहा है।”

(पेज 27)

“My brain has not been working properly for 8-10 months. My memory has weakened. In my statement of the day, I have stated the death of Dhanpat Yadav to have occurred 2-3 years ago, due to weakness of my brain, which is not working properly on that account.” (E.T.C.)

“साक्षी को उसके शपथ पत्र की धारा 10 को पढ़कर सुनाया गया। इस धारा में लिखी बातों को मैंने लिखवाया था या नहीं, मुझे याद नहीं है। इस धारा की दूसरी व तीसरी लाइन में मैंने यह लिखा है कि “22-23 दिसम्बर को गर्भगृह के भाग में मूर्ति रखना एकदम गलत बात है”, यह बात 1949 की घटना से संबंधित है अथवा नहीं, यह मुझे याद नहीं है। इसी धारा में मैंने यह भी लिखा है कि “कुछ मुकामी मुसलमानों ने फर्जी कार्यवाही करा दिया।” यह फर्जी कार्यवाही किस संबंध में थी, यह मुझे याद नहीं है। स्वयं कहा जिस फर्जी कार्यवाही का मैंने उल्लेख किया है, वह सन् 1934 की घटना से संबंधित है अथवा नहीं, यह मैं नहीं बता सकता।”

(पेज 31-32)

“The paragraph 10 of his affidavit, was read out to the witness. I do not recollect whether the facts mentioned in this paragraph, had been got incorporated by me or not.. In second and third line of this paragraph, I have mentioned that 'the placement of idols in the 'Garbh-grih' portion on 22-23 December, is totally wrong'. I do not remember whether this fact is related to the incident of 1949 or not. In this very paragraph, I have also mentioned that 'few local Muslims. got the

forged action taken'. I do not recollect as to in which behalf, was this forged action. Stated on his own that I can not tell whether the forged action mentioned by me was related to the incident of year 1934 or not.” (E.T.C.)

‘इस समय मेरा दिमाग काम नहीं कर रहा है।’ (पेज 33)

“**My brain is not working presently.**” (E.T.C.)

“जो मैं आज बयान दे रहा हूँ, उसका बिस्मरण दो घण्टे बाद हो जायेगा। जब मैं बयान देता हूँ तो जो मुझे स्मरण रहता है, मैं बताता हूँ। मेरी स्मरण शक्ति कमजोर हो गयी है, अतएव इस संबंध में मैं क्या कर सकता हूँ। मैं यह बता चुका हूँ कि मेरी स्मरण शक्ति कमजोर है, अतः मैं तथ्यों को भूल जाता हूँ तथा परिवार के सदस्य को भी कभी-कभी नहीं पहचानता हूँ। मेरे अन्दर यह क्षमता नहीं है कि मैं तथ्यों को कहने के पहले यह सुनिश्चित कर लूँ कि बताये गये तथ्य सही हैं।” (पेज 51-52)

“The statement being given by me today, will be forgotten after two hours. Whenever I give statement, I tell whatever I remember. My memory has become weak, and I can do nothing in this behalf. I have told that my memory has become weak, as such I forget the facts and sometimes fail to recognise even the family members. I do not have the capacity to ensure before stating that the facts are correct.” (E.T.C.)

2064. DW 3/11, Shri Bhanu Pratap Singh is also a resident of Village Haliyapur, district Sultanpur and is aged about 70 years in April 2004, meaning thereby his year of birth comes to 1934. He claims to have visited Ayodhya before 1949 and that the idols were kept inside the building in the inner courtyard prior to 1949. The idols of Bhagwan Ram Lala and others were also there on Ram Chabutara. He visited the disputed building for about 40-50 times upto 1949. The distance of his village

from Ayodhya is 54 Kms. On page 29 he virtually admits of having given his wrong age as is evident from the following:

“मेरी जन्म तिथि हाईस्कूल प्रमाण-पत्र में 1 जुलाई 1936 लिखी हुई है।” (पेज 29)

“My date of birth is mentioned as 1st July, 1936 in the High School certificate.” (E.T.C)

2065. His father expired in 1945 as said by him on page 30. He used to visit Ayodhya with his grandfather. There are several contradictions in his statements but for us suffice to mention about his admission regarding weak memory.

“तो क्या मैं यह समझूँ कि आपकी स्मरण शक्ति इतनी क्षीण हो गई है कि आप पाँच मिनट में बात भूल जाते हैं और फिर पाँच मिनट बाद आपको याद आ जाती है?”

उ०— मेरी स्मरण शक्ति कुछ कमजोर है।” (पेज 46)

“Should I consider that your memory is so weak that you forget facts within five minutes and then you recollect after five minutes?”

Answer:- **My memory is a bit weak.**” (E.T.C)

“मेरे उपर्युक्त बयान का अंश “चारों तरफ़ मंदिर हैं” ग़लत है, क्योंकि मंदिर मात्र दो ही तरफ़ थे।इस संबंध में मैं ग़लत बयान देने का कोई कारण नहीं बता सकता, मैं कुछ तथ्यों को भूल जाता हूँ, जिसके कारण इस प्रकार के बयान दे दिये जाते हैं। भूलने का तात्पर्य यह है कि वे तथ्य उस समय मुझे याद नहीं रहते हैं।” (पेज 105)

“The portion ‘temples all around’ of my above statement, is wrong because temples were only on two sides. . . .In this behalf, I cannot give any reason for making wrong statement. **I forget few facts** due to which such statements are made. By forgetting, I mean that I do not remember those facts at that time.” (E.T.C)

“दिनांक 29.4.2004 के पृष्ठ 20 पर अभिलिखित बयान का अंश “मैंने तीन गुम्बद नहीं देखे थे, तीन शिखर देखे थे, गुम्बद तथा शिखर एक

ही नहीं होता है" ग़लत हो सकता है, गुम्बद तथा शिखर एक ही होता है। बयान की इस ग़लती का कोई कारण नहीं बता सकता। कभी-कभी भूल जाने के कारण मुझसे ग़लती हो जाती है।" (पेज 106)

"The portion 'I had not seen the three domes, had seen the three vertexes, dome and vertex are not same' of my statement dated 29.04.2004 at page 20, may be wrong. Dome and vertex are same. I cannot give any reason for this mistake in the statement..... Sometimes such mistakes creep in on account of loss of memory" (E.T.C)

2066. DW 3/12, Ram Akshyawar Pandey:

"मैंने रामजन्मभूमि मंदिर के चारों तरफ परिक्रमा नहीं किया है। रामचबूतरे की परिक्रमा किया है।" (पेज 17)

"I have not performed circumambulation of the Ramjanmbhumi temple. I have performed the circumambulation of Ramchabutara." (E.T.C.)

"वहां पर स्थित मंदिर जहां पर रामलला विराजमान थे, वहां पर तीन गुम्बद थे। राम चबूतरा से रामलला मंदिर तक की अंदर से चौड़ाई लगभग 60 हाथ की थी।" (पेज 25)

"The temple, where Ramlala was present, had three domes. The inside width from Ramchabutara to Ramlala temple was about 60 yards." (E.T.C.)

"यह कहना ग़लत है कि दिनांक-23.12.1949 की रात में मूर्तियां रखी गई थीं। मेरे गांव वालो ने मुझसे इस संबंध में बताया था कि रामजन्मभूमि जिसमें रामलला बैठे हैं, पुराना था, वह गिर गया।"

(पेज 27-28)

"It is wrong to say that the idols had been placed in the night of 23-12-1949. The villagers of my village had told me in this behalf that the Ramjanmbhumi, in which Ramlala was present, had collapsed as it was old." (E.T.C.)

"इस समय मेरे सिर में बहुत तेज दर्द तथा आंखे लाल हैं, इसलिए मैं ठीक

से नहीं देख पा रहा हूँ और नहीं बता पाउगा कि सुन्दरकाण्ड में कितने दोहे व कितनी चौपाईयाँ हैं।” (पेज 39)

“I have severe headache and my eyes are infected, hence I am not able to see properly and as such I will not be able to give the number of ‘Doha’ and ‘Chaupai’ in the ‘Sundar Kand’.” (E.T.C.)

“क्योंकि मेरे सिर में दर्द है और मेरी आंखें दर्द कर रही हैं।
. आज मैं इसका अर्थ नहीं बता पाऊँगा, क्योंकि मेरा सिर दर्द कर रहा है।
. . . . वह दर्द के कारण भूल जा रहा हूँ।” (पेज 40)

“Because I have headache and also have pain in my eyes. I will not be able to give its meaning today because of headache.. . . . My memory is failing because of the pain.” (E.T.C.)

“विवादित भवन, जिसमें तीन गुम्बद थे, उसको किसने और कब बनाया था, इसके बारे में मैंने न तो कहीं सुना और न पढ़ा।” (पेज 42)

“I have nowhere read or heard as to who constructed the disputed structure with three domes, and when.” (E.T.C.)

“इस सम्बन्ध में मैंने यह सुना है कि यह स्थान रामचन्द्र जी का जन्मस्थान है। भगवान राम का जन्म तीन गुम्बद वाले भवन के बीच वाले गुम्बद के नीचे वाले स्थान पर हुआ था।” (पेज 44)

“I have so heard that this place is the birthplace of Lord Rama. Lord Rama was born at the place below the mid dome of the three dome structure.” (E.T.C.)

“जब मैं अपने बाबा के साथ आखिरी बार अयोध्या गया था, तब मेरी आयु 12 वर्ष की थी। जब मैं अपने बाबा के साथ पहली बार अयोध्या गया था, तब मेरी आयु क्या थी, यह मैं नहीं बता सकता, क्योंकि उस समय मैं बहुत छोटा था।”

(पेज 48)

“When I last visited Ayodhya along with my grandfather, I was aged 12 years. I do not remember my

age at the time when I first visited Ayodhya, since I was quite young at that time.” (E.T.C.)

“प्रश्न— तो क्या आपकी याददास्त इतनी कमजोर है कि आप थोड़ी देर पहले कही गयी बात भूल जाते हैं?”

उत्तर— मेरी याददास्त कमजोर नहीं है, परन्तु सिर में दर्द होने के कारण कभी-कभी दिमाग में चक्कर आ जाता है।” (पेज 54)

“Question:- Is your memory so weak that you are unable to recollect what you have stated sometime back?

Answer:- My memory is not weak, but on account of headache, sometimes there is dizziness.” (E.T.C.)

“मैं यह नहीं बता सकता कि जब मैं अपने बाबा के साथ पहली बार अयोध्या गया था, उस समय मेरी आयु 9 वर्ष की थी अथवा नहीं। पंडित लोगों ने मुझे यह बताया कि इस समय मेरी उम्र 70 वर्ष की हो चुकी है। मैं कभी स्कूल में पढ़ने नहीं गया। एक टेम्पेरेरी स्कूल खुला था, जिसमें मैं पढ़ने गया वहां पर मैंने तीसरे चौथे दर्जे तक शिक्षा पाई।”

(पेज 59)

“I can not tell whether I was aged nine years or not, when I first went to Ayodhya along with my grandfather.The priests told me that I am aged 70 years now. I never went to school. A temporary school had been established and I received education there upto Class III-IV.” (E.T.C.)

“ऐसा प्रतीत होता है कि मैं बयान देते समय भूल गया था।” (पेज 69)

“It appears that I had forgotten at the time of my statement.” (E.T.C.)

“आज बयान देते समय मेरा दिमाग सही नहीं था।”

(पेज 78)

“I was not in my senses during my deposition of the day.” (E.T.C.)

2067. The above extract is self evident to make this witness

unreliable.

2068. DW 3/13, Mahant Ram Subhag Das Shastri, aged about 86 years in 2004 meaning thereby his year of birth comes to 1918, came to Ayodhya in 1933 and since then is continuously visiting Ram Janam Bhumi Temple. He has confirmed existence of Ram Chabutara, Chhati Pujan Sthal, Charan Chinh, Chakla and Belan as well as Bhandara in the outer courtyard of the site in dispute. He says that various idols of Lord Rama, Lakshmanji etc. were present on Ram Chabutara as well as Garbhgrih when he used to visit Ram Janam Bhumi Temple for Darshan and worship of Lord Ramlala. The incident of 23rd December, 1949, he claims to be a fictitious one and says that the entire disputed building was in possession of Nirmohi Akhara who were managing and serving. It was a temple of Nirmohi Akhara and Math. He also denies that any Namaj was offered in the entire building in dispute. Three documents he has annexed alongwith his affidavit to show that he had to sign a bond alongwith Baba Abhiram Das, Baba Brindaban Das, Baba Ram Vilas Das, Naga Sudarshan Das and Ram Shatrudhan since proceedings were initiated against them under Section 295/448 after the incident of 23rd December, 1949. However, in cross-examination the witness gave contradictory statement to the stand of the plaintiffs (Suit-3), as is evident from the following:

“सन् 1934 के अप्रैल माह में अयोध्या में झगड़ा हुआ था। इस झगड़े के बाद अयोध्या में रहने वालों पर टैक्स लगा था। स्वयं कहा कि गोकुषी हो गयी थी जिसमें कुछ मुसलमान मारे गये थे, उसके बाद रामजन्मभूमि के ऊपर जो ढांचा था उसको हिन्दू लोग गिराने लगे, उस समय अंग्रेजों का राज्य था, फौज ने आकर भीड़ को तितर-बितर कर दिया, उसके बाद ही हिन्दुओं पर जुर्माना लगाया गया था। 85 हजार रुपये जुर्माने के रूप में लगाये गये।” (पेज 15)

“A riot had broken out in Ayodhya in the month of

April of the year 1934. After this riot, a tax had been imposed on the residents of Ayodhya. Stated on his own that cow slaughter had taken place, in which few Muslims had been killed and thereafter the Hindus started demolishing the structure standing over Ramjanmbhumi. At that time there was British rule and the army had come and scattered the crowd. The fine was imposed on the Hindus only after that. A sum of Rupees 85 thousand had been imposed as fine.” (E.T.C)

“सन् 1933 के पूर्व लोग कहते थे कि बाबरी मस्जिद है, परन्तु जब मैं उसका स्वरूप देखता था तो लगता था कि यह मंदिर है।” (पेज 23)

“Prior to the year 1983, people used to say that (it) was Babri mosque, but when I used to see, it appeared to be a temple.” (E.T.C)

“स्वयं कहा कि इसे मंदिर को ध्वस्त करके बनवाया गया था।” (पेज 23-24)

“Stated on his own that it had been built after demolishing the temple.” (E.T.C)

“बाबरी मस्जिद में तीन गुम्बद ऊपर थे। बाबरी मस्जिद लगभग पचास फिट लम्बी तथा लगभग उतनी ही चौड़ी थी। स्वयं कहा कि लम्बाई तथा चौड़ाई लगभग बराबर थी। यह कहना ग़लत है कि खाली जगह पर मस्जिद बनायी गयी, बल्कि यह मस्जिद, मंदिर तोड़कर बनायी गयी थी। जब से मैं अयोध्या गया हूँ, तब से बाबरी मस्जिद में नमाज़ नहीं पढ़ी गयी। बाबरी मस्जिद अपने स्थान पर जिस प्रकार थी, उसी प्रकार कायम रही। 22/23.12.1949 की रात में विवादित भवन में कोलाहल हुआ, उस रात में क्या व्यवस्था हुई, यह मुझे पता नहीं, परन्तु इतना विदित हुआ कि नवीन मूर्ति बैठा दी गयी।”

(पेज 24)

“There were three domes on top of the Babri mosque. Babri mosque was about fifty feet long and

*equally wide. Stated on his own that length and breadth were almost similar. It is wrong to say that mosque was built at vacant place , and **instead this mosque was built after demolishing the temple.** Since I have been to Ayodhya, namaz has not been offered in the Babri mosque. Babri mosque as it was stood at this place.. There was disturbance in the night of 22/23.12.1949 in the disputed structure, but I do not know as to what arrangements were made in that night. However, **this much transpired that new idols had been installed.**”(E.T.C)*

“बाबर द्वारा निर्मित भवन 500 साल पुराना होगा। स्वयं कहा कि जिस समय बाबर थे, उसी समय यह भवन बना। जिस समय बाबर ने यह भवन बनवाया, उसको लोग मस्जिद के रूप में बनाना बताते हैं, परन्तु भवन को देखने से यह भवन, मंदिर मालूम देता था। जिस रूप में बाबर ने विवादित भवन बनवाया था, उसी रूप में वह भवन सन् 1992 तक चला आया।” (पेज 35)

*“The structure built by Babar would be 500 years old. Stated on his own that this structure was build in the period in which Babar existed. At the time when Babar built this structure, it is said by people that he built as a mosque, but on looking at the structure, it appeared to be a temple. **The shape in which Babar had built this structure, continued as such till the year 1992.**” (E.T.C)*

“सन् 1949 का बलवा विवादित भूमि पर हुआ था। यह बलवा 23 दिसम्बर 1949 की रात में हुआ था, इसकी जानकारी दूसरे दिन अर्थात् 24 दिसम्बर 1949 को हुई। यह सही है कि यह बलवा 22/23 दिसम्बर की मध्य रात्रि में हुआ था। यह बलवा विवादित भवन में मूर्ति रखने के संबंध में हुआ था। कोई कहता था कि भगवान स्वयं प्रकट हो गये हैं, कोई कहता था कि मूर्ति रख दी गई है। उस रात मैं विवादित भवन में नहीं गया था। मैं रात में विवादित भवन पर नहीं गया

था, फिर भी मेरा नाम सम्मिलित कर दिया गया।" (पेज 41)

"The riot of the year 1949, occurred at the disputed premises. This riot broke out in the night of 23rd December, 1949. I came to know about it on the next day i.e. on 24th December, 1949. It is correct that this riot broke out in midnight of 22/23 December. This riot had broken out in respect of installation of idols in the disputed structure. Some claimed that the deity had Himself appeared, some said that the idols had been installed. I had not been to the disputed structure that night. I had not gone to the disputed structure in the night, still my name was included." (E.T.C)

"मैंने दिनांक 7.7.2004 को पृष्ठ 41 पर यह बयान दिया है कि 22/23 दिसम्बर 1949 को बलवा हुआ था, जो विवादित भवन में मूर्ति रखने के संबंध में था, कोई कहता था कि भगवान प्रकट हो गये हैं, कोई कहता था मूर्ति रख दी गयी हैं मेरा यह बयान सही है।" (पेज 54)

"On 7.7.2004 at page-41, I have stated that 'a riot had broken out in the night of 22/23 December, 1949, which was in respect of installation of idols in the disputed structure. Few used to say that the deity had Himself appeared, few used to say that the idols had been installed', this statement of mine is correct." (E.T.C)

"सन् 1934 में वैरागियो ने विवादित भवन को मंदिर समझकर उसके ऊपर हमला किया था। वे वैरागी लोग उस समय भी विवादित भवन में पूजा करने जाते थे।" (पेज 98)..

"In the year 1934, the recluses had attacked the disputed structure, considering it to be temple. At that time also, the recluses used to go to the disputed structure for worship." (E.T.C)

"बाबर ने मंदिर के ढांचे को तोड़कर मस्जिद बनाया था, परन्तु वह पूर्ण रूप से मस्जिद नहीं बना पाया। 14 खंभे इस भवन में

लगे हुए थे, जिनमें मूर्तियां बनी हैं, इसलिए वह बुतखाना हो गया।”

(पेज 107)

“Babar had built the mosque by demolishing the structure of temple, but he was unable to make it a mosque completely. 14 pillars were fixed in this structure, which had idols engraved over them, and as such it became a place of idol.” (E.T.C)

2069. He admits weak memory.

“स्वयं कहा कि अवस्था अधिक होने के कारण मुझे विस्मृति हो जाती है।” (पेज 20)

“Stated on his own that on account of advanced age, my memory fails me.” (E.T.C)

“यह संभव है कि सन् 1933-34 के बाद की बातें भी मुझे विस्मृत होना शुरू हो गई हों अर्थात् सन् 1933-34 के बाद की बातें भी मैंने भूलना शुरू कर दिया है।” (पेज 28)

“It is possible that the post 1933-34 facts are also fading away from my memory i.e. I have also started forgetting the post 1933-34 facts.” (E.T.C)

“यह सही है कि बयान देते समय उल्टी-पुल्टी बातें निकल जाती हैं तथा हो सकता है कि मेरा यह बयान कि फैजाबाद, अयोध्या में शामिल है, गलत हो।” (पेज 106)

“It is true that I make unnecessary utterances at time of giving my statement and it is possible that my statement ‘Faizabad is included in Ayodhya’ may be wrong.” (E.T.C)

“मेरा मस्तिष्क इधर-उधर होता रहता है।” (पेज 109)

“My mind tends to lose concentration.” (E.T.C)

2070. His statement about the existence of Chhati Pujan Sthal, Charan and Ram Chabutara in the outer courtyard of the disputed building could not be discredited in the cross-examination where he has categorically and in clear terms,

consistently made similar statement. Then on some occasions he has also made contradictory statement.

“22/23 दिसम्बर 1949 की रात में विवादित भवन में जिस समय नय्यर साहब मजिस्ट्रेट थे, मूर्तियां नहीं रखी गई, ये मूर्तियां पहले से थीं।”

(पेज 102)

“These idols were not installed in the disputed structure in the night of 22/23 December, 1949, when Mr. Nayyar was the Magistrate, these idols were already in existence.” (E.T.C)

2071. The statement of DW 3/13 does not support Nirmohi Akhara, plaintiff (Suit-3). In fact, it is contrary to their pleadings. It is well settled that evidence which are totally contrary to the pleadings ought not be entertained by the Court. A Division Bench of Patna High Court in **Parmeshwari Devi and others Vs. Khusali Mandal and others, AIR 1957 Patna 482** has observed:

“.....evidence at variance with the pleadings is not permissible and, if adduced, cannot be looked into to sustain a claim which was never put forward in the pleadings.”

2072. The entire case of Nirmohi Akhara is that there never existed any mosque and nothing was constructed by Babar or Mir Baqi at the disputed site which all through was a temple in the management, control and possession of Nirmohi Akhara and no riot or disturbance occurred either in 1934 and nothing happened in the night of 22/23 December, 1959 but the same stand totally belied by DW 3/13.

2073. DW 3/14, **Jagadguru Ramanandacharya Swami Haryacharya.** He is the head of Ramanandi Sampraday since 1985-86. His statement is not relevant as to whether the idols were already existing prior to December 1949 inside the

disputed building but he in general gave history about the birth of Lord Rama. He has explained the concept of Panchkoshi Parikrama on page 64 as under:

“महाराजा दशरथ के राजमहल का क्षेत्रफल जैसा कि वाल्मीकि रामायण में उल्लिखित है, अयोध्या के पांच कोस के अन्तर्गत स्थित है। यह पांच – कोस पंचकोसी परिक्रमा के अन्तर्गत है, दशरथ के राजमहल की ही परिक्रमा होती है। जहाँ से पंचकोसी शुरू होती है, वहाँ से महाराजा दशरथ का राजमहल शुरू होता था तथा जहाँ पर पंचकोसी परिक्रमा समाप्त होती है वहाँ पर समाप्त होता था।” (पेज 64)

“The area of King Dashrath's palace as mentioned in the Valmiki Ramayana, is located within 5 kosas (unit of distance) of Ayodhya. This distance of five kosas is within the panchkosi prikrama, which is only the circumambulation of Dashrath's palace. The panchkoshi starts from the place from where the palace of King Dashrath started and the panchkoshi circumambulation terminates at the place where it (the palace) ended.”

(E.T.C.)

2074. Similarly on page 67 he explained 84 Koshi Parikrama observing that it encompasses the then entire Ayodhya. On page 118, 120, 127 and 128 however he said:

“इस प्रकार विवादित भवन के अन्दर सीढ़ियों पर रामलला जी की मूर्ति को रखे हुए मैंने सन् 1946-47 में देखा था” (पेज 118)

“I saw the idol of Ramlala installed inside the disputed structure on the stairs, in the year 1946-47.”(E.T.C.)

“जब मैंने पहली बार 15 फ़िट की दूरी से मूर्ति का दर्शन किया था, तब मैंने गुम्बद के नीचे खड़े होकर दर्शन नहीं किया था, बल्कि सहन में खड़े होकर दर्शन किया था।” (पेज 120)

“When I first had ‘Darshan’ (offering worship to the

idol) from a distance of 15 feet, I did not have 'Darshan' from under the dome and instead it was done from the courtyard." (E.T.C.)

“कुर्की के पहले जब मैं दर्शन करने जाता था, तो सायंकाल साढ़े पाँच बजे दर्शन करता था तथा दर्शन करके प्रायः सात बजे तब वापस आता था। जाड़े के मौसम में हमेशा अंधेरा हो जाता था। उस समय गुम्बद वाले भवन में कभी लालटेन तथा कभी लैम्प रखा रहता था, उस समय वहाँ बिजली नहीं थी। मैं सीखचे वाली दीवार, जिसमें एक प्रधान फाटक तथा एक छोटा फाटक था, से होकर दर्शन करने जाता था। कभी-कभी बड़ा वाला फाटक जब बन्द रहता था तो मैं सीखचे वाले फाटक से चला जाता था।” (पेज 120)

“Prior to the attachment whenever I went for 'Darshan', I had 'Darshan' at 5.30 PM and usually I returned by 7'O' clock. It always turned dark during winters. Sometimes lantern and sometimes lamp was kept in the domed building. There was no electricity at that time. I used to go through the main gate and a small gate in the grill wall to have 'Darshan'. Whenever the main gate was locked, I used to go through the grill gate.” (E.T.C.)

“मेरी मुख्य परीक्षा के शपथ-पत्र की धारा-45 में 3 फ़िट ऊँचे, 20 फ़िट लम्बे तथा 17 फ़िट चौड़े चबूतरे का उल्लेख है, यह उल्लेख राम चबूतरे के बारे में है। मैंने अपने बयान में आज रामचबूतरे को 40 फ़िट लम्बा तथा 20 फ़िट चौड़ा बताया है, **मेरी मुख्य परीक्षा के शपथ-पत्र की धारा-45 में राम चबूतरे की लम्बाई जो उल्लिखित है, वह सही नहीं है।** मैंने अपनी मुख्य परीक्षा के शपथ-पत्र की धारा - 46 में जिस छठ्ठी पूजन स्थल का उल्लेख किया है उसके बारे में विवरण वाल्मीकि रामायण में मात्र छठ्ठी पूजन के रूप में मिलता है, उसमें छठ्ठी पूजन स्थल का उल्लेख नहीं है, रामचरित्र मानस में भी छठी महोत्सव मनाने का उल्लेख है परन्तु छठ्ठी पूजन स्थल का उल्लेख नहीं है। रामचरित मानस तथा वाल्मीकि रामायण में मात्र छठ्ठी का उल्लेख है, छठ्ठी महोत्सव का उल्लेख नहीं है।” (पेज 127)

*“In para 45 of the affidavit of my examination-in-chief, there is mentioned about a platform 3 feet high, 20 feet long and 17 feet wide. This mention is about Ramchabutara. In my statement today, I have mentioned the Ramchabutara to be 40 feet long and 20 feet wide. **The length of Ramchabutara mentioned in para 45 of the affidavit of my examination-in-chief, is not correct.** The detail about the ‘Chhathi’ (the sixth day after the birth of a child) worship place mentioned in para 46 of the affidavit of my examination-in-chief, is found only as ‘Chhathi’ worship in Valmiki Ramayana, but it does not mention about ‘Chhathi’ worship place. The Ramcharit Manas also mentions about observance of the function of ‘Chhathi’, but there is no mention about ‘Chhathi’ worship place. The Ramcharit Manas and Valmiki Ramayana only mention about ‘Chhathi’ but there is no mention about the function of ‘Chhathi’.” (E.T.C.)*

“चरण चिन्ह, बेलना, चकला व चूल्हे का कोई उल्लेख न तो रामचरित मानस में है न ही वाल्मीकि रामायण में है। मेरी मुख्य परीक्षा के शपथ-पत्र की धारा-46 में जिन चरण चिन्हों का उल्लेख है, वे पाषाण के थे। इन चरण चिन्हों की संख्या 4 थी। चकला भी पाषाण का था, बेलना भी पाषाण का था, चूल्हा हो सकता है मिट्टी का रहा हो क्योंकि इसे मैंने दूर से देखा था। ये सब चीजें 8 X 10 फिट की एक बेदी पर था। बेदी का तात्पर्य चबूतरे से है। यह चबूतरा चार अंगुल ऊँचा रहा होगा। यह चबूतरा जिस पर चौका, बेलना तथा चूल्हा था, इसे कौशल्या पाक तथा सीता रसोई भी कहा जाता था।
.कौशल्या पाक तथा कौशल्या रसोई एक ही चीज़ है अपनी-अपनी आस्था से लोग उसे अलग-अलग पुकारते हैं कौशल्या रसोई से तात्पर्य उस रसोई से है, जिसका प्रयोग कौशल्या जी करती थी। यह भी संभव है कि कौशल्या रसोई का प्रयोग सीताजी भी करती रही हों। मैंने अपने बयान में बताया है कि रामजी तथा सीताजी अलग महल में रहते थे

तथा कौशल्या जी अलग महल में रहती थीं।” (पेज 127–128)

“Neither in Ramcharit Manas nor in Valmiki Ramayana, is there any mention about foot sign, ‘Belna’ (traditional utensil used for rolling breads), ‘Chakla’ (traditional utensil used as base for rolling breads) & stove. The foot signs mention in para 46 of affidavit of my examination-in-chief were of stone and were four in number. The ‘Chakla’ and ‘Belna’ were also of stone, but the stove may have been of earth because I had seen it from a distance. All these items were on a ‘Vedi’ (platform) of 8x10 feet. Vedi means platform. This platform must have been four finger tall. **The platform over which were these ‘Chauka’, ‘Belna’, stove, was also called Kaushalya Pak and Sita Rasoi.. Both Kaushalya Pak and Sita Rasoi are the same thing, and people refer them differently out of their faith. Kaushalya Rasoi implies that kitchen which was used by Kaushalya. It is possible that Kaushalya’s kitchen was used by Sita ji. I have stated in my statement that Lord Rama and Sita lived in a separate palace and Kaushalya lived in separate palace.**” (E.T.C.)

2075. On page 136 he made a statement contrary to the stand of Nirmohi Akhara.

“6 दिसम्बर सन् 1992 को विवादित भवन के गिरने से उसमें रखी मूर्तियाँ इसलिए नहीं टूटी क्योंकि रोधाच्छादन (पुष्ट तरीके से) उस पर कुछ गिरने से रोक दिया गया था। **6 दिसम्बर सन् 1992 को प्रातः काल जो मूर्तियाँ विवादित भवन में रखी हुई थी, वह मूर्तियाँ भवन गिरने के दौरान भी वहीं रखी रहीं।** आज भी वे मूर्तियाँ वहीं पर रखी हुई हैं। जो सिंहासन व झूला विवादित भवन के गिरने के पूर्व वहाँ रखे हुए थे तथा जिसमें मूर्तियाँ रखी हुई थीं, वह सिंहासन तथा झूला आज भी उसी प्रकार रखा हुआ है। इस बारे में मैंने सुना था क्योंकि 6 दिसम्बर 1992 के बाद मैं वहाँ पर दृश्यन करने नहीं गया। यह बात मैंने

विवादित भवन के गिरने के दूसरे दिन आश्रम में विद्यार्थियों तथा साधुओं से सुनी थी। इसके बाद भी इस संबंध में मैंने सुना था। मैंने यह बात रामदेव शास्त्री, शाशिकान्त, रामदास अम्बरीष मिश्र, कमलदास जो आश्रम में रहने वाले विद्यार्थी तथा साधु हैं, ये सुनी थी। यह सभी लोग अभी जीवित हैं तथा मेरे आश्रम में रहते हैं।” (पेज 150)

*“The idols present in the disputed structure did not break down due to collapse of the structure on 6th December, 1992 because by a protective cover, nothing was allowed to fall over it. **The idols present in the disputed structure in the morning of 6th December, 1992, were present at that place even during the collapse of the structure.** Even today the said idols are at that very place. The throne and swing, in which the idols were placed, were there in the disputed structure before its collapse and even today the said throne and swing are kept in the same manner. I had heard about this, because after 6th December, 1992 I have not been there to have ‘Darshan’. I had heard this on the next day of the collapse of the disputed structure, from students and saints in the Ashram. I heard about this even subsequently. I had learnt this from Ramdev Shastri, Shashikant, Ramdas, Ambrish Mishra, Kamaldas who are students and saints of the Ashram. They all are alive even today and live in my Ashram.” (E.T.C.)*

2076. About observance of Namaz in the disputed building on page 151 he says:

“अयोध्या आने के पूर्व यदि वहाँ पर नमाज़ होती रही हो, तो इसकी जानकारी मुझे नहीं है।” (पेज 151)

“I have no information if Namaz was offered there, before I came to Ayodhya.” (E.T.C.)

2077. About the place of dispute he admits that there is no mention in the plaint.

“जिस विवादित स्थल तथा विवादित भवन के बारे में मैं इस न्यायालय में बयान दे रहा हूँ, उसके बारे में इस वाद-पत्र में कुछ नहीं लिखा है।” (पेज 168)

“Nothing has been written in this plaint about the disputed site and the disputed structure regarding which I am giving statement in this Court.” (E.T.C.)

2078. On page 183 his statement did not rule out placement of idols inside the disputed building in 1949:

“यह संभव है कि सन् 1949 का जो विवाद हुआ तथा विवादित भवन में जो मूर्ति रखी गयी उसमें अयोध्या के स्थानीय हिन्दू भाईयों का कोई योगदान नहीं था बल्कि बाहर के बैरागी साधु लोग जिम्मेदार हैं।” (पेज 183)

“It is possible that in the dispute that occurred in 1949 and in the incident in which idol had been placed in the disputed building, the local Hindus of Ayodhya had no role; rather, outsider ascetic saints were responsible for the same.” (ETC)

2079. It is worthy to mention that on page 159 he has said that:

“मैं यह गवाही निर्मोही अखाड़ा के पक्ष में दे रहा हूँ।” (पेज 159)

“I am giving this evidence in favour of Nirmohi Akhara.” (E.T.C.)

“उत्तर— मैं केवल एक ही मुकदमें “निर्मोही अखाड़ा बनाम प्रिया दत्त” के मुकदमें में गवाही दे रहा हूँ किसी अन्य मुकदमे के बारे में गवाही नहीं दे रहा हूँ।” (पेज 161)

“Answer:- I am giving evidence only in one case viz. ‘Nirmohi Akhara versus Priya Dutt’, and not about any other case.” (E.T.C.)

2080. DW 3/15, Narendra Bahadur Singh. According to age he has disclosed, his year of birth comes to 1932 and he

claims to have visited the disputed site at the age of 15 years.

“मैं 15 वर्ष की आयु में रामजन्मभूमि का दर्शन करने जाने लगा था, परन्तु इसके पहले भी मैं अपने माता-पिता के साथ यह दर्शन करने जाया करता था।” (पेज 12)

“I had started going to have Darshan of Ramjanmbhumi at the age of 15 years, but even before that I used to go to have Darshan there along with my parents.”(E.T.C.)

2081. He is resident of Village Rajapur Saraiya which is about 35 kms away from Faizabad. On page 27-28 he did not deny the construction of the building by demolition of the then temple by Babar.

“मैंने ऐसा सुना है कि बाबर ने रामजन्मभूमि पर स्थित मंदिर को तोड़कर कुछ मसिजद का रूप देने का प्रयत्न किया, परन्तु अब भी सारे सबूत जन्मभूमि के वहां पर विद्यमान हैं। ऐसा सुना जाता है कि सन् 1528 में बाबर ने मंदिर को गिराकर यह निर्माण किया। बाबर के समय में मीरबाकी थे, जिन्होंने निर्माण संबंधी कुछ कार्य किया था। मैं यह सही रूप से नहीं बता सकता हूँ कि यह निर्माण-कार्य सन् 1528 में हुआ था। यह कहना गलत है कि सन् 1528 के बाद विवादित भवन में बराबर नमाज़ होती रही हो। मीरबाकी ने कोई निर्माण नहीं किया था, उसने केवल तोड़फोड़ करके कुछ परिवर्तन किया था।” (पेज 27-28)

“I have so heard that after demolishing the temple existing at the Ramjanmbhumi, Babar attempted to shape it like a mosque, but even today all the evidences of Janmbhumi exist there. It is so heard that in the year 1528, Babar had raised this construction after demolishing the temple. There was one Mir Baqi in the period of Babar, who had carried out some construction. I can not tell correctly that this construction was carried out in the year 1528. It is wrong to say that from the year 1528,

Namaz was regularly offered at the disputed structure. Mir Baqi had not carried out any construction, and instead had only carried out minor modification after destruction.” (E.T.C.)

2082. About belief he said:

‘मेरी ऐसी आस्था है तथा विष्वास भी है कि विवादित स्थल ही रामचन्द्र जी की जन्मभूमि है परन्तु इसके बारे में धार्मिक पुस्तकों में जिनका मैंने अध्ययन किया है, कहीं नहीं पढ़ा है।’ (पेज 34)

“It is my faith as well as belief that the disputed site is the birth place of Lord Rama, but I have not read so in the religious books studied by me.” (E.T.C.)

2083. He subsequently admitted to have visited the disputed place twice before its attachment.

‘दोनों बार जब मैं विवादित भवन में कुर्की के पूर्व गया था तो वहां पर 10-15-30 मिनट तक रुका था।’ (पेज 40)

“On both the occasions, when I had been to the disputed structure prior to the attachment, I had stayed there for 10-15-30 minutes.” (E.T.C.)

‘अपनी मुख्य –परीक्षा के षपथ-पत्र की धारा – 16 में यह कहा है कि ‘मैंने अपने होष में वहां कभी किसी मुसलमान को नमाज पढ़ने नहीं देखा है।’ देखने का तात्पर्य यह है कि जब मैं वहां उपस्थित रहूंगा, तभी देखूंगा। सन् 1950 के पूर्व विवादित परिसर में मैंने तीन बार जाना बताया है। इन्हीं तीन अवसरों के सम्बन्ध में मैंने यह कहा है कि ‘ मैंने किसी मुसलमान को नमाज पढ़ते नहीं देखा है।’ (पेज 51)

“In para 16 of the affidavit of my examination-in-chief, (I) have mentioned that ‘in my senses, I have never seen any Muslim offer Namaz at that place’. By ‘seen’ I mean that I would see only when I will be present there. I have stated to have been to the disputed site on three occasions prior to the year 1950. It is in respect of these

very three occasions that I have stated that 'I have not seen any Muslim offer Namaz'."(E.T.C.)

2084. DW 3/16, Shiv Bheekh Singh:

"रामजन्मभूमि मंदिर, जहाँ पर मैं दर्शन करने जाता था, वहाँ पर राम लला की मूर्ति विराजमान थी। वहाँ पर तीन गुफाएं थी।" (पेज 8)

"The idol of Ramlala existed in the Ramjanmbhumi temple, where I used to go to have 'Darshan' (offering of prayer by sight). There were three caves." (E.T.C.)

"विवादित स्थल जहाँ पर रामलला विराजमान हैं उनको रामजन्मभूमि इसलिए कहा जाता है क्योंकि वहीं पर रामचन्द्र जी का जन्म हुआ था। इसलिए यह स्थान बहुत पवित्र माना जाता है। हिन्दुओं को ऐसा विष्वास है कि इस स्थान के दर्शन मात्र से ही मोक्ष की प्राप्ति होती है। विवादित परिसर या रामजन्मभूमि में किसी मुसलमान को आते-जाते या नमाज पढ़ते कभी नहीं देखा।" (पेज 10)

"The disputed site where Ramlala exists, is called Ramjanmbhumi because Lord Rama was born there. This is why this place is considered to be very sacred by the Hindus. It is the belief of Hindus that only by 'Darshan' of this place, 'Moksha' (salvation) is obtained. I never saw any Muslim either visit or offer Namaz at the disputed site or the Ramjanmbhumi." (E.T.C.)

"मेरा गाँव फ़ैजाबाद चौक से 48 किलोमीटर दूर है। अयोध्या से मेरा गाँव 54-55 किलोमीटर की दूरी पर होगा। मैं अधिकांश रूप से बैलगाड़ी से अयोध्या जाता था कभी अयोध्या इक्के से जाता था। मैं 2-4 वर्ष के लिए सन् 1940 में बम्बई गया था, उसके अलावा अपने गाँव में ही रहा हूँ। 3-4 वर्ष तक मैं बम्बई में साइकिल तथा ताप बनाने के कारखाने में अस्थायी रूप से कार्यरत था।" (पेज 11-12)

"My village is 48 kilometres away from Faizabad Chowk. My village would be 54-55 kilometres from Ayodhya. Mostly I went to Ayodhya on bullock-cart

and sometimes by Tonga. In the year 1940, I had gone to Bombay for 2-4 years, and except for that period I have always remained in my village.....I temporarily worked in Bombay for 3-4 years in factories of cycle and playing cards.” (E.T.C.)

“मैं अपने गांव से अयोध्या अनुमान से आज तक 24-25 बार गया होऊँगा।” (पेज 14)

“Till today, I may have gone to Ayodhya from my village on approximately 24-25 occasions.” (E.T.C.)

“मैं यह नहीं मानता हूँ कि सन् 1528 में बाबरी मस्जिद बनी थी। स्वयं कहा कि सन् 1528 या कभी भी बाबरी मस्जिद नहीं बनी थी।”

(पेज 15)

“I do not accept that Babri mosque was built in the year 1528. Stated on his own that Babri mosque was not built either in the year 1528 or on any other occasion.”

(E.T.C.)

“इसको मेरे बाप-दादा भी नहीं बता सकते हैं कि यह मूर्ति कब रखी गयी। अतएव इसे मेरे द्वारा बताया जाना सम्भव नहीं है।” (पेज 18)

“Even my forefathers can not tell as to when this idol had been placed. Hence, it is not possible for me to tell.”

(E.T.C.)

“यह कहना गलत है कि 23 दिसम्बर सन् 1949 को विवादित भवन में मूर्तियां रखी गयीं।” (पेज 18)

“It is wrong to say that idols had been placed in the disputed structure on 23rd December, 1949.” (E.T.C.)

“जब से मैंने होष संभाला, तब से रामजन्मभूमि परिसर में किसी मुसलमान का आवागमन मैंने नहीं देखा है।” (पेज 19)

“Since I attained maturity, I have never seen any Muslim visit the Ramjanmbhumi premises.” (E.T.C.)

“उत्तर- रामजन्मभूमि परिसर में मेरे बाप-दादाओं के जमाने के और पहले से मूर्तियाँ विराजमान थीं।” (पेज 20)

“Answer:- The idols existed at the Ramjanmbhumi premises even before the period of my forefathers.” (E.T.C.)

“मैं फैजाबाद – अयोध्या एक साल में अधिक से अधिक 3-4 बार आता हूँ। अपने पूरे जीवनकाल में फैजाबाद-अयोध्या 26-28 बार आया होऊँगा। अयोध्या में रामनवमी, सावनजूला, परिक्रमा तथा कार्तिक पूर्णिमा ये चार मेले होते हैं। इनमें से दो मेलों के अवसर पर मैं प्रतिवर्ष आता था।” (पेज 22)

“I go to Faizabad- Ayodhya, a maximum of 3-4 times a year. In my entire life, I may have been to Faizabad- Ayodhya on 26-28 occasions. The four fairs of Ramnavami, Sawan Jhula, Parikrama and Kartik Purnima are held at Ayodhya. Out of these, I used to go to two fairs every year.” (E.T.C.)

“विवादित भवन रामजन्मभूमि मंदिर था। यह मैं तथा सारी दुनिया कही रही है।” (पेज 23)

“The disputed structure was Ramjanmbhumi temple. This is being claimed by me and the whole world.” (E.T.C.)

“मैं अपने बयान में पहले कोतवाली के पास जिस दशरथ महल के होने का उल्लेख किया है वह उल्लेख गलती से वृद्धावस्था के कारण स्मृति के क्षीण होने के कारण ऐसा कह दिया है।”

(पेज 27-29)

“My earlier statement regarding the Dashrath palace being near the Kotwali, was made inadvertently on account of fading memory in old age.” (E.T.C.)

“राम ने मानव देह धारण किया है, इसलिए उनका जन्म लेना कहा जाता है। स्वयं कहा कि मेरा इस संबंध में बयान सुनी-सुनाई बातों पर आधारित है।” (पेज 30)

“ Lord Rama had taken human form, and due to this His birth is claimed. . . . Stated on his own that my statement in this behalf is based only on hearsay.” (E.T.C.)

“रामजन्मभूमि मंदिर में जिसे बता रहा हूँ वह वही तीन गुम्बद वाला भवन है जिसका विवाद है।” (पेज 31)

“The Ramjanmbhumi temple according to me, is the same three dome structure about which is the dispute.”

(E.T.C.)

“मेले के अवसर पर पांच मिनट से कम समय ही मंदिर में दर्शन करने के लिए मिलता था क्योंकि भीड़ के कारण तुरन्त निकाल दिया जाता था। तीन गुंबद वाले भवन जिसमें मूर्तियां रखी थी वहां पर दो-तीन मिनट से ज्यादा दर्शन करने के लिए नहीं मिलता था। परिक्रमा सीखचे वाली दीवार के अंदर होती थी। विवादित परिसर में पूरब तरफ रामचबूतरा था। विवादित परिसर में स्थित रामचबूतरे की परिक्रमा नहीं होती थी।” (पेज 35)

“On occasion of fair, less than five minutes were afforded to have ‘Darshan’ in temple, because the crowd was immediately pushed out. Not more than 2-3 minutes were afforded for ‘Darshan’ in the three dome structure, where the idols existed. The circumambulation was performed inside the grill wall. Ramchabutara was to the east of the disputed structure. The Ramchabutara situated inside the disputed structure, was not circumambulated.” (E.T.C.)

“विवादित परिसर में सीता रसोई नामक स्थान नहीं था। कौषल्या जी का छट्ठी पूजन स्थल था। छट्ठी पूजन स्थल की भी परिक्रमा नहीं होती थी।” (पेज 35)

“There was no place called Sita Rasoi in the disputed premises. There was the ‘Chhathi’ (the sixth day after birth) worship place of Kaushalya ji. The ‘Chhathi’ worship place was also not circumambulated.”

(E.T.C.)

“तीन गुम्बद वाले विवादित भवन में राम-लक्ष्मण थोड़ा ऊपर थे। भरत, षत्रुघ्न थोड़ा नीचे थे। बगल में गुफा थी उसमें माता कौषल्या

रामलला को गोंद में लिये बैठी थी। कौषल्या जी की मूर्ति सीढ़ी के बगल में एक छोटी सी गुफा के अंदर थी।” (पेज 36)

“In the three dome disputed structure, Rama-Laxaman were at some elevation. Bharat, Shatrughan were a bit lower. There was cave on side wherein mother Kaushalya had Ramlala in her laps. The idol of Kaushalya ji was inside the cave adjacent to the steps.”

(E.T.C.)

“जब मैं पहली बार तीन गुम्बद वाले भवन में गया था तब मैं गुंबद के ठीक नीचे नहीं गया था। गुंबद वाले भाग के नीचे सामने जो गेट था वहां से मैंने दर्शन किया था।” (पेज 38)

“When I had first gone inside the three dome structure, I had not been exactly under the mid dome. I had the ‘Darshan’ from the gate in front of the lower side of the dome.” (E.T.C.)

“मेरा जन्म सन् 1926 में हुआ था। जब मैं पहली बार विवादित स्थल पर गया था। तब उस समय सन् 1937-38 रहा होगा। मैंने दिनांक 24-8-2004 को पेज 14 पर यह बयान दिया है कि “मैं अपने गांव से अयोध्या 24-25 बार गया होउंगा।” मेरा यह बयान विवादित भवन के गिरने तक की अवधि का है। साक्षी ने कहा कि मैं अयोध्या वर्ष में अधिकांशतः दो बार गया। कभी – कभी एक बार वर्ष में गया परन्तु ऐसा कभी नहीं हुआ कि मैं किसी वर्ष अयोध्या एक बार भी न गया हूँ।” (पेज 42-43)

“I was born in the year 1926. When I first went to the disputed site, it was probably the year 1937-38. On 24.08.2004, I stated at page 14 that ‘I must have been to Ayodhya from my village on about 24-25 occasions’. This statement of mine is for the period upto the demolition of the disputed structure. The witness stated that mostly I went to Ayodhya twice a year. Sometimes I went once a year, but it never so happened

that I did not go to Ayodhya even once a year.” (E.T.C.)

“मैं साईकिल से लगभग बीस बार दूसरों के साथ आया होऊँगा। जब मैं पहली बार विवादित स्थल पर सन् 1938 में गया था तब भी वहाँ पर भाष्कर दास जी को देखा था।” (पेज 47)

“I must have visited along with others by cycle, on about 20 occasions. When I first went to the disputed site in the year 1938, then I had seen Bhaskar Das over there.”

(E.T.C.)

2085. DW 3/17, Mata Badal Tiwari, born in 1920, has stated visiting Ramjanm Bhumi at the age of 12 years. Ayodhya was about 18-19 kos from his place of residence. About the construction of the disputed building by Babar on page 30-31 he said:

“अयोध्या की बाबरी मस्जिद के बारे में मैं नहीं जानता हूँ मुझे यह जानकारी नहीं है कि बाबरी मस्जिद कब बनी थी। मैं यह नहीं बता सकता हूँ कि बाबरी मस्जिद को बीर बाकी ने बनवाया था या नहीं। यह हो सकता है कि सन् 1528 में मीरबाकी ने बाबरी मस्जिद बनवाई हो।” (पेज 30)

“I do not know about Ayodhya’s Babri mosque. I have no knowledge about the date of construction of the Babri mosque. I can not tell whether the Babri mosque had been built by Mir Baqi or not. It may be that Mir Baqi had built the Babri mosque in the year 1528.” (E.T.C.)

2086. Then on page 35 he took a different stand:

“यह कहना गलत है कि मीरबाकी ने सन् 1528 में मस्जिद का निर्माण कराया था और बराबर इसमें नमाज होती रही।” (पेज 35)

“It is wrong to say that Mir Baqi had built the mosque in the year 1528 and that Namaz was regularly offered there.” (E.T.C.)

2087. Again about the Babari mosque on page 35 and 53 he made contradictory statement.

“मैं यह जानता ही नहीं हूँ कि बाबरी मस्जिद कहां है।” (पेज 35)

“I just do not know where is Babri mosque situated.”

(E.T.C.)

“मैंने बाबरी मस्जिद का नाम सुना है।” (पेज 53)

“I have heard the name of Babri mosque.” (E.T.C.)

2088. Fallacy of his statement is evident from what he has said on page 56, 57, 61 and 62.

“मैंने अयोध्या के दंगे का उल्लेख किया है। यह दंगा सन् 1934 में हुआ था। उस समय विवादित भवन का कुछ हिस्सा क्षतिग्रस्त कर दिया गया था। उन गुम्बदों को बहुत से लोगों ने क्षति पहुँचाया था। क्षतिग्रस्त करने वाले हिन्दू धर्म के अनुयायी थे।” (पेज 57)

“I have mentioned about the riot of Ayodhya. This riot occurred in the year 1934. Some part of the disputed structure had been damaged at that time. Those domes were damaged by many people. The damagers were followers of Hindu religion.” (E.T.C.)

“इस घटना में जो गुम्बद क्षतिग्रस्त हुआ था, उसे बनवाया गया या नहीं, यह मुझे ध्यान नहीं है। सन् 1934 में जो गुम्बद क्षतिग्रस्त हुआ था, उसकी कोई मरम्मत सन् 1992 के पूर्व तक नहीं हुई थी। सन् 1934 में तीनों गुम्बदों को क्षतिग्रस्त किया गया था। बीच वाला गुम्बद पूरा गिर गया था। तीनों गुम्बदों में थोड़ा-थोड़ा नुकसान हुआ था।” (पेज 61-62)

“I do not remember whether the dome damaged in this incident, was repaired or not. The dome damaged in the year 1934, was not repaired till the year 1992. All the three domes had been damaged in the year 1934. The mid dome had completely collapsed. All three domes were damaged slightly.” (E.T.C.)

2089. DW 3/18, Mahant Banshidhar Das @ Uriya Baba, born in 1905, came to Ayodhya in 1930 and since then is continuously visiting the disputed place and worshipping the

idols in the inner courtyard under three dome structure as also on Ram Chabutara etc. In his cross-examination he has also made statement which demolishes the case of Nirmohi Akhara about the existence of temple since time immemorial and no construction or demolition by Babar in 1528 AD or his agent, no riot or damage to the building in 1934 and no incident on 22/23 December, 1949. On page 34 he states to have come to Ayodhya at the age of 28 which takes to the period of his coming to Ayodhya from 1930 to 1933. He admits of his weak memory.

“साक्षी ने बताया कि अधिक आयु होने के कारण मेरा मस्तिष्क काम नहीं करता है।” (पेज 41)

“The witness stated – Due to advanced age my mind does not work.” (E.T.C)

“क्योंकि मैं वृद्ध व्यक्ति हूँ और मेरा दिमाग ज़्यादा काम नहीं करता है।” (पेज 50)

“Since I am an old man, my mind does not work much.” (E.T.C)

2090. On page 59 he states that all the temples of Ayodhya were demolished during the reign of Mohammad Tughlaq and in 1325 the temple of the disputed place was also demolished by him.

“मोहम्मद तुगलक का शासनकाल 1320 ई० से शुरू हुआ था तथा 1325 ई० में विवादित स्थल पर स्थित मंदिर को गिराया गया था। (यह बात साक्षी ने अपने द्वारा लाई गयी जायरी को पढ़ने के बाद बताया)। मोहम्मद तुगलक द्वारा विवादित स्थल पर बने मंदिर को गिराये जाने के बाद इस स्थान पर मंदिर, रामानंद स्वामी के शिष्य अनंतानंद ने बनवाया था। इस मंदिर को अनंतानंद ने फ़िरोजशाह तुगलक के समय में बनवाया था। फ़िरोजशाह तुगलक, मोहम्मद शाह तुगलक का लड़का था। स्वयं कहा कि मंदिर गिराये जाने के बाद बहुत समय तक वह गिरा पड़ा रहा। मंदिर गिराये जाने के बाद उसका दुबारा निर्माण 30-40 वर्षों के बाद हुआ।” (पेज 59)

“The tenure of Mohammad Tughlaq commenced in 1320 and the temple situated on the disputed site was demolished in 1325. (The witness stated this thing after going through a diary which he had brought along). After the mosque situated at the disputed site had been demolished by Mohammad Tughlaq, Anantanand, disciple of Ramanand Swami, got a temple built on that place. Anantanand got this temple built in the time of Firoz Shah Tughlaq. Firoz Shah Tughlaq was the son of Mohammad Shah Tughlaq. (Stated on his own) The temple after having been demolished had remained as such for a considerable time. The temple after having been demolished was reconstructed after 30-40 years.”(E.T.C)

“जो मंदिर अनंतानंद जी ने विवादित स्थल पर बनवाया था उसे फ़िरोज शाह तुग़लक़ ने पुनः गिरवा दिया। उसके बाद स्वामी अनुभवानंद जी ने वहाँ पर मंदिर बनवाया। अनुभवानंद जी द्वारा बनाये गये मंदिर में श्यामानंद जी रहे। श्यामानंद जी के समय में बाबर के सेनापति मीरबाकी ने इस मंदिर को गिरवाया। स्वयं कहा कि बाबर ने मीर बाकी को इस संबंध में कोई निर्देश नहीं दिया था, मीर बाकी ने स्वयं गिरवाया था। मीर बाकी ने मंदिर को गिरा कर मस्जिद नहीं बनवाया। उसने इस स्थान को मंदिर के गिरने के बाद उसी प्रकार छोड़ दिया। श्यामानंद जी के शिष्य गोविन्ददास ने विवादित स्थल पर फिर मंदिर बनवाया। गोविन्ददास जी ने विवादित स्थल पर मंदिर बाबर के समय में ही बनवाया था। जो मंदिर गोविन्ददास ने बनवाया था वही मंदिर 6 दिसम्बर 1992 को गिरा दिया गया था।” (पेज 60)

“Firoz Shah Tughlaq again ensured demolition of the temple which Anantanand Ji had got built on the disputed site. After that Swami Anubhavanand Ji got a temple built there. Shyamanand stayed in the temple built by Anubhavanand Ji. In the time of Shyamanand Ji, Babur's commander Mir Baqi got this temple

demolished. (Stated on his own) Babur had not given any directions in this respect; Mir Baqi had himself got it demolished. After demolishing the temple Mir Baqi had not got a mosque built there. In the wake of demolition of the temple he had left this place as it was. Shyamanand's disciple Govind Das again got a temple built on the disputed site. Govind Das Ji had got the temple built in the disputed site only on the time of Babur. That very temple which Govind Das had got built, was demolished on 6th December, 1992.”(E.T.C)

“1930 के बाद मुसलमानों ने विवादित स्थल पर पाँच साल बाद आक्रमण किया था। मुसलमानों द्वारा पहला आक्रमण मेरे समय में सन् 1934 में हुआ था। आखिरी आक्रमण विवादित स्थल पर तब हुआ, जब रामदेव दूबे दरोगा था। यह वही रामदेव दूबे था, जिसने 22/23 दिसम्बर 1949 की घटना के अनुसार रिपोर्ट 23 दिसम्बर 1949 को लिखायी थी। इस रामदेव दूबे को मैं अच्छी तरह जानता था।” (पेज 61)

“Five years after 1930, Muslims attacked the disputed site. The first invasion of Muslims had taken place in my time, that is, in 1934. The last invasion on the disputed site was at a time when Ram Dev Dubey was an inspector. It was the same Ram Dev Dubey who had on 23rd December, 1949 got a report lodged as per the incident of 22nd-23rd December, 1949. I was well acquainted with this Ram Dev Dubey.”(E.T.C)

“वास्तविकता यह है कि 1934 में मस्जिद को जो हानि हुई थी, उसे हिन्दू साधुओं ने स्वयं चन्दा एकत्र करके जिसकी राशि 35 हजार थी, बनवा दिया।” (पेज 89)

“Reality is that Hindu saints got repaired the damage, caused to the mosque in 1934, by themselves collecting subscription which had aggregated to Rs. 35,000.”(E.T.C)

“यदि सन् 1930 के पूर्व विवादित स्थल पर मुस्तकिल तौर पर नमाज पढ़ी जाती रही हो, तो उसके बारे में मुझे जानकारी नहीं है। यदि मेरी अनुपस्थिति के दौरान सन् 1930 से 1949 के बीच विवादित स्थल पर नमाज पढ़ी जाती रही हो, तो इसकी भी जानकारी मुझे नहीं है।” (पेज 93-94)

“If namaz may have regularly been offered on the disputed site prior to 1930, I do not have the knowledge about the same. If namaz may have been offered on the disputed site between 1930 to 1949 in my absence, I also do not have the knowledge about the same.”(E.T.C)

“यह भी कहना गलत है कि 22 दिसम्बर सन् 1949 तक विवादित भवन के किसी भी भाग में कोई भी मूर्ति नहीं रखी थी।” (पेज 96)

“It also incorrect to say that no idol had been placed in any part of the disputed building up to 22nd December, 1949.”(E.T.C)

2091. DW 3/19, Ram Milan Singh has sought to prove the existence of idols in the disputed building, i.e., under the Central Dome in the inner courtyard and also on Ram Chabutara which he had been visiting for Darshan and worship since 1940 till 1949. According to the age given in his affidavit, year of birth comes to 1929. He is resident of Mauja Haliyapur, Pargana Isauli, Tahsil Musafirkhana, District Sultanpur. He claims to have mainly visited in the three fairs held at Ayodhya. First of all with respect to the averments contained in his affidavit which he has filed under Order 18 Rule 4 on page 70 he says:

“इस शपथ पत्र को तैयार करने वाले व्यक्ति ही इस बारे में बता सकते हैं। मुख्य परीक्षा के शपथ पत्र पर हस्ताक्षर करने के पूर्व मैंने पूरा नहीं पढ़ा था।शपथ पत्र पर हस्ताक्षर मैंने उच्च न्यायालय, लखनऊ में किया है। यह शपथ पत्र लखनऊ में टाईप हुआ था या नहीं, यह मैं नहीं बता सकता। मेरे इस शपथ पत्र का प्रारूप जब तैयार किया गया था, तब मैं अयोध्या में अपने वकील साहब के घर पर

था। उन्होंने यह बताया था कि मैं आपके शपथ पत्र का मज़मून तैयार कर रहा हूँ। शपथ पत्र का मज़मून तैयार होने के बाद मैंने उसे नहीं देखा।” (पेज 70)

“The person having prepared this affidavit, can only tell about this. I had not completely read the affidavit of examination-in-chief before signing it. I had put my signature on the affidavit at the High Court, Lucknow. I cannot tell whether this affidavit had been typed out at Lucknow or not. At the time when the draft of this affidavit of mine had been prepared, I was at the place of my counsel in Ayodhya. He had told that ‘I am preparing the draft of your affidavit’. I had not seen the contents of the draft of the affidavit, after it was prepared.” (E.T.C)

2092. This itself makes his entire deposition doubtful and unreliable. He also admits of having never entered three dome disputed structure prior to 1986.

“सन् 1972 के पूर्व 1940, 1941, 1942 में जब मैं विवादित स्थल पर जाता था, तो गुम्बद के नीचे गया था। पुनः कहा कि मैं सन् 1940, 1941 व 1942 में गुम्बद के नीचे वाले भाग में नहीं गया था।” (पेज 34)

“Prior to the year 1972, whenever I used to go to the disputed site in the years 1940, 1941, 1942, I had gone beneath the dome. Again stated that I had not gone to the place beneath the dome in the years 1940, 1941 and 1942.” (E.T.C)

“यह कहना सही है कि तीन गुम्बद वाले विवादित भवन के अंदर मैं सन् 1986 के पूर्व कभी नहीं गया।” (पेज 56)

“It is correct to say that I had never been inside the three domed disputed structure before the year 1986.”(E.T.C)

2093. Distance of disputed site from the witness's residence

is about 54 Kms. The witness says that in 1940, 1941 and 1942 he came to Ayodhya on a bullock-cart and thereafter on foot till 1948 and then by bus in 1948 and onwards. He has however admitted his date of birth on page 67 as 15.01.1930.

2094. DW 3/20, Mahant Rajaram Chandracharya, aged about 76 years in 2004, must have born in the year 1930, came to Ayodhya in 1944 at the age of 14 years. He claims to become pupil of Mahant Raghunath Das who was Mahant of Nirmohi Akhara at that time. He was assigned duties to perform worship at Janambhumi Temple where he worked from 1943 to 1949 and claims continuous worship of the idols placed in the internal part of the disputed building, i.e., under the three domed structure. Very clearly he has given topography of various structures in regard to the disputed site which is almost consistent with various maps prepared by different Commissioners appointed by the Civil Judge in different proceedings including that of Commissioner's map prepared in Suit 1885. The following part of his statement are relevant for our purposes.

“मैं इस मुकदमें में निर्मोही अखाड़ा के पंच तथा पक्षकार के रूप में बयान दे रहा हूँ।” (पेज 41)

“I am testifying in this case as a 'Panch' of the Nirmohi Akhara and as a party.” (E.T.C)

“सन् 1943 में जब मैं प्रथम बार अयोध्या आया था, तब वहाँ पर बाबरी मस्जिद का अस्तित्व ही नहीं था। सन् 1943 में विवादित स्थल पर कोई मस्जिद नहीं थी, क्योंकि उस समय वहाँ पर मूर्ति पूजा होती थी। मैंने बाबरी मस्जिद का नाम सुना है। विवादित भवन बाबरी मस्जिद है। पुनः कहा कि यह बाबरी मस्जिद नहीं है, यह मंदिर है। विवादित भवन में तीन गुम्बद हैं। यह मस्जिद नहीं है। यह भगवान राम की जन्मभूमि है। सन् 1943 में जब मैं प्रथम बार अयोध्या गया था, तब मैंने बाबरी मस्जिद देखी ही नहीं। विवादित भवन में मैंने कभी नमाज़ होते हुए

नहीं देखा। मैंने वहाँ पर पूजा होते देखी है। स्वयं कहा कि जहाँ पर पूजा होती है, वहाँ पर नमाज़ होने का प्रश्न ही नहीं उत्पन्न होता। सन् 1943 में जब मैं प्रथम बार अयोध्या गया था, तब विवादित स्थल पर मैंने मस्जिद नहीं देखा था, मन्दिर देखा था। स्वयं कहा कि वहाँ पर पूजा-सेवा होती थी। विवादित भवन में तीन गुम्बद बने हुए थे।” (पेज 51)

“In 1943, when I first came to Ayodhya, the Babri mosque was not at all existing there. There was no mosque on the disputed site in 1943, because there used to be worship of idols over there. I have heard the name of the Babri mosque. **The disputed building is the Babri mosque. (Again stated) It is not the Babri mosque; it is a temple.** The disputed building has three domes. It is not a mosque. It is the birthplace of Lord Rama. In 1943, when I first visited Ayodhya I did not see the Babri mosque at all. I never saw namaz being offered in the disputed building. I have seen Pooja being performed there. (Stated on his own) No question arises of offering namaz at a place where Pooja is performed. In 1943, when I first visited Ayodhya, I saw a temple, not a mosque, on the disputed site. (Stated on his own) There used to be Pooja-Sewa (offering worship and rendering service) over there. Three domes were built in the disputed building.” (E.T.C)

“अयोध्या में मैं अंदाजन लगभग 8-9 वर्षों तक रहा हूँ। सन् 1943 से लेकर सन् 1949-50 तक विवादित भवन में नमाज़ नहीं होती थी, बल्कि पूजा होती थी।” (पेज 54)

“I guess to have resided at Ayodhya for about 8-9 years. Namaz was not offered at the disputed building from 1943 to 1949-50; rather, Pooja (worship) was performed.” (E.T.C)

“मैंने यह सुना है कि बाबर ने सन् 1528 में मन्दिर को तोड़कर मस्जिद बनवाई थी और उसी को लेकर विवाद संघर्ष

का रूप लिए चलता आ रहा है।” (पेज 56)

“I have heard that Babur had got the mosque built by breaking down the temple in 1528, and the dispute over that very construction has been continuing, taking the shape of struggle.”(E.T.C)

“विवादित भवन के सम्बन्ध में यह कहा जाता है कि यह मन्दिर तोड़कर सन् 1528 में मस्जिद बनाई गई। यह कहना ग़लत है कि विवादित स्थल पर बराबर नमाज़ होती रही है।” (पेज 57)

“It is said about the disputed building that demolishing this temple the mosque was constructed in 1528. It is incorrect to say that namaz has regularly been offered on the disputed site.”(E.T.C)

“विवादित भवन के तीनों गुम्बद के नीचे का भाग गर्भगृह था। आजकल जहाँ तम्बू के अंदर भगवान रामलला हैं, वह एक छोटा स्थान है। गर्भगृह से मेरा तात्पर्य यह है कि जहाँ किसी का जन्म होता है, उसी स्थान को गर्भगृह कहते हैं।” (पेज 72)

“The part beneath the three domes of the disputed building was 'Garbh-Grih' (sanctum sanctorum). The place where Lord Ramalala rests under a tent today, is a small place. By 'Garbh-Grih' I mean that a place where someone is born, is called 'Garbh-Grih'.”(E.T.C)

“मैंने कल यह बयान दिया था कि 1943 से 1951 तक मैं गुम्बद वाले भवन में रहता था। रहने से मेरा आशय पूजा-पाठ करने व आराम करने से था, सोने के लिए मैं विवादित स्थल में बने सन्त निवास में जाता था। यह सन्त निवास विवादित भवन के परिसर की उत्तरी दीवार से मिला हुआ था।” (पेज 82)

“I had given a statement yesterday that I resided in the domed building from 1943 to 1951. By 'residing' I mean 'offering Pooja-Paath' and 'taking rest'; I used to go to Sant Niwas built on the disputed site to take sleep. This Sant Niwas abutted on the northern wall of the

disputed building premises.”(E.T.C)

“जो विवादित भवन 6 दिसम्बर 1992 को तोड़कर गिरा दिया गया था, वह भवन मेरे ज्ञान के मुताबिक 500 वर्ष से ज्यादा पुराना था। वह भवन, राममंदिर था, जो बाबर के शासनकाल के पहले से था और जिसे बाबर ने परिवर्तित किया था, फिर कहा कि परिवर्तित करने की कोशिश की। उक्त भवन बाबर के शासनकाल से पहले से निर्मित था। बाबर के शासनकाल में उस भवन की तोड़फोड़ हुई थी तथा पुनर्निर्माण हुआ था। मेरे कहने का आशय है कि पूर्व निर्मित भवन को बाबर के शासनकाल में तोड़फोड़ करने के बाद पुनर्निर्माण की कोशिश की गई, जिसमें उसे सफलता नहीं मिली और वह संघर्ष के रूप में बदल गया और वह संघर्ष आज भी चल रहा है।” (पेज 98)

“*The disputed building, demolished on 6th December, 1992, was, as per my knowledge, older than 500 years. That building was Rama Temple, which existed from before the reign of Babur and which Babur changed, (further stated) tried to change. The said building was built from before the tenure of Babur. During the reign of Babur that building had been damaged and reconstructed. I mean to say that during the reign of Babur attempts were made for reconstruction after damaging the earlier built building. He had not succeeded in his attempt and the situation had turned into a struggle, which is continuing even today.”(E.T.C)*

“बाबर के ज़माने में जब मंदिर तोड़कर विवादित भवन बनाया गया था, तब 84 में से 70 खंभे लोग उठा ले गये होंगे या क्या हो गये, इसका मुझे पता नहीं, क्योंकि वह कसौटी पत्थर था, कीमती पाषाण था।”

(पेज 100)

“*I do not know whether 70 out of 84 pillars may have been picked up by people at the time when the disputed building was constructed by demolishing the temple in the time of Babur or what happened to such pillars, because*

there were of Kasauti stone, costly stone.” (E.T.C)

“आज जो मूर्तियाँ विवादित स्थल पर देखने को मिलती हैं, वे वही मूर्तियाँ हैं, जो बाबा श्यामानन्द जी के द्वारा उत्तराखण्ड लेकर चली जाने वाली मूर्तियों में से हैं। बाबा श्यामानन्द जी वह मूर्तियाँ बाबर के आक्रमण के समय उत्तराखण्ड लेकर चले गये थे। गोविन्ददास जी बाबा श्यामानन्द के अंगरक्षक व शिष्य थे। गोविन्ददास जी ने मूर्तियों को ले आकर पुनः उसी स्थान पर स्थापित कर दिया।” (पेज 101-102)

“The idols which are now seen on the disputed site, are among the idols which had been taken along by Baba Shyamanand Ji to Uttarakhand. Baba Shyamanand Ji had gone to Uttarakhand at the time of Babur, taking along those idols. Govind Das Ji was the body guard and disciple of Shyamanand. Govind Das Ji took the idols along and reinstalled them on that very place.” (E.T.C)

“राम चबूतरा की स्थापना भी उसी समय हुई, जब बाबा गोविन्द दास जी ने मूर्तियों की पुनर्स्थापना उसी स्थान पर की, जहाँ पर वह मूर्तियाँ पहले थीं। यह बाबर के शासनकाल का आखिरी समय था। इस राम चबूतरे पर भी रामलला, भरत जी, लक्ष्मण जी, शत्रुघ्न जी व कौशिल्या जी की मूर्तियाँ गोविन्द दास के शिष्यों में से किन्हीं शिष्यों द्वारा स्थापित की गयीं। उस शिष्य का नाम याद नहीं है।” (पेज 103)

“Ram Chabuttra was also built at that very time when Govind Das Ji had reinstalled the idols on that very place where they existed earlier. It was the concluding period of Babur's tenure. Idols of Ramlala, Bharat Ji, Lakshman Ji, Shtrughn Ji and Kaushalya Ji were installed on this Ram Chabuttra, too, by certain disciples of Govind Das. I do not remember the names of those disciples.” (E.T.C)

“सन् 1934 में जो दंगा हुआ था उससे बाबरी मस्जिद को नुकसान हुआ था उसके बाद हिन्दुओं पर टैक्स लगा और उसी पैसे से मस्जिद की मरम्मत पुनः कर दी गई।”

(पेज 106)

“Damage was caused to the Babri mosque due to the riot which had broken out in 1934. After that tax was imposed on Hindus and the mosque was repaired from that very fund.” (E.T.C)

‘मैं विवादित स्थान पर सन् 1943 में आया था और तभी से मैंने गोविन्द दास जी को पुजारी के रूप में वहाँ देखा था। वे जब तक जीवित रहे, वहाँ पर पुजारी रहे। उनकी मृत्यु लगभग सन् 1950 में हुई। श्री बलदेवदास जी जो गोविन्द दास जी के समय सहायक पुजारी थे उनकी मृत्यु के बाद बड़े पुजारी के रूप में कार्य करने लगे।’ (पेज 208)

“I came to the disputed site in 1943 and since then I saw Govind Das Ji as a priest there. As long as he was alive, he was priest there. He died in around 1950. At the time of Govind Das Ji, Sri Baldev Das Ji was assistant priest. After the former's death the latter began to work as chief priest.”(E.T.C)

NOTE: This statement shows that during this period of 1943 to 1950 Mahant Bhaskar Das was not there as Pujari at the disputed site though it has been so claimed by other witnesses and that stand contradicted.

2095. Sri Jilani, learned counsel for plaintiffs (Suit-4) has taken great pains in placing before us the apparent contradiction and incorrectness in the statement of these witnesses at several places and in particular in recognising places, topography, various structures etc. in the photographs which are part of record, some of which were obtained by Sri Bashir Ahmad, Civil Court’s Commissioner appointed in 1950 and most of them were prepared by the State Archaeological Survey through its Director, Dr. Rakesh Tiwari in 1990 pursuant to an order passed by this Court on 10.01.1990 which reads as under:

"Sunni Central Waqf Board has filed this application in Suit No. 4 of 1989 for:

- I- *permitting and authorising the plaintiff or its representatives to enter upon the property in suit with a photographer and others to take the photographs of the building and the surrounding area;*
- II- *taking measurements of the buildings and its boundaries;*
- III- *permitting a video tape of the same for being placed as evidence in Court and*
- IV- *such other direction as the Court deems fit and proper.*

Another application has been moved by defendant no. 2 (Paramhans Ram Chandra Das) purporting to be under Order XXXIX Rule 7 of the Code of Civil Procedure through Sri Tilhari, Advocate, in Suit No. 4 of 1989, and the permission sought for is the same as in the application mentioned above.

A third application has also been filed in Suit No. 2 of 1989 by the defendant no. 3 of the said suit for appointing a survey commissioner for preparing a report in accordance with the map and Abadi Khasra (Annexures I and II) filed along with this application.

Sri Abdul Mannan, counsel appearing for the plaintiff in Suit No. 4 of 1989, referred to an application filed on its behalf in the Court below for appointment of a survey commissioner.

The last prayer made was contested on the ground that as the application filed in the trial court stood disposed of the prayer made by Sri Abdul Mannan could not be acceded to. This submission is not correct. The

application was not rejected. It was kept in abeyance directing that an order for survey commissioner would be made after final hearing. Since we are of the opinion that a survey commissioner be appointed at this stage, therefore, we direct that the Registrar/Secretary of the Board of Revenue to appoint any officer, not below the rank of P.C.S. Officer, having knowledge of survey work, to survey the site and to report the location of the plots. The survey commissioner to be appointed would take assistance from the municipal records and such other records which he considers to be useful for the same purpose. The commissioner would give notices of the date, on which he would like to survey, to the Sunni Central Waqf Board and the defendants nos. 2 and 13, namely, Paramhans Ram Chandra Das and Mahant Dharam Das, in Suit No. 4 of 1989. Since we are of the opinion that the photographs of mosque and temple, including all the pillars, may also be helpful for deciding the controversy in this suit, as well as other connected ones, we direct that the photographs of the mosque, temple, including pillars be taken and prepared.

The question as to who would be fit for purposes of carrying out the directions of the Court was considered by us at length. In the circumstances, we consider that the Director, U.P. Archaeological Department, be asked to do the same. He would also prepare carbon dating of the pillars, mosque and temple. For purposes that the directions given by us are effectively complied with and no unnecessary rush gets collected, we consider that out of the two sides, that is, Sunni Central Waqf Board and

defendants 2 and 13 would be entitled to take not more than seven persons with themselves, one of them can be a photographer.

So far as defendant no. 3 is concerned, we consider, for purposes of settlement of controversy involved in the suit, its interest is not adverse to that of the defendants nos. 2 and 13, therefore, it can take with itself three persons.

The Director, Archaeological Department, would also get video cassettes prepared of the mosque, temple and pillars. The district administration will make arrangement for security.

The Advocate General had made a statement in the Court that the expenses would be borne by the State of all the proceedings, such as the present. Consequently, we direct that for making the survey commission, taking photographs, video cassettes etc. the expenses would be borne by the State itself.

The applications are decided accordingly."

(emphasis added)

2096. Dr. Rakesh Tiwari, OPW 14 has proved the aforesaid photographs and also the video recording made of the disputed building. He (Sri Jilani) says, since the witnesses have failed to identify most of the photographs and in fact made apparently wrong statements, showing that they never visited the disputed place, their statements are basically wrong and should be rejected.

2097. It is no doubt true that almost all the witnesses have failed to identify correctly location, site or the objects shown in one or the other of the above photographs, but then we have to consider certain well settled principles in the matter of oral

evidence. Memory of a man may be very good or may not be, depending upon the individual. Some people's memory is so sharp that they can continue the things in their mind for several years, decades and may tell very accurately the things happened 20, 30 or 40 years back but this is not a normal phenomena. Normal period of memory of human being is not so long. All the witnesses who have appeared before us have deposed their statements after more than 50 years of the incident. To expect meticulous details, these witnesses can recollect, what transpired or what they observed more than 50 years ago and that too when they must not have any idea that at some point of time they will have to depose statement in a Court of Law and, therefore, could not watch everything very carefully and minutely, is too much. Such lacking is quite normal. No one has a flashing computerised memory. Such expectation and that too from those who are simple rural folks, is too much. We have to consider the overall credibility of the statement of the witnesses as that could be of an ordinary human being.

2098. In fact similar kind of error has occurred virtually with all the witnesses of facts who have deposed their statements whether on behalf of plaintiffs or defendants. It is for this reason, we have not delved into the statements of all the witnesses of facts with respect to the events of 1950 and earlier thereto by looking into contradiction of each line, each word and each page, i.e., on every aspect. We have tried to find out truth in the statements of witnesses by judging their credibility by narrowing down the facts which they intend to prove in their examination-in-chief and thereafter looking to the general conduct, attitude and some other circumstantial state of affairs as discerned from the statement of the witnesses in cross-

examinations. Wherever oral evidence is corroborated with the documentary evidence then obviously one has to take more reliable one than the one which is totally based on the statement of a person which is slippery and appears to be tutored. For a particular fact, if one gives statement of a fact which occurred 50 and more years back with minute details but not able to recollect or tell the Court about such event the dates of which are much more recent, normally very important for a man's life, for example the date or year of birth of children, marriage etc. which must be known by him, then his statement becomes suspicious and needs to be seen with care.

2099. So far as claim of Nirmohi Akhara is concerned that nothing had happened on 22/23 December, 1949 and idols existed under the central dome in the inner courtyard much prior thereto is not only unbelievable and incorrect but in fact many of their own witnesses have proved their case wrong. Many of the witnesses appeared on behalf of Nirmohi Akhara have made statement which is wholly inconsistent to the basic pleadings of Nirmohi Akhara, plaint and replication in Suit-3 and in written statement in Suit-4 and 5.

2100. Though twenty witnesses have been produced on behalf of Nirmohi Akhara and it is strange but unfortunate that we find almost all of them uncreditworthy so far as this aspect of the matter is concerned that the idols in dispute were placed inside the building under central dome long back and much before 22nd December, 1949 and nothing happened on that day. It is well settled that the quantity of evidence does not matter but it is the quality of evidence which matters.

2101. On the point where there is some variance between pleadings and proof, in **Ananda Chnadra Chakrabarti vs.**

Broja Lal Singha (supra), the Court while taking the view that every variance is not fatal has held:

“ The rule that the pleading and proof must correspond is intended to serve a double purpose; first, to apprise the defendant distinctly and specifically of the case he is called upon to answer; and, secondly, to preserve an accurate record of the cause of action as a protection against a second proceeding upon the same allegations. The test thus is, whether the defendant will be taken by surprise if relief is granted on the facts established by the evidence, or, as has sometimes been said, a variance between a pleading and what is proved is immaterial unless it hampers a defence or unless it relates to an integral part of the cause of action.”

2102. In **Sewkissendas Bhattar & others Vs. Dominion of India AIR 1957 Cal. 617** and **Basant Kumar Roy Vs. Secretary of State for India & others AIR 1917 PC 18**, it was held that where a matter requires consideration of facts, a new fact ought not be allowed unless supported by pleadings since it is only the matters of law which can be allowed to be raised and not those where factual investigation is required.

2103. Extending the diluted approach as observed by the Calcutta High Court in **Ananda Chandra Chakrabarti vs. Broja Lal Singha (supra)** yet we find that it is really unfortunate that even this approach may not help the plaintiffs (Suit-3) for the reason that the variance in pleadings and proof is so inconsistent that virtually it amounts to a mutually destructive plea and when the variance is so wide, it cannot but fatal to the case of the plaintiffs (Suit-3). It demolishes their case virtually in its entirety for the purpose of their claim in respect to the

premises inside the courtyard.

2104. We have no hesitation in holding and recording our finding that under the central dome of the disputed building, idols were kept in the night of 22nd/23rd December, 1949.

2105. Now the question about the consecration of the said idols and whether the idols were kept after observing the procedure meant for consecration, and, if the idols were same as were kept on Ram Chabutara up to 22nd December, 1949, whether on shifting, fresh exercise of consecration was required and its effect etc., if any.

2106. The crucial aspect would be whether the idols kept under the central dome in the night of 22nd/23rd December, 1949 were placed in such a manner that the people who visit to worship believe, that there exists a divine spirit, it is a deity conceived of as a living being, capable of providing spiritual salvation and it is a deity having supreme divine powers. As we have discussed, an idol itself is not worshipped but it is a particular image wherein on consecration it is believed by the Hindus that it has attained such divinity and supreme power so as to provide human salvation and fulfillment of wishes of the beneficiary. The idol is only a material symbol and embodiment of pious purpose though the real worship is that of a supreme power. In **T.R.K. Ramaswami Servai (supra)** as we have already observed the test was not whether the installation of an idol and the mode of its worship conform to any particular school of Agama Sastras but if the public or that section of the public who go for worship consider that there is a divine presence in a particular place and by offering worship at that place, they are likely to be the recipients of the bounty or blessings of God then it is a temple, a deity capable of worship

and no further ceremonial right is required to be shown. This has been approved and affirmed by the Apex Court in **Ram Jankijee Deities (supra)**. None of the witnesses of plaintiffs (Suit-4) have said that he was present at the time of such placement. On the contrary, plaintiff no. 3 (Suit-5), i.e., OPW 2 in his statement under Order X Rule 2 has clearly said that due ceremonies were performed when the idols were transferred. Paramhans Ramchandra Das also appeared in the witness box as OPW 1 and has proved the state of affairs. His presence on the site at the relevant time has not been doubted either by the plaintiffs (Suit-4) or their witnesses or before us during the course of arguments by learned counsels. Some other witnesses have also proved this fact.

2107. It thus cannot be said that the idol(s) placed therein were not properly consecrated. At least the status of deity cannot be assailed by those who do not believe in idol worship since it is to be seen from the angle of those who go and worship thereat. They conform the test of being a juridical person in the eyes of law.

2108. The plaintiffs (Suit-4) have failed to prove that idols and objects of worship were placed inside the building as described in plaint by letters ABCD read with the map appended to the plaint in the night intervening 22nd/ 23rd December, 1949. Consistent with the pleadings in plaint (Suit-4), the building denoted by the area ABCD of the map appended to the plaint (Suit-4), the idols and object of worship were existing even prior to 22nd December 1949 at Ram Chabutara, in the outer courtyard.

2109. We accordingly answer Issue No. 12 (Suit-4) in **negative**. The effect of this answer shall be considered at the

relevant stage and need not be answered at this stage.

2110. Issue No. 3 (a) Suit-5 is answered in affirmance i.e. in favour of the plaintiffs (Suit-5). It is held that the idol(s) in question was/were installed under central dome of the disputed building (since demolished) in the early hours of 23rd December 1949 as alleged by the plaintiff in para 27 of the plaint and clarified by the plaintiffs in the statement under Order X Rule 2 C.P.C. **The Issue No. 1 (suit-5) is, also, accordingly, answered in its entirety, in affirmance.** It is held that the plaintiffs 1 and 2 both are juridical person. **Issue No. 21 (Suit-5) is answered in negative**, i.e., against the defendants no. 4 and 5.

2111. Having said so, immediately Issue No. 21 (Suit-4) need be considered as to whether the Suit is bad for non-joinder of the said deity.

2112. An idol being a legal/juristic person, is a necessary party in a suit where relief is sought against it. The idol represents a Deity or a spiritual being whose existence is recognized by Hindu Law. The Deity or spiritual being is supposed to exist for ever. It cannot suppose to act like an ordinary human being but has to be represented by someone. Where a suit is filed seeking a relief against an idol without its impleadment, the suit cannot be decreed against the idol and has to be dismissed for the reason that decree, if any, is passed, would not be binding upon the idol.

2113. In **Mukundji Mahraj (supra)**, para 31 of the judgment, the Court said :

"As the idol was not properly represented in the aforesaid suits, the decrees were nullities as against the idol. In such cases the principle laid down by the Privy Council in Rashidunnisa Vs. Muhammad Ismail, ILR 31All 572 (PC)

*(I) and by this Court in Dwarika Halwai v. Sitla Prasad, 1940 All LJ 166: (AIR 1940 All 256) (J) applies. **The decree is not merely voidable, but null and void.** The decrees being nullities can be ignored and the plaintiff is not under the necessity of having them set aside before suing for possession."*

2114. In **B. Jangi Lal Vs. B. Panna Lal and another AIR 1957 Allahabad 743** a Division Bench of this Court said that an idol can bring a suit to defend its interest and also has right to defend itself in a suit instituted claiming a relief which impairs the idols rights. Whether it is a necessary party or not depends upon the facts and circumstances of each case. Where the interest of the idol are directly affected or its own existence seriously impaired appearance of idol before the Court is necessary. However, while observing so in para 5, the Court proceeded further to observe where it is found that idol must be impleaded being a necessary party, it should do so.

2115. In our view this later observation in **B. Jangi Lal (supra)** would require a little clarification. It is suffice if the plaintiff is made known of the fact that idol being a juristic personality, a necessary party. Wherever its interest is sought to be impaired, no relief can be granted without impleading it. Despite this aspect having been pointed out by the defendants in suit, if no attempt is made by the plaintiff to implead the idol and on the contrary this is defended by objecting to the issue, the matter would have to be considered in a different manner and if at the time of final adjudication the Court finds that the suit was filed without impleading a necessary party and continuing as such it would have to face the logical consequences.

2116. In **K. Manathunainatha Desikar Vs. Sundaralingam (supra)** a Full Bench of the Madras High Court in para 20 of the judgment observed:

*".....The Deity, a juristic entity, is the proprietor who never dies but labours under physical disability which renders it necessary that its **interests should be looked after in perpetuity.**"*

2117. In **Jodhi Rai Vs. Basdeo Prasad and Ors. (supra)** a Full Bench of this Court held:

".....An idol has been held to be a juristic person who can hold property. Therefore, when a suit is brought in respect of property held by an idol, it is the idol who is the person bringing the suit or against whom the suit is brought, the idol being the person beneficially interested in the suit."

2118. The Court in **Jodhi Rai (supra)** however on merits found that though the idol was impleaded through Manager but it was not properly described. In these circumstances, the Court held that the correction in the description could have been permitted to the plaintiff and this by itself does not warrant dismissal of suit since correction would not have the effect of introducing third party, on record after expiry of period of limitation. However where the necessary party has not been impleaded within the period of limitation, the position may be different.

2119. In **Bimal Krishna Ghose and Ors. Vs. Shebaites of Sree Sree Iswar Radha Ballav Jiu and Ors. AIR 1937 Cal 338** the Court referring to its earlier decision in **Rabindra Nath Vs. Chandi Charan AIR 1932 Cal 117** observed that in India, the Crown is the constitutional protector of all infants and as the

Deity occupies in law the position of an infant, the Shebaita who represent the Deity are entitled to seek the assistance of the Court in case of mismanagement or maladministration of the deity's estate and to have a proper scheme for management framed which would end the disputes amongst the guardians and prevent the debutter estate from being wasted or ruined.

2120. In para 7 of the judgment the Court relied and referred to the Privy Council decision in **Kanhaya Lal Vs. Hamid Ali, AIR 1933 PC 198** and observed :

"The Privy Council held that they could not deal with the appeal in the absence of the idol whose interest arose under the Wakf"

2121. In **Kasturi Vs. Iyyamperumal and Ors. 2005 (6) SCC 733** referring to Order I Rule 10 as to who would be the necessary party in para 7 and 13 it said :

7. In our view, a bare reading of this provision, namely, second part of Order 1 Rule 10 sub-rule (2) CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are – (1) there must be a right to some relief against such

party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.

13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

2122. In **J. Jaya Lalitha Vs. Union of India & another AIR 1999 SC 1912**, the Court observed that "necessary" means that is indispensable, needful and essential in respect of which, nothing is vague or nebulous.

2123. In **Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue AIR 1963 SC 786**, the Court said that a necessary party is one without whom no effective order can be made; a proper party in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings.

2124. In **Prabodh Verma & others Vs. State of U.P. and others AIR 1985 SC 167** it was considered as to who are necessary and proper parties. The Court observed that a person who may be adversely affected directly by a decision of the Court is a necessary party, for the reason any order passed behind his back may not be binding upon him having been passed in violation of the principles of natural justice.

2125. In **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay & others (1992) 2 SCC 524**, the Court said that parties whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, are necessary parties. What makes a person a necessary party is not merely that he has relevant evidence to come on some of the questions involved nor it is merely that he has interest in the correct solution of some questions involved, and has relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.

2126. It has also been held in a catena of decisions that non impleadment of a necessary party is fatal as provided in the principles enshrined in proviso to Order 1, Rule 9 C.P.C. Recently, a Division Bench of this Court also taken the above view in **Satya Narain Kapoor Vs. State of U.P. & others 2007 (2) ARC 308**.

2127. In **Narayan Bhagwantrao Gosavi Balajiwale (supra)** the Apex Court in para 41 of the judgment observed:

".....The difficulty in the way of the appellant is real. He refrained from joining the Deity, if not as a necessary, at least as a proper party to the suit. If he had joined the deity and the deity was represented by a disinterested guardian, necessary pleas against his contention could have been raised by the guardian, and it is likely that some evidence would also have been given.

The appellant seeks to cover up his default by saying that the suit was one under O. 1, R. 8 of the Code of Civil Procedure, and that the Hindu public was joined and the Deity was adequately represented. In a suit of this character, it is incumbent to have all necessary parties, so that the declaration may be effective and binding. It is obvious enough that a declaration given against the interests of the deity will not bind the Deity, even though the Hindu Community as such may be bound. The appellant would have avoided circuitry of action, if he had acceded to the very proper request of the respondents to bring on record the Deity as a party. He stoutly opposed such a move, but at a very late stage in this court he has made an application that the Deity be joined. It is too late now to follow the course adopted by the Privy Council in 52 Ind App 245: (AIR 1925 PC 139) and Kanhaiya Lal Vs. Hamid Ali, 60 Ind App 263: (AIR 1933 PC 198 (1)),....."

2128. The plaintiffs (Suit-4) have sought a relief of eviction of idol from the building in dispute. The idol in question is a Deity and a juridical person in law. That being so, if a relief is sought against the idol, a juridical person, its impleadment was necessary as it is a necessary party. The consequences of non impleadment of a necessary party is that the suit cannot proceed and deserves to be dismissed on this ground. The principle in this regard is that relief cannot be granted in a suit against a person who has no opportunity to place his case before the Court as one cannot be condemned unheard.

2129. In ordinary circumstances, we ought to have dismissed Suit-4 for non impleadment of necessary party. However, there are certain peculiar facts and circumstance in the present sets of

cases. There was a serious dispute regarding the status of the idol in question. Besides, four suits have been clubbed. The legal person i.e. Deity is fully represented in this Court and has placed its case in the best possible manner through a battery of learned counsels and we find nothing more could have been said if technically the impleadment of idol would have been there in Suit-4. The basic principle that no one should be condemned unheard therefore does not exist in the case in hand. If a relief is to be given to a plaintiff, an order may not be passed against a person who is not a party to that suit. This would make at the best, in case Suit-4 is to be allowed, not to grant relief in respect of the eviction of the idol from the premises in question but would have no impact on the matter of declaration.

2130. After due and careful consideration of the matter and having placed this question before the learned counsels, who argued the matter as to what else could have been their defence if the idol would have been a party in Suit-4, they could not place before us on behalf of the idol, who is plaintiff no.1 in Suit-5 and is placing his case before us to which they could not reply or add anything.

2131. We, accordingly, in the facts and circumstances and discussion made above, decide **issue 21 (Suit-4) in negative i.e. in favour of the plaintiff (Suit-4)** and hold that the suit is not bad for non-joinder of the Deities.

2132. **Issues no.2 and 6 (Suit-5)** relate to the capacity of plaintiff no.3 to file suit on behalf of plaintiffs no. 1 and 2 as their next friend and relate to the maintainability of the suit in the manner it has been filed or even if plaintiffs no.1 and 2 are held to be juridical person, are entitled to sue or be sued in their own name.

2133. Now, so far as the issue No.2 and 6 (Suit-5) are concerned, we really find it surprising that there is no averment at all in the entire plaint that plaintiff no. 3 is a worshipper of lord Ram and that of plaintiffs 1 and 2. Besides it is also not the case that there is no Shebait at all or the Shebait, if any, is not managing the affairs properly.

2134. An idol or deity in Hindu law, as we have already discussed, is a juridical person and can file a suit for protection of its rights etc. and similarly can also be sued. Not being a natural person, it cannot litigate on its own as but its interest has to be watched through a natural person. Here we come up to the concept of Shebait or Mahant. He look after the interest of the idol or deity, can sue or be sued. Where the suit is in respect of the rights of the idol, it is to be filed in the name of the idol through the concerned Shebait or Mahant who is held to be the manager of such deity, under an obligation to look after its interest. No specific procedure in this regard has been mentioned in the Code of Civil Procedure. However, by process of interpretation and by judicial precedence the Courts have taken recourse to the principles of Order 32 Rule 1 CPC. In B.K. Mukherjea's **Hindu Law of Religious and Charitable Trusts (supra)** at page 265 the learned author clearly opined that a deity being a juristic person has undoubtedly, right to institute a suit for protection of its interest. So long as there is a Shebait in the office functioning properly, the rights of the deity, as stated above, practically lie dormant and it is the Shebait alone who can file suits in the interest of the deity. When, however, the Shebait is negligent or is himself the guilty party against whom the deity needs relief, it is open to worshippers or other persons interested in the endowment to file suit for the protection of the

Debutter. It is open to the deity also to file a suit through some person as next friend for recovery of possession of property improperly alienated or for other relief. Such a next friend may not unoften be a person who as a prospective Shebait or a worshipper is personally interested in the endowment.

2135. The learned author has further considered as to how we can distinguish the two classes of cases and ascertain whether it is a suit by the deity or by the worshipper personally. He has answered this question observing that it would certainly depend upon the nature of the suit and the nature of the relief claimed. If the suit is not in the name of the deity, it cannot be regarded as a deity's suit, even though the deity is to be benefited by the result of the litigation. It would be the personal suit of the worshipper, the family members or the prospective Shebait, as the case may be. These persons are not entitled to claim any relief for themselves personally, e.g., by way of recovery of possession of the property improperly alienated or adversely possessed by a stranger.

2136. It appears that there was some variation in the opinion of different courts on this aspect as to how and in what manner a suit be filed on behalf of a deity or idol. Sri Jilani and other learned counsels appearing for Sunni Board as well as other Muslim parties have not gone to the extent of denying any right of filing a suit by a deity and it is not, in fact, disputed that a deity consecrated in accordance with Shashtrik law is a juridical person entitled to sue or be sued and such a suit can be filed through its Shebait or Mahant, as the case may be. Their objection is that plaintiffs no.1 and 2 are not deity in accordance with recognised tenets of Hindu law and, therefore, Suit-5 itself is not maintainable. This issue we have already considered and

replied.

2137. In continuation, the next objection is that plaintiffs no.1 and 2 cannot be represented through the next friend i.e., the plaintiff no.3, and Suit-5 by plaintiffs no.1 and 2 through plaintiff no.3 as next friend is not in accordance with law, hence not maintainable.

2138. The defendant no. 4 though has pleaded in para 1 of his written statement (Suit-5) that there is no installation of deity within the premises of the disputed place of worship and that the idol in question was stealthily and surreptitiously kept inside the mosque in the night of 22nd/23rd December, 1949 and, therefore, are not a juridical person being not a deity but nothing has been brought on record to prove it. Similar assertions have also been made in paras 6, 11, 12, 14, 18 and 21 of the written statement of defendant no. 4, Suit-5. Regarding plaintiff no. 1 (Suit-5) the assertion that it is a *Chal Vighrah* and was kept in the night of 22nd/23rd December, 1949 after due ceremonies and the fact that since 23rd December, 1949 it is continuously being worshiped by Hindus leaves no option for us but to disagree with the stand of the defendant no. 4 (Suit-5) that it is not a deity in terms of Hindu *Shastras* and, therefore, not a juridical person. So far as the plaintiff no. 2 is concerned, the discussion made above make it clear that a place by itself can also be a deity for worship of Hindus and in such a case being a *Swyambhu* and permanent deity, no particular kind of consecration is required to be observed in such a case. Subject to our findings in respect to the issues whether the disputed site is the place of birth of Lord Rama or that it is believed to be the place of birth of Lord Rama by Hindus from time immemorial, the issues which are separately under consideration, if answered in affirmance, i.e.,

in favour of Hindu parties, we have no hesitation in holding that the plaintiffs no. 1 and 2 cannot be denied the status of deity and, therefore, are juridical persons as known in Hindu laws. It is not the case of any of the parties that there is or there was any shebait appointed or working to look after or managing the plaintiffs no. 1 and 2. The idol while existing on Ram Chabutara, its worship etc. was being managed by the priest of Nirmohi Akhara as claimed by them and also not seriously disputed by other Hindu parties but after its shifting in the disputed building under the central dome, there is nothing on record to show that any person as shebait of plaintiff no. 1 continued to look after.

2139. So far as plaintiff no. 2 is concerned, we find that there is no pleading by the defendants no. 4 and 5 or any other muslim party that there was any shebait to manage the affairs of plaintiff no. 2. The plaintiff no. 3 has stated in para 1 that he is a Vaishnav Hindu. The Vaishnavas are those who worship Lord Rama. He was allowed to represent the plaintiffs no. 1 and 2 as their next friend by Civil Judge while entertaining the suit in question vide order dated 01.07.1989. After death of Sri D.N. Agrawal he was replaced by Sri T.P.Verma vide order of the Court who was made next friend of plaintiffs no. 1 and 2. Recently Sri Triloki Nath Pandey has been allowed as next friend to represent plaintiffs no. 1 and 2. In view of the law laid down by the Apex Court in **Bishwanath Vs. Sri Thakur Radha Ballabhi (supra)** in the absence of Shebait, a suit on behalf of a Hindu idol can be filed and pursued by a worshipper as an idol's next friend.

2140. A suit on behalf of a minor or a Deity can be filed through next friend only if the above conditions are satisfied.

This could have been a serious deficiency in respect to maintainability of Suit-5 through next friend but we have noticed that here is not a case where Suit-5 was entertained on behalf of plaintiffs 1 and 2 through next friend without the intervention of the Court. The record shows that before entertaining the suit, the Court considered the prayer of the plaintiff 3 to permit him to represent the plaintiffs no.1 and 2 as next friend. The Civil Judge passed order on 01.07.1989 permitting the plaintiff no.3 to present the said suit as next friend of the plaintiffs no.1 and 2. The said order of the Civil Judge has never been challenged by any of the parties and the same has attained finality. In fact after the death of Sri Deoki Nandan Agarwal the then next friend of plaintiffs no.1 and 2, an application was filed for another next friend by Sri T.P.Verma which was allowed by this Court. Thereafter when a further change was requested, another application was filed on behalf of Kamleshwar Nath to represent as next friend of plaintiffs 1 and 2 but it was dismissed by this Court against which an appeal was taken to the Apex Court and vide judgment dated 08.02.2010, the Apex Court permitted him to be impleaded and pursue the present suit as next friend of plaintiffs no. 1 and 2 subject to certain conditions, which he complied with and accordingly he was substituted as next friend by this Court's order dated 18.03.2010.

2141. In view of the above discussion, we are of the view that Suit-5 cannot be held not maintainable merely on account of some defects in pleading with respect to the status of the next friend or Shebait. We **decide Issues no. 2 and 6 (Suit-5) in negative i.e. in favour of the plaintiffs (Suit-5)**. We hold that the suit is maintainable and plaintiff no. 3 can validly represent

plaintiffs no. 1 and 2 as their next friend and is competent on this account.

(H) Limitation

2142. In this category fall four issues namely Issue No. 3 (Suit-4); 10 (Suit-1); 9 (Suit-3); and 13 (Suit-5).

2143. The above issues though pertain to a common statute of “limitation” but since the situation, relevant facts and arguments cover different angles in all the cases, we propose to deal the said four issues separately and suitwise.

2144. First we proceed with the leading case, i.e., **Issue No. 3 (Suit-4)** which reads as under:

“Is the suit within time?”

2145. The plaintiffs in para 23 of the plaint have alleged that the cause of action arose on 23rd December, 1949 when the Hindus unlawfully and illegally entered the mosque, desecrated the same by placing idols therein, caused obstruction and interference with the rights of Muslims in general in offering prayers and other religious ceremonies in the mosque, caused obstructions to Muslims going to the grave-yard and reciting Fatiha to the dead persons buried therein; the said injury is continuing and renewed de-die-indiem; the cause of action against defendants 5 to 9 arose on 29th December, 1949 on which date the defendant No. 7 attached the mosque in suit and handed over possession to Receiver (defendant No. 9) who assumed charge of the same on 5th January, 1950 and the State Government and its officials, defendants No.6 to 8, failed in their duty to prosecute offenders and safeguard interest of Muslims. Para 23 of the plaint reads as under:

“23. That cause of action for the suit against the Hindu public arose on 23.12.1949 at Ajodhiya District Faizabad

within the jurisdiction of this Hon'ble Court when the Hindus unlawfully and illegally entered the mosque and desecrated the mosque by placing idols in the mosque thus causing obstruction and interference with the rights of the Muslims in general, of saying prayers and performing other religious ceremonies in the mosque. The Hindus are also causing obstructions to the Muslims going in the grave-yard (Ganj-Shahidan) and reciting Fatiha to the dead persons buried therein. The injuries so caused are continuing injuries and the cause of action arising therefrom is renewed de-die-indiem and as against defendants 5 to 9 the cause of action arose to the plaintiffs on 29.12.1949 the date on which the defendant No. 7 the City Magistrate Faizabad-cum-Ajodhiaya attached the mosque in suit and handed over possession of the same to Sri Priya Dutt Ram defendant no. 9 as the receiver, who assumed charge of the same on January 5, 1950.

The State Government and its officials defendants 6 to 8 failed in their duty to prosecute the offenders and safeguard the interests of the Muslims”

2146. The defendants No.1 and 2 in para 23 of written statement dated 12th March, 1962 have denied it. In additional pleas, para 28 they have pleaded that the suit is time barred. The plaintiffs were not in possession of the disputed property since 1934. The relevant pleading is as under :

*“23. That para 23 of the plaint is wrong. The suit is hopelessly time barred. The Muslims have not been in possession of the property in dispute **since 1934, and earlier.**”*

“28. That the suit is time barred as the plaintiffs were

never in possession over the temple in dispute since 1934, and the Hindus were holding it adversely to them, overtly and to their knowledge.”

2147. Another written statement filed on behalf of defendants No. 1 and 2 dated 25th January, 1963 is similarly worded in para 23 and 28 thereof.

2148. The defendants No. 3 and 4 in their written statement dated 22nd August, 1962, while denying para 23 of the plaint in para 23 of the written statement, have stated in para 34 (part of additional pleas) that the suit is barred by time.

2149. The defendant No.10 in his written statement dated 15th February, 1990 has denied para 23 of the plaint and in additional pleas has alleged in para 29 and 79 that the suit is barred by time. Para 79 of the written statement says:

“79. That the suit as framed is a suit for declaration only and the relief for delivery of possession is in the words that “In case in the opinion of the court ” which means that the plaintiffs are not seeking relief of possession and leave it to the court to grant possession suo motu. The reason is obvious that the suit was barred by limitation and so specific prayer has not been made.”

2150. Though a replication has been filed to this written statement of defendant No.10 but para 79 was inserted in the written statement pursuant to the amendment allowed by Court's order dated 23rd November, 1992 and there is no reply to para 79 of the written statement. The part of relief sought in the plaint i.e. para 24 (bb) is also pleaded barred by time in para 12, additional written statement dated 12th September, 1995 of defendant No.10 (Baba Abhiram Dass, substituted by defendant No.13/1 vide Court's order dated 27th January, 1992). In written

statement dated 20.7.1968, paras 23, 27 and 28 he pleads that the suit is hopelessly time barred. The defendant No.13/1 in his separate written statement dated 4th December, 1989 in para 23 and 39, while asserting that the suit is barred by time, has averred:

*“23. That paragraph 23 of the plaint is denied. The cause of action pleaded therein is fictitious. It could in no case be said to be renewed de-die-indiem, inasmuch as the imaginary injury complained of does not constitute a continuing injury or a continuing wrong in the eye of law. **The suit is hopelessly time-barrred by the limitation of 6 years prescribed by Article 120 of the Schedule to the Indian Limitation Act, 1908, which squarely applies to the allegations and the cause of action pleaded in the plaint, though the answering defendant submits that there was in fact no cause of action for the suit, and the suit is only a malicious exercise in futility which is fit to be dismissed as such.**”*

*“39. That the relief for possession by the removal of the idols and other articles of Hindu worship, is in fact and in law a relief for mandatory injunction, and is **barred** the 6 years' limitation prescribed **by Article 120** of the Schedule to the Indian Limitation Act, 1908. Otherwise too a person other than the Mutwalli of a Mosque cannot sue for its possession, and can only sue for a declaration that it is a mosque and, if out of possession or dispossessed, that its possession be made over to the Mutwalli, and to such suit also Article 120 applied, and **neither** of the **Article 142 or 144** of the Schedule to the Indian Limitation Act, 1908 **had any application**. Further, on the pleas raised in the plaint,*

*the plaintiffs having claimed to have been effectively and completely dispossessed by the Preliminary order of attachment and appointment of a Receiver to maintain the worship of the Deity inside the three-domed building, passed on 29.12.1949 under Section 145 of the Code of Criminal Procedure, 1898, the suit is **barred by Article 14 of the Schedule to the Indian Limitation Act, 1908.** Inasmuch as the **Plaintiffs have claimed that they were completely and effectively ousted from the building and the premises in suit by the Defendants act of 'placing' of Idols within the 'mosque', on December 23, 1949, their cause of action was finally complete and closed that day, and did not recur thereafter, according to their own allegations. It could not be said to arise thereafter die-in-diem, as it was not the case of a continuing wrong, within the meaning of Section 23 of the Indian Limitation Act, 1908. In any view of the matter the suit is hopelessly barred by limitation, even on the allegations of the Plaint which is liable to be rejected under Order 7, Rule 11 of the Code of Civil Procedure, 1908, and Section 3 of the Indian Limitation Act, 1908, casts a duty on the Court to dismiss the suit and not to proceed with its trial any further.**"*

2151. Defendant No.17 in para 18 of additional written statement dated 14th September, 1995 has pleaded that the suit is barred by time in the following words :

*"18. That the suit as framed is a **suit for declaration and the relief for delivery of possession has not been made in specific terms** as the said relief was time-barred on the date of institution of the suit. Now by way of amendment, relief of possession from statutory receiver is being sought*

and as such the plaintiffs are stopped from claiming possession of the property at this stage and the said claim has also become time-barred.”

2152. Similarly, defendant No.18 in para 23 of the written statement has denied and in para 28 has said that the suit is barred by limitation; Defendant No.20 has denied para 23 and in para 48 has pleaded that the suit is barred by limitation.

2153. Sri P.N.Mishra, Advocate, assisted by Miss Ranjana Agnihotri appearing on behalf of defendant No.20 submitted that Sri Zahoor Ahmad-plaintiff No.10 (since deceased) was impleaded as defendant No.1 in Suit-1. Mohammad Faiq-plaintiff No.4 (since deceased) was defendant No.3 in Suit-1 and defendant No.7 in Suit-3. Similarly, plaintiff No.10/1 Farooq Ahmad substituted after the death of the plaintiff No.10 Zahoor Ahmad is defendant No.11 in Suit-3. In the plaint (Suit-4), the plaintiffs have taken a stand in para 11 that the disputed building was in peaceful possession of Muslims and they used to recite prayer therein till 23rd December, 1949 when a large crowd of Hindus with mischievous intention of destroying, damaging or defiling the said mosque and thereby insulting Muslim religion and religious feelings, entered and desecrated the mosque by placing idols therein. Shri Mishra pointed out that plaintiff No.4-Mohd. Faiq and plaintiff No.10-Zahoor Ahmad had filed written statement dated 21st February, 1950 in Suit-1 and in para 22 therein have pleaded that Namaz was offered in the building in dispute till 16th December, 1949 and till then there was no idol in the said building; if it has been placed subsequently in the disputed building, the same was wholly illegal. Similarly, the plaintiff No.4 along with two others had filed written statement dated 28.03.1960 in Suit-3 and in para 26 thereof he

has pleaded that Namaz was offered in the disputed building till 16th December, 1949 and upto that time there was no idol inside the building. The above stand has been changed by the said two plaintiffs in Suit-4 though it is a futile and illegal attempt; will not bring the suit in dispute within the limitation prescribed therefor.

2154. Sri Mishra contended that Suit-4 was presented and filed in the court on 18th December, 1961. Plaintiff No.1 (Suit-4), who was impleaded as defendant No.9 (Suit-3) pursuant to the Court's order dated 23rd August, 1989 on application for impleadment, made a statement through his counsel that he is adopting written statement already filed on behalf of the defendants No.1 to 5 in Suit-1 and the defendants No.6 to 8 in Suit-3. Sunni Central Waqfs Board was also impleaded as defendant No.10 in Suit-1 pursuant to the Court's order dated 7th January, 1987. Thus the stand taken by plaintiffs No. 4 and 10 is binding on plaintiff No.1. The change in stand in Suit-4 with respect to the date on which last Namaz was offered in the disputed building cannot be pleaded otherwise than what they have already pleaded. They are estopped from changing the stand and cannot be permitted to cover up the deficiency in regard to limitation by such altered stand.

2155. It is contended by Sri P.N. Misra that in the earlier pleadings of Muslim parties their specific case was that last Namaz was offered on 16.12.1949 hence the subsequent improvement in the later pleadings shall not improve upon their case. They are bound by the stand they have taken in earlier pleadings. He argued that post litem motum is inadmissible on the ground that the same thing must be in controversy before and after the statement is made. The statement in Suit-4,

therefore, is inadmissible where improving upon their earlier stand it has been pleaded that Namaz was offered lastly on 22.12.1949. Sri Misra placed reliance on a decision of the Apex Court in **State of Bihar & Ors. Vs. Sri Radha Krishna Singh (Supra)** and in particular para 132 and 138 which read as under:

"132. Same view was taken by a full Bench of the Madras High Court in Seethapti Rao Dora v. Venkanna Dora & Ors, (1922) ILR 45 Mad 332: (AIR 1922 Mad 71). Where Kumaraswami Sastri, J. Observed thus:

"I am of opinion that Section 35 has no application to judgments, and a judgment which would not be admissible under Sections 40 to 43 of the Evidence Act would not become relevant merely because it contains a statement as to a fact which is in issue or relevant in a suit between persons who are not parties or privies. Sections 40 to 44 of the Evidence Act deal with the relevancy of judgments in Courts of justice."

"138. In Hari Baksh v. Babu Lal & Anr., AIR 1924 PC 126, their Lordships observed as follows.

"It appears to their Lordships that these statements of Bishan Dayal who was then an interested party in the disputes and was then taking a position adverse to Hari Baksh cannot be regarded as evidence in this suit and are inadmissible."

2156. Referring to the reliefs sought in Suit-4, it is contended by Sri Mishra that for the purpose of limitation, Suit-4 would be governed by Article 120 of Limitation Act, 1908, (*hereinafter referred to as "L.A. 1908"*). The period prescribed therein is only six years. Admittedly the suit has been filed by

the plaintiffs after more than 12 year. Therefore, it is liable to be dismissed on the ground of limitation itself. He argued that though presently the L.A. 1908 has been repealed by Limitation Act, 1963, (*hereinafter referred to as "L.A.1963"*), but for the purpose of ascertaining as to whether the suit in question was filed within the period prescribed in law, the statute as it was enforced on the date of filing of the suit would have to be considered. Applying Article 120 of L.A. 1908, Suit-4 is hopelessly barred by limitation.

2157. The submission is that in a suit for declaration, only Article 120 of L.A. 1908 is applicable since no other Article applies. Even if the date of cause of action, as mentioned in para 23 of the plaint, is taken to be correct, the suit in question having been filed after expiry of six years, is hopelessly barred by limitation.

2158. He also submitted that there is no question of continuing wrong. It is not a case where the cause of action accrued *de die indiem* i.e. every day. The suit in question cannot be treated to be within limitation. Alternatively he contended that even if Article 120 is found inapplicable, due to Article 142 or 144 of L.A. 1908, the cause of action having arisen on 16th December, 1949, and, not being a continuous cause of action running *de die indiem*, the suit in question is barred by limitation having been filed after expiry of 12 years i.e. 2 days later after expiry of 12 years. Sri Mishra submits that once the suit stands barred by limitation, there is no question to consider or apply any sympathy or equity in the matter. A suit, which is barred by limitation, cannot be held within time for trial on any such ground like equity, conscience, justice, sympathy, leniency etc.

2159. He further pleaded that Articles 142 and 144 of L.A. 1908 are mutually exclusive. In any case, both have no application to the dispute in hand in view of the relief sought by the plaintiffs. The party to a suit, if has taken in an earlier proceedings, a particular stand, is estopped from taking a different stand in a subsequent proceeding. It amounts to approbate and reprobate at the same time, which is impermissible. In such a matter, doctrine of 'election' would apply which binds the party to adhere to the first stand taken and not to take advantage of subsequent stand, which is an after thought.

2160. To attract Article 142 of L.A. 1908, possession of the defendants was necessary on the date of suit filed by it. There are two words used in Article 142 namely “discontinuation from possession” and “dispossession”. Both have different meaning and context. Since the defendants were not in possession on the date the suit was filed, Article 144 of L.A. 1908 would not come into picture.

2161. Sri Mishra further submits that the order of attachment passed as a preliminary order under Section 145 Cr.P.C. would make no difference, inasmuch as, a Receiver appointed by the Magistrate in proceedings under Section 145 Cr.P.C. is not adversary to any of the party but he holds and receive the property, entering into the shoes of the original and real owner. Hence the date from which receiver is appointed, would not confer any advantage to the plaintiffs in the present case so as to bring the matter within limitation.

2162. The above arguments have been buttressed by the learned counsel Sri Mishra from various angles relying on a catena of decisions i.e.: **Shyam Sunder Prasad & Others Vs.**

Raj Pal Singh & Anr. 1995(1) SCC 311, Chairman & M.D., N.T.P.C. Ltd. Vs. M/s Reshmi Construction Builders & Contractors AIR 2004 SC 1330, Draupadi Devi & Ors. Vs. Union of India & Ors. (2004) 11 SCC 425, Mohima Chundar Mozoomdar & Ors. Vs. Mohesh Chundar Neogi & Ors. 16 Indian Appeals (1888-1889) 23, Nawab Muhammad Amanulla Khan Vs. Badan Singh & Ors. 16 Indian Appeals (1888-1889) 148, Jamal Uddin & Anr. Vs. Mosque at Mashakganj & Ors. AIR 1973 Allahabad 328, Raja Rajgan Maharaja Jagatjit Singh Vs. Raja Partab Bahadur Singh AIR 1942 Privy Council 47, Mt. Bolo Vs. Mt. Koklan and others AIR 1930 Privy Council 270, Partab Bahadur Singh, Taluqdar Vs. Jagatjit Singh AIR 1936 Oudh 387, Yeknath Vs. Bahia AIR 1925 Nagpur 236 (1), Rajah of Venkatagiri Vs. Isakapalli Subbiah & Ors. ILR (26) Madras 410, Abinash Ch. Chowdhury Vs. Tarini Charan Chowdhury and others AIR 1926 Cal. 782, The Firm of Eng Gim Moh Vs. The Chinese Merited Banking Co. Ltd. and another AIR 1940 Rangoon 276, Annamalai Chettiar and others Vs. A.M.K.C.T. Muthukaruppan Chettiar & anr. AIR 1931 Privy Council 9, Mst. Rukhmabai Vs. Lala Laxminarayan & Ors. AIR 1960 SC 335, Garib Das and others Vs. Munshi Abdul Hamid and others AIR 1970 SC 1035, State of Bihar & Ors. Vs. Sri Radha Krishna Singh (supra), C. Beepathumma and others Vs., Valasari Shankaranarayana Kadambolithaya and others, AIR 1965 SC 241.

2163. Sri M.M.Pandey, Advocate on behalf of defendant no.2/1 Mahant Suresh Das submitted that the property is under attachment. There is no cause of action for claiming the relief of possession and hence a suit for declaration lies which attracts

limitation under Article 120. He placed reliance on **Deo Kuer & Anr. Vs. Sheo Prasad Singh & Anr. AIR 1966 SC 359** and submitted that since the suit has been filed after more than 11 years, it is highly barred by limitation. He also submitted that limitation once start running, shall not stop and placed reliance on **Bank of Upper India Vs. Mt. Hira Kuer & Ors. AIR 1937 Oudh 291**. Explaining "right to sue", he placed reliance on **Annamalai Chettiar and others Vs. A.M.K.C.T. Muthukaruppan Chettiar & anr (Supra)** and **Mt. Bolo Vs. Mt. Koklan and others (Supra)**.

2164. Besides above, he also placed reliance on **Partab Bahadur Singh, Taluqdar Vs. Jagatjit Singh (Supra)**, **C. Natrajan Vs. Ashim Bai & Anr. AIR 2008 SC 363**; **Shyam Sunder Prasad (supra)**; **Panna Lal Biswas Vs. Panchu Raidas AIR 1922 Cal 419**; **Bhinka and others Vs. Charan Singh 1959 (Supp.) 2 SCR 798**, **Abdul Halim Khan Vs. Raja Saadat Ali Khan & Ors. AIR 1928 Oudh 155** and **Brojendra Kishore Roy Chowdhury & others Vs. Bharat Chandra Roy and others AIR 1916 Cal. 751**.

2165. Sri G.Rajagopalan, Senior Advocate, appearing on behalf of defendant No.12 also towing the same line contended that the suit is only for declaration and there is no prayer for possession. It is covered by Article 120 of the L.A.1908 hence barred by limitation. Referring to Order VII Rule 6 C.P.C., he submits that the plaintiffs when filed the suit beyond the period of limitation must state the grounds upon which exemption from such law is claimed. No such ground or exemption has been stated in the plaint therefore, it is ex facie barred by limitation. He also contended that the plaintiffs have also not sought any exemption under Public Waqf (Extension) of Limitation Act,

1959 and even otherwise the said Act would not be applicable to the plaintiffs.

2166. Sri Ravi Shankar Prasad, Senior Advocate, contended that the suit of plaintiffs-Muslims is actually a suit for immovable property governed by Article 120 of L.A. 1908 and neither Article 142 nor 144 is applicable. Any attempt to construe the suits filed by the plaintiffs as anything but a suit for possession of immovable property is incorrect. They are not in possession of the property in dispute since 22/23rd December, 1949 and therefore, the limitation was only for six years which having elapsed the suit is barred by limitation. He placed reliance on **Raja Ramaswamy Vs. Govinda Ammal, AIR 1929 Madras 313 (Para 19 to 25); Pierce Leslie & Co. Ltd. Vs. Miss Violet Ouchterlony Wapshare AIR 1969 SC 843 (Para 7); Janki Kunwar Vs. Ajit Singh (1888) ILR 15 Cal 58 (Para 8); Jafar Ali Khan & Ors. Vs. Nasimannessa Bibi AIR 1937 Cal 500 (Para 7).**

2167. On the contrary, Sri Siddiqui refuting all the submission vehemently contended that here is a continuous cause of action since the proceedings of 145 Cr.P.C. have not been finalized so far. The deprivation for the Muslims is on day-to-day basis and that it was a suit for possession wherein the limitation would commence from 22/23 December, 1949 and the suit having been filed on 18th December, 1961 is well within time. He also cited certain authorities namely **Kali Prasad Misir and others Vs. Harbans Misir 1919 All 383; Mata Palat Vs. Beni Madho AIR 1914 All 184; Prajapati and others Vs. Jot Singh and others AIR 1934 All 539; Jagat Mohan Nath Sah Deo Vs. Pratap Udai Nath Sah Deo & Ors. AIR 1931 PC 302; and Suryanarayana & Ors. Vs. Bullayya & Ors. AIR 1927**

Madras 568.

2168. Before coming to the question as to whether Suit-4 (leading suit) is barred by limitation or not, it would be appropriate, first to consider, the relevant provisions, namely, Article 120, 142 and 144 of L.A. 1908 and a few other relative provisions to find out scope, effect and the circumstances in which they would operate since it is this Act which was in operation at the time when Suit-4 was filed.

2169. The nature of the statute on limitation has been considered in **C. Beepathuma (supra)** and it say:

“There is no doubt that the Law of Limitation is a procedural law and the provisions existing on the date of the suit apply to it.”

2170. Before the British, during the period when Muslims ruled the Country (in particular Oudh), it appears that personal laws governed all matters. The Muslim law does not recognize limitation; while in Hindu personal laws, on certain aspects, in different schools, some provisions for limitation are prescribed which are not common to all the Hindus. Hindu Law recognizes both prescription and limitation while Muslim jurisprudence recognises neither of them. In some of the *Smritis* a period of 20 years was prescribed for acquisition of title by prescription. It appears that since agriculture was the main occupation of the people, *Smritis* concentrated more on land and on the rights therein.

2171. Thus prior to 05.05.1859 there was no common law of limitation applicable to whole of India. The Provincial Courts in each Presidency established by East India Company were governed by certain Regulations, like; Regulation III of 1793 (Bengal); Regulation II of 1802 (Madras); Regulation I of 1800

(Bombay) and the Acts particularly applicable to them like Act I of 1845; Act XIII of 1848; Act XI of 1859. The Non-Regulation Provinces i.e. Punjab and Oudh etc. were governed by Codes of their own and sometimes by Circular Orders of Judicial Commissioner. The three Supreme Courts established by Royal Charter adopted the English law of limitation.

2172. Cause of action with respect to the statutes of Limitation as applicable in England in one of the earliest cases came to be considered in 1849 as to when it would run. Privy Council in **The East India Company Vs. Oditchurn Paul 1849 (Cases in the Privy Council on Appeal from the East Indies)** **43** held that the Statute runs from the time of breach, for that constitutes the cause of action. With reference to the East India Company, it observed that the statute of limitation was extended to India by Indian Act No. XIV of 1840. The appeal against the Supreme Court of Judicature at Fort William in Bengal (Calcutta) was allowed by Privy Council. It also observed therein if the matter would have been tried by Hindu law, the limitation of suits, under the Hindu law, would have been twelve years.

2173. The first codified statute was Act No. XIV of 1859, enacted to amend and consolidate laws relating to limitation of suits. This Act received the assent of Governor General on 5th May, 1859. It was repealed by Act No. IX of 1871, Act XV of 1877 and thereafter by Act IX of 1908 (i.e. L.A. 1908). Presently, even L.A. 1908 has been repealed and the Courts in India are now governed by Limitation Act, 1963 (i.e. L.A. 1963).

2174. Act XIV of 1859 provided limitation of suits only. Section I, Clauses 12 and 16, said :

“12. To suits for the recovery of immovable property or of any interest in immovable property to which no other provision of this Act applies- the period of twelve years from the time the cause of action arose.”

“16. To all suits for which no other limitation is hereby expressly provided- the period of six years from the time the case of action arose.” (emphasis added)

2175. Sections XI, XII, XV and XVI of the Act XIV of 1859 read as under:

*"XI. If, at the time when the **right to bring an action first accrues, the person to whom the right accrues is under a legal disability, the action may be brought by such person or his representative within the same time after the disability shall have ceased as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased; but, if, at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person or of the legal disability of any person claiming through him.**"*

*"XII. The following persons shall be deemed to be under legal disability within the meaning of the last preceding Section-**married women in cases to be decided by English law, minors, idiots, and lunatics.**"*

"XV. If any person shall, without his consent, have been dispossessed of any immovable property otherwise than by due course of law, such person, or any person

*claiming through him, shall, in a suit brought to recover possession of such property, be entitled to recover possession thereof notwithstanding any other title that may be set up in such a suit, provided that the suit be commenced **within six months from the time of such dispossession**. But nothing in this Section shall bar the person from whom such possession shall have been so recovered, or any other person, **instituting a suit to establish his title to such property and to recover possession thereof within the period limited by this Act.**"*

"XVIII. All suits that may be now pending, or that shall be instituted within the period of two years from the date of the passing of this Act, shall be tried and determined as if this act had not been passed; but all suits to which the provisions of this Act are applicable that shall be instituted after the expiration of the said period shall be governed by this Act and no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding."

2176. Section I of Act XIV of 1859 says that no suit shall be maintained in any Court of Judicature within any part of the British territories in India in which this Act shall be in force, unless the same is instituted within the period of limitation hereinafter made applicable to a suit of that nature, any Law or Regulation to the contrary notwithstanding. The territory upon which the said Act was made operative, is provided in Section XXIV as under:

"XXIV. This Act shall take effect throughout the Presidencies of Bengal, Madras, and Bombay, including the Presidency Towns and the Straits Settlements; but shall not take effect in any Non-Regulation Province or place

until the same shall be extended thereto by public notification by the Governor-General in Council or by the Local Government to which such Province or place is subordinate. Whenever this Act shall be extended to any Non-Regulation Province or place by the Governor-General in Council or by the Local Government to which such Province or place is subordinate, all suits which, within such Province or place, shall be pending at the date of such notification, or shall be instituted within the period of two years from the date thereof, shall be tried and determined as if this Act had not been passed; but all suits to which the provisions of this Act are applicable that shall be instituted within such Province or place after the expiration of the said period, shall be governed by this Act and by no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding."

2177. Though Act No. XIV of 1859 was drafted in a language much more precise than the loose phraseology of earlier Regulations, but the Privy Council in **The Delhi and London Bank Vs. Orchard, I.L.R. 3 (1876) Calcutta 47 (PC)** observed it as an “inartistically drawn statute”.

2178. Act IX of 1871 extended the scope and made provisions relating to limitation to suits, appeals and certain applications to Courts. It received the assent of Governor General on 24th March, 1871. Second Schedule, First Division, Articles 118, 143 and 145 provided limitation for possession of immovable property and read as under :

	Description of suit	Period of limitation	Time when period begins to run
118	Suit for which no period of	Six years	When the right to

	limitation is provided elsewhere in this schedule.		sue accrues.
143	For possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years	The date of the dispossession or discontinuance.
145	For possession of immovable property or any interest therein not hereby otherwise specially provided for	Twelve years	When the possession of the defendant, or of some person through whom he claims, became adverse to the plaintiff.

2179. Some of the feature of Act IX of 1871 are:

- (a) Section-3 defines term 'minor means a person who has not completed his age of eighteen years;
- (b) Section-7 deals with legal disability, Section 9 provides continuous running of time, Sections 23 and 24 deals with continued cause of action or renewal of cause of action and 29 for the first time provides for extinction of rights of a person in respect to any land or hereditary office and read as under:

"7. If a person entitled to sue be, at the time the right to sue accrued, a minor, or insane, or an idiot, he may institute the suit within the same period after the disability has ceased, or (when he is at the time of the accrual affected by two disabilities) after both disabilities have ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed. When this disability continues upto his death, his

representative in interest may institute the suit within the same period after the death as would otherwise have been allowed from the time prescribed therefor in the third column of the same schedule.

Nothing in this section shall be deemed to extend, for more than three years from the cessation of the disabilities or the death of the person affected thereby, the period within which the suit must be brought"

"9. When once time has begun to run, no subsequent disability or inability to sue stops it : Provided that where letters of administration to the stage of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues."

*"23. In the case of a suit **for the breach of a contract**, where there are successive breaches, a fresh right to sue arises, and a fresh period of limitation begins to run, upon every fresh breach; and where the breach is a continuing breach, a fresh right to sue arises, and a fresh period of limitation begins to run, at every moment of the time during which the breach continues.*

Nothing in the former part of this section applies to suits for the breach of contracts for the payment of money by instalments, where, on default made in payment of one instalment, the whole becomes due."

*"24. In the case of a **continuing nuisance** a fresh right to sue arises, and a fresh period of limitation begins to run at every moment of the time during which the nuisance continues."*

"29. At the determination of the period hereby limited

to any person for instituting a suit for possession of any land or hereditary office, his right to such land or office shall be extinguished."

2180. Drafting of this statute received better observation from Privy Council in **Maharana Futtehsangji Vs. Dessai Kullianraiji, (1873) LR 1 IA 34** and it commented as a "more carefully drawn statute".

2181. The Act gave for the first time some recognition to the doctrine of prescription by the Legislative Council of India, *viz.* the doctrine of extinctive prescription as to land and hereditary offices, and of positive prescription as to easements. It lived short and was replaced by Act 15 of 1877 which extended the principle of extinctive prescription to movable property and the principle of positive or acquisitive prescription to profits a *prendre*.

2182. The Law of Prescription prescribes the period at the expiry of which not only the judicial remedy is barred but a substantive right is acquired or extinguished. A prescription by which a right is acquired, is called an "acquisitive prescription". A prescription by which a right is extinguished is called "extinctive prescription". The distinction between the two is not of much practical importance or substance. The extinction of right of one party is often the mode of acquiring it by another. The right extinguished is virtually transferred to the person who claims it by prescription. Prescription implies with the thing prescribed for is the property of another and that it is enjoyed adversely to that other. In this respect it must be distinguished from acquisition by mere occupation as in the case of *res nullius*. The acquisition in such cases does not depend upon occupation for any particular length of time.

2183. Doctrine of limitation and prescription is based upon the broad considerations. The first, there is a presumption that a right not exercised for a long time is non-existent. Where a person has not been in possession of a particular property for a long time, the presumption is that he is not the owner thereof. The reason is that owners are usually possessors and possessors are usually owners. Possession being normally evidence of ownership. The longer the possession has continued the greater is its evidentiary value. The legislature it appears, therefore, thought it proper to confer upon such evidence of possession for a particular time a conclusive force. Lapse of time is recognised as creative and destructive of right instead of merely an evidence for and against their existence. The other consideration on which the doctrine of limitation and prescription may be said to be based is that title to property and matters of right in general should not be in a state of constant uncertainty, doubt and suspense. It would not be in the interest of public at large. The object of the statute of limitation is preventive and not creative but in a matter covered by the principle of adverse possession it also creates. It interposes a statutory bar after a certain period and gives a quietus to suits to enforce an existing right.

2184. Act XV of 1877 received the assent of Governor General on 19th July, 1877 and came into force on 1st October, 1877. Articles 120, 142 and 144 , Second Schedule-First Division of the said Act reads as under :

	Description of suit	Period of limitation	Time when period begins to run
120	Suit for which no period of limitation is provided elsewhere in this schedule.	Six years	When the right to sue accrues.

142	For possession of immovable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years	The date of the dispossession or discontinuance.
144	For possession of immovable property or any interest therein not hereby otherwise specially provided for.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

2185. Section 2 of Act XV of 1877 makes it very clear that the right to sue if already barred shall not revive by said enactment. It reads as follows:

"2. All reference to the Indian Limitation Act, 1871, shall be read as if made to this Act; and nothing herein or in that Act contained shall be deemed to affect any title acquired, or to revive any right to sue barred, under that Act, or under any enactment, thereby repealed; and nothing herein contained shall be deemed to affect the Indian Contract Act, section 25."

2186. Section 4 makes it obligatory for the Court to dismiss a suit if presented after the expiry of the period of limitation. Section 7 deals with the legal disability which is virtually *pari materia* with the earlier provision of 1871 Act though slightly worded differently and says:

"7. If a person entitled to institute a suit or make an application be, at the time from which the period of limitation is to be reckoned. A minor, or insane, or an idiot, he may institute the suit or make the application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed"

therefor in the third column of the second schedule hereto annexed.

When he is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or when, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

When his disability continues up to his death, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

When such representative is at the date of the death affected by any such disability, the rules contained in the first two paragraphs of this section shall apply.

Nothing in this section applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made."

2187. Section 9 talks of continuous running of time, Section 23 deals with the continuing breach of contract and Section 28 talks of extension of right to property and say:

"9. When once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt

shall be suspended while the administration continues."

"23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues."

"28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."

2188. There were several amendments in the above statute and ultimately it was repealed and replaced by Act 9 of 1908.

2189. L.A. 1908 came into force on 1st January, 1909. It continued with the provision imposing obligation upon the Court to dismiss a suit if, while it is instituted, is already barred by limitation vide Section 23.

2190. The arrangement of above Articles 120, 142 and 144 in L.A. 1908 remained the same, i.e., Articles 120, 142 and 144 and is verbatim:

	Description of suit	Period of limitation	Time when period begins to run
120	Suit for which no period of limitation is provided elsewhere in this schedule	Six years	When the right to sue occurs.
142	For possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years	The date of the dispossession or discontinuance.
144	For possession of immovable property or any interest therein not hereby otherwise specially	Twelve years	When the possession of the defendant becomes

	provided for.		adverse to the plaintiff.
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2191. The doctrine of limitation is founded on considerations of public policy and expediency. It does not give a right where there exist none, but to impose a bar after a certain period to the remedy for enforcing an existing right. The object is to compel litigants to be diligent for seeking remedies in Courts of law if there is any infringement of their right and to prevent and prohibit stale claims. It fixes a life span for remedy for redressal of the legal injury, if suffered, but not to continue such remedy for an immemorial length of time. Rules of limitation do not destroy the right of the parties and do not create substantive rights if none exist already. However, there is one exception i.e. Section 28 of L.A. 1908, which provides that at the determination of the period prescribed for instituting suit for possession of any property, his right to such property shall stand extinguished and the person in possession, after expiry of the such period, will stand conferred title. The law of limitation is enshrined in the maxim "*interest reipublicae ut sit finis litium*" (it is for the general welfare that a period be part to litigation).

2191A. This statute is based upon two broad principles. First, there is a presumption that a right not exercised for a long time is non existent. Where a person has not been in possession of a particular property for a long time, the presumption is that he is not the owner thereof. The owners are usually possessors and possessors are usually owners. Possession thus being normally evidence of ownership. Longer the possession has continued the greater is its evidentiary value. The law therefore has deemed it expedient to confer upon such

evidence of possession for a particular time, a conclusive force.

2192. In **Motichand Vs. Munshi, AIR 1970 SC 898**, the Court noticed the maxim *vigilantibus non dormientibus jura subveniunt* (the law assists the vigilant not those who sleep over their rights). Though there is a general principle *ubi jus ibi remedium* i.e. where there is a legal right there is also a remedy, but there are certain exceptions to this general rule.

2193. Mere expiry of limitation could have extinguished remedy but the principle embodied in Section 28 extinguishes the right also and thereby makes the said general principle inapplicable. Once the right of getting possession extinguished it cannot be revived by entering into possession again [See **Salamat Raj Vs. Nur Mohamed Khan (1934) ILR 9 Lucknow 475; Ram Murti Vs. Puran Singh AIR 1963 Punjab 393; Nanhekhan Vs. Sanpat AIR 1954 Hyd 45 (FB) and Bailochan Karan Vs. Bansat Kumari Naik 1999 (2) SCC 310**].

2194. In this matter the plaintiffs (Suit-4) have attempted to bring their case within the precinct of Article 142 and in the alternative Article 144 while the defendants intend to bulldoze the plaintiffs by stressing upon to apply Article 120. An attempt to out class the bar of limitation has also been made by pleading that the wrong is *de-die indium*, hence being a continuing wrong, no obstruction of limitation is there.

2195. Article 120 is completely a residuary provision and where limitation cannot be found in any other provision, only then it would be attracted. We can say safely that Article 120 L.A. 1908 would be attracted only when Articles 142 and 144 are inapplicable. We, therefore, at this stage defer to consider scope and extent of Article 120 so as to be discussed a bit later.

2196. Between the Articles 142 and 144 the later one is a

kind of residuary provision while Article 142 applies in a specific type of case [See **Sidram Lachmaya Vs. Mallaya Lingaya AIR (36) 1949 Bom. 137 (Para 9); Ranchordas Vandravandas Vs. Parvatibai 29 I.A. 71 (P.C.)**].

2197. A Full Bench of this Court in **Bindyachal Chand Vs. Ram Gharib, AIR 1934 All. 993 (FB)** held where Article 142 is applicable, Article 144 cannot be applied. First it has to be seen whether Article 142 applies in the case or not and when it clearly becomes inapplicable only then resort can be taken to Article 144.

2198. Article 142 applies where the plaintiff while in possession has been dispossessed or has discontinued his possession. Where a person has been dispossessed or discontinued of his possession of the property, he can bring an action seeking restoration of possession of the immoveable property within 12 years. It pre-supposes the possession of such person over the immoveable property before he is dispossessed or discontinued. Article 144, however, applies where any other provision specifically providing for restoration of immoveable property or interest therein is not available and there also though the period of limitation is 12 years but the limitation runs from the date when the possession of the defendants becomes adverse to the plaintiff and commonly it is said that this provision is in respect to the cases where the defendant's possession is said to be adverse. Though the distinction is quite evident but in the complex nature of the society and the disputes which arise, at times the courts find difficulty in maintaining distinction between the two and there appears to be some conflicting views also as to the scope of Article 142 L.A. 1908 and its applicability. What has been ultimately realised is that the

question would basically that of pleading.

2199. In reference to Articles 143 of Act 9 of 1871 the Privy Council in **Bibi Sahodra Vs. Rai Jang Bahadur, (1881) 8 Cl. 224:8 I.A. 210** said:

“refers to a suit for possession of immovable property, where the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession, and it allows twelve years from the date of the dispossession or discontinuance. But in order to bring the case under that head of the schedule, he must show that there has been a dispossession or discontinuance.”

2200. The view, therefore, was that Article 143 of Act 9 of 1871 which is corresponding to Article 142 of Act 15 of 1877 and L.A. 1908 would not be attracted where pleadings distinctly show that there was no dispossession or discontinuance of possession of the plaintiff.

2201. In **Karan Singh Vs. Bakar Ali Khan, (1882) 5 All 1** the question of application of Article 145 of Act 9 of 1871 (this corresponds to Article 144 of the statute with which we are concerned) arose. Sir Peacock observed that a suit can be brought within 12 years from the time when the possession of the defendant or of some persons through whom he claims, became adverse to the plaintiff.

2202. In both the type of cases what we find is that possession by itself is of much relevance and importance. The courts took the view that by reason of his possession a person may have an interest which can be sold or devised. One has to prove first his possession before making complaint of dispossession or discontinuance of possession. He need not prove the title or the capacity in which he had the possession for

the purpose of Article 142. However, after title is proved, the presumption of possession goes with it unless proved otherwise.

2203. Privy Council in **Sundar Vs. Parbati, (1889) 12 All 51** agreed with the view of this court that possession is a good title against all the world except the person who can show a better title. By reason of his possession such person has an interest which can be sold or devised.

2204. In **Mohima Chundar Mazoomdar (supra)** considering Article 142 of Act 15 of 1877, the Judicial Commissioner held that onus lies upon the plaintiffs to prove their possession prior to the time when they were dispossessed, and at sometime within twelve years before the commencement of the suit so as to save suit from limitation prescribed under Article 142.

2205. Articles 142 and 144 of Act XV of 1877 came up for consideration before the Judicial Commissioner in **Nawab Muhammad Amanulla Khan (supra)**. It held that Article 142 applies where the plaintiff while in possession of the immovable property earlier had been dispossessed or has discontinued the possession and in such a case to bring a suit for possession, limitation would be 12 years. However, Article 144 applies only as to adverse possession where there is no other Article which specifically provides for the same. In the aforesaid case there was a refusal on the part of the plaintiffs and their ancestors to make the engagement for payment of revenue. The Government made engagement with the villagers (defendants). It was held that this amounted to dispossession or discontinuance of possession of the plaintiff within the meaning of Article 142 of Act 15 of 1877 and this case would not be governed by residuary Article 144 as to adverse possession.

2206. Explaining inter relationship of the two Articles Punjab Chief Court in **Bazkhan Vs. Sultan Malik, 43 P.R. 1901** held that suit for possession of immovable property upon discontinuance of possession or dispossession is barred after 12 years under Article 142 of the Limitation Act although no adverse possession is proved. Articles 144 and 142 cannot both apply. Article 144 in terms is applicable only when no other Article is found applicable.

2207. Privy Council in **Dharani Kanta Lahiri Vs. Gabar Ali Khan, (1913) 18 I.C. 17** said:

“it lay upon the plaintiffs to prove not only a title as against the defendants to the possession, but to prove that the plaintiffs had been dispossessed or had discontinued to be in possession of the lands within the 12 years immediately preceding the commencement of the suit.”

2208. In the above case a suit was filed for ejectment of persons who were admittedly in possession of land from which they were sought to be evicted.

2209. In **Secretary of State Vs. Chelikani Rama Rao, (1916) 39 Mad. 617** Lord Shaw on page 631 of the report observed:

“nothing is better settled than that the onus of establishing title to property by reason of possession for a certain requisite period lies upon the person asserting such possession. It is too late in the day to suggest the contrary of this proposition. If it were not correct it would be open to the possessor for a year or a day to say, 'I am here; be your title to the property ever so good, you cannot turn me out until you have demonstrated that the possession of myself and my predecessors was not long enough to fulfil

all the legal conditions.'It would be contrary to all legal principles to permit the squatter to put the owner of the fundamental right to a negative proof upon the point of possession.” (emphasis added)

2210. In **Kanhaiya Lal Vs. Girwar, 1929 ALJ 1106** this Court said:

*“this article applies to suit in which the plaintiff claims possession of the property on the ground that while in possession he was dispossessed or his possession was discontinued by the defendant. In other words that article is restricted to cases in which the relief for possession sought by the plaintiff is based on what may be styled as **possessory title.**”*

“possession is in itself title and good against every body except the true owner. In short, there may be cases in which a person, though not the true owner, has been in peaceful possession of property and his possession is disturbed. In such cases the person dispossessed has a right to be restored back to possession on proving the fact of his possession and his dispossession or discontinuance of his possession by the defendant within a period of 12 years prior to the institution of the suit. To such cases Art. 142 applies.”

2211. It thus appears that the Court followed the principles that the correct article to apply in cases based upon the allegation of title and possession is Article 144 because if plaintiff's title is proved he is entitled to succeed unless the defendants prove that the title has been lost on account of adverse possession on the part of defendants. But the plaintiff though not able to substantiate his title, is in a position to prove

his possession and dispossession by defendants within 12 years, if that be the case, Article 142 will apply and the burden will lie on the plaintiff. This was in fact misunderstood in the sense that a suit of owner who also had actual possession, if dispossessed or discontinued possession was not treated to be covered by Article 142. This is evident in **Kallan Vs. Mohammad Nabikhan, 1933 ALJ 105**. Fortunately this mistake was soon realised and the view otherwise was overruled by a Full Bench in **Bindyachal Chand Vs. Ram Gharib (supra)** where it was held that Article 142 is not restricted to suits based on possessory title only as distinguished from suits in which plaintiff proved his proprietary title as well. This view of the Full Bench was followed by a Full Bench of Lahore High Court in **Behari Lal Vs. Narain Das, 1935 Lah. 475**.

2212. In **Shyam Sunder Prasad (supra)** in reference to Article 142 and 144 of L.A. 1908 the Apex Court said:

“Under the old Limitation Act, all suits for possession whether based on title or on the ground of previous possessions were governed by Article 142 wherein the plaintiff while in possession was dispossessed or discontinued in possession. Where the case was not one of dispossession of the plaintiff or discontinuance of possession by him, Article 142 did not apply. Suits based on title alone and not on possession or discontinuance of possession were governed by Article 144 unless they were specifically provided for by some other articles. Therefore, for application of Article 142, the suit is not only on the basis of title but also for possession.”

2213. Thus, the judicial consensus now binding on this Court is to the effect that Article 142 is one of the specific

provisions governing suits for possession of immoveable property and contemplates a suit for possession when the plaintiff, while in possession has been dispossessed or has discontinued possession [See also **Abbas Dhali Masabdi Karikar, (1914) 24 I.C. 216 (Cal.)**].

2214. Article 144 in the matter of an occasion for possession of immoveable property or an interest therein is a residuary Article hence the allegations made in the plaint if brings the suit within Article 142, there is no justification or occasion to take the matter out of that Article and then to apply Article 144. It is only when Article 142 is not applicable and no other article applies, based on the pleadings, then if attracted, Article 144 may be applied. Article 142 is neither subordinate nor subject to Article 144 but will have application on its own and independent. Article 144 thus is a kind of residuary article and will have application when no other article has application to the matter. In **Bindyachal Chand (supra)** Justice Mukharjee observed that if on the allegations made in the plaint suit falls within Article 142 there is no justification to take it out of Article 142 and attempt to bring Article 144 into picture.

2215. We may notice at this stage that the view taken by the Courts that Article 142 would apply to a suit by the owner of the property as well as a person suing on the basis of possessory titles and thereby seems to favour even a trespasser, as observed in **Bindyachal Chand (supra)** and some other Courts that its applicability to a suit is based on possessary title constitute one of the relevant aspect resulted in possibility of helping miscreants. This view, besides other, caused in a specific and clear provision in the new statute i.e. L.A. 1963 where words “or has discontinued the possession” were omitted in column 3

and the words “based on previous possession and not on title” were inserted in column 1 in Article 64 thereof.

2216. In **C. Natarajan Vs. Ashim Bai (supra)**, the Apex Court noticed the distinction between Article 142 and 144 of LA 1908 and Article 64 and 65 of LA 1963 in para 15 of the judgment as under:

“15. The law of limitation relating to the suit for possession has undergone a drastic change. In terms of Articles 142 and 144 of the Limitation Act, 1908, it was obligatory on the part of the plaintiff to aver and plead that he not only has title over the property but also has been in possession of the same for a period of more than 12 years. However, if the plaintiff has filed the suit claiming title over the suit property in terms of Articles 64 and 65 of the Limitation Act, 1963, burden would be on the defendant to prove that he has acquired title by adverse possession.”

What is Dispossession

2217. Article 142 contemplates earlier possession before dispossession or discontinuance thereof. This bring us to understand the term 'Possession'. It has a variety of meanings. It is a juristic concept distinct from title and can be independent of it. It is both physical and legal concept. The concept of possession implies “corpus possession” coupled with “animus possidendi”. Actual user without animus possidendi is not a possession in law. In fact, possession is a polymorphous term having different meanings in different context. It has different shades of meaning and very elastic in its connotation. We intend to discuss with the term “possession” in much detail while dealing with the issues “pertaining to possession/adverse possession” and hence do not intend to elaborate hereat. For the

purpose of the plea of limitation, we shall confine ourselves to the pleadings and the evidences available to find out its consequence on the case whether the suit in question is saved from limitation or not.

2218. The pivotal point to attract Article 142 and to run limitation is the date of "dispossession" or "discontinuation of possession". The period of limitation thus would commence, in a case governed by Article 142, from the date the plaintiff is "dispossessed" or "discontinued". The two terms *ex facie* do not and cannot have the same meaning.

2219. The dictionary meaning of the term "dispossession" is:

(A) In "**Mitra's Legal & Commercial Dictionary**" 5th Edition (1990) by A.N. Saha, published by Eastern Law House Prv. Ltd., at pages 232-233:

"Dispossession. The term 'dispossession' applies when a person comes in and drives out others from possession. It imports ouster; a driving out of possession against the will of the person in actual possession. This driving out cannot be said to have occurred when according to the case of the plaintiff the transfer of possession was voluntary, that is to say, not against the will of the person in possession but in accordance with his wishes and active consent. The term 'discontinuance' implies a voluntary act and abandonment of possession followed by the actual possession of another. Qadir Bux v. Ramchand AIR 1970 All 289.

Unless the possession of a person prior to his alleged dispossession is proved, he cannot be said to have been dispossessed. Rudra Pratap v Jagdish AIR 1956 Pat 116."

(B) In "**Black's Law Dictionary**" Seventh Edition (1999),

published by West, St. Paul, Minn., 1999, at page 485:

“dispossession Deprivation of, or eviction from, possession of property; ouster.”

(C) In **“The Judicial Dictionary of Words and Phrases Judicially Interpreted, to which has been added Statutory Definitions”** by F. Stroud Second Edition Vol. 1 (1903), at page 485:

“DISPOSSESSION.-”Dispossession, or Discontinuance of Possession,” s.3, Real Property Limitation Act, 1833, means the ABANDONMENT of possession by one entitled to it (Rimington v. Cannon, 22 L.J. C.P. 153; 12 C. B. 18), followed by actual possession by another (Smith v. Lloyd, 23 L.J. Ex. 194; 9 Ex. 562; McDonnell v. McKinty, 10 Ir.L.R. 514); ignorance on the part of the rightful owner that such adverse possession has been taken making no difference (Rains v. Buxton, 49 L.J. Ch. 473; 14 Ch. D. 537; 28 W. R. 954).

Acts of user which do not interfere, and are consistent, with the purpose to which the owner intends to devote the land, do not amount to Discontinuance of Possession by him (Leigh v. Jack, 5 Ex. D.264; 49 L. J. Ex. 220); Dispossession “involves an animus possidendi with the intention of excluding the owner as well as other people” (per Lindley, M.R., Littledale vs. Liverpool College, 69 L.J. Ch. 89, cited DISCONTINUANCE).

SMALL ACTS by the rightful owner will disprove “Dispossession or Discontinuance,”- e.g. small repairs (Leigh v. Jack, sup), or, as regards a boundary wall, an inscription claiming it (Phillipson vs. Gibbon, 40 L.J. Ch. 406; 6 Ch. 428).

Vh, Watson, Eq. 574, 575; and for a full examination of the cases on "Dispossession" and "Discontinuance," V. 35 S. J. 715, 742, 750."

(D) In "**Corpus Juris Secundum**" A Complete Restatement of the Entire American Law as developed by All Reported Cases (1959), Vol. 27, published by Brooklyn, N.Y. The American Law Book Co., at pages 600-601:

"DISPOSSESSION. The act of putting out of possession, the ejectment or exclusion of a person from the realty, if not to his injury, then certainly against his interest and without his consent, ouster.

The term has been held not to imply necessarily a wrongful act; and, although it has been defined as a wrong that carries with it the amotion of possession, an act whereby the wrongdoer gets the actual possession of the land or hereditament, including abatement, intrusion, disseisin, discontinuance, deforcement, it has been said that it may be by right or by wrong, that it is necessary to look at the intention in order to determine the character of the act, and that, in this respect, the word is to be distinguished from "disseisin."

(E) In "**Words and Phrases**" Legally Defined, Vol. 2 (1969), published by Butterworth & Co. (Publishers) Ltd., at pages 89-90:

"DISPOSSESSION [A partnership was dissolved, and the continuing partner, Hudson, agreed, in consideration of an assignment to him of the partnership property, to pay an annuity to the retiring partner. In order to carry into effect this agreement an indenture was entered into and executed between the parties; and Hudson bound himself to trustees,

in the sum of £ 2,000, by a bond of even date conditioned to be void on payment of the annuity “or in case he should at any time after the expiration of the then existing lease, be dispossessed of and be compelled and obliged to leave and quit the premises without any collusion, contrivance, consent, act, or default” on his part.] “It seems that the species of dispossession in contemplation was a compulsory eviction; and they meant to provide that, if Hudson should be evicted, not through any fault of his own, he should no longer be burthened with payment of the annuity The expulsion intended to be provided for, was such an expulsion as would leave Hudson no benefit from the premises.” Heyland v. De Mendez (1817), 3 Mer. 184, per Grant, M.R., at p. 189.”

(F) In **P Ramanatha Aiyar's “The Law Lexicon” with Legal Maxims**, Latin Terms and Words & Phrases, Second Edition (1997), published by Wadhwa and Company Law Publishers, at page 573:

*“Dispossession. Where the heirs of the deceased could not realise rent owing to successful intervention of another person, it must be taken that they were dispossessed. “Dispossession” implies ouster, and the essence of ouster lies in that **the person ousting is in actual possession.***

Dispossession implies some active element in the mind of a person in ousting or dislodging or depriving a person against his will or counsel and there must be some sort of action on his part.

The word “dispossession” in the third column of the article is dispossession by the landlord or by an authorised agent of the landlord acting within the scope of his

authority.

Dispossession obviously presupposes previous possession of the person dispossessed. If a person was never in possession, he will be said to be out of possession, but he cannot be said to have ever been dispossessed.”

2220. Similarly the meaning of term “discontinuance” in various dictionaries is as under:

(A) In “**The New Lexicon Webster's Dictionary of the English Language**” (1987), published by Lexicon Publications, Inc. at page 270:

“Dis-con-tin-u-ance-a discontinuing (law) the discontinuing of an action because the plaintiff has not observed the formalities needed to keep it pending”

(B) In “**Mitra's Legal & Commercial Dictionary**” 5th Edition (1990) by A.N. Saha, published by Eastern Law House Prv. Ltd., at pages 229:

“Discontinuance of Possession. Discontinuance of possession connotes abandonment of possession by the owner followed by the taking of possession by another. Hashim v. Hamidi AIR 1942 Cal 180: 46 CWN 561.

Discontinuance implies a voluntary act and abandonment of possession followed by the actual possession of another. Quadir Bux v. Ramchand AIR 1970 All 289.”

(C) In “**Black's Law Dictionary**” Seventh Edition (1999), published by West, St. Paul, Minn., 1999, at page 477:

“discontinuance 1. The termination of a lawsuit by the plaintiff; a voluntary dismissal or nonsuit. See Dismissal; Nonsuit. 2. the termination of an estate-tail by a tenant in

tail who conveys a larger estate in the land than is legally allowed.”

(D) In “**The Judicial Dictionary of Words and Phrases Judicially Interpreted, to which has been added Statutory Definitions**” by F. Stroud Second Edition Vol. 1 (1903), at page 540-541:

“**DISCONTINUANCE.**- “ ‘Discontinuance’ is an ancient word in the law” (*Litt. s. 592*). “A discontinuance of estates in lands or tenements is properly (in legal understanding) an alienation made or suffered by tenant in taile, or by any that is seized in auter droit, whereby the issue in taile, or the heire or successor, or those in reversion or remainder, are driven to their action, and cannot enter” (*Co. Litt. 325 a*). *Vf, Termes de la Ley: 3 Bl. Com. 171.*

“Discontinuance of POSSESSION,” *s. 3, 3 & 4 W. 4, c. 27; V. Leigh v. Jack, 5 Ex. D. 264; 49 L. J. Ex. 220; Littledale v. Liverpool College, 1900, 1 Ch. 19; 69 L. J. Ch. 87; 81 L.T. 564; 48 W.R. 177.*”

(E) In “**Corpus Juris Secundum**” A Complete Restatement of the Entire American Law as developed by All Reported Cases (1956), Vol. 26A, published by Brooklyn, N.Y. The American Law Book Co., at pages 971-972:

“**DISCONTINUANCE.** The word “discontinuance” is defined generally as meaning the **act of discontinuing; cessation; intermission; interruption of continuance.**

As defined in Dismissal and Nonsuit; 2, the word “discontinuance” means an interruption in the proceedings of a case caused by the failure of the plaintiff to continue the suit regularly as he should, and it is either

voluntary or involuntary, and is similar to a dismissal, nonsuit, or nolle prosequi, but differs from a retraxit.

In a particular connection, it has been held that the term connotes a voluntary, affirmative, completed act, and that it cannot mean a temporary nonoccupancy of a building or a temporary cessation of a business.

The term may be employed as synonymous with “abandonment.”

(F). In **“Words and Phrases”** Permanent Edition, Vol. 12A (1954), published by St. Paul, Minn. West Publishing Co., at pages 276-277:

“DISCONTINUANCE-A “discontinuance” of case is a gap or chasm in proceeding after suit is pending.

The term “discontinuance” means voluntary withdrawal of a suit by a plaintiff.

There exists no essential difference between a “discontinuance” and a “voluntary nonsuit.”

A criminal suit may be discontinued, “discontinuance” being a gap or chasm in prosecution after suit is pending.

The word “discontinuance” is synonymous with “abandonment,” and connotes a voluntary, affirmative, completed act.

The word “discontinuance” as it is used in the ordinance is synonymous with “abandonment”. It connotes a voluntary, affirmative, completed act.

Word “discontinuance” as employed in deed of land from city to county providing in effect that property was deeded to county to be used for park purposes and that city reserved all right of reversion in event of discontinuance of

property for park purposes was equivalent to abandonment.

Narrowing of street held not “discontinuance” within statute requiring written petition as basis for action by village board.

“Discontinuance,” generally speaking, is failure to continue case regularly from day to day and from term to term from commencement of suit until final judgement.

The word “discontinue” as used in ordinance, providing that, if nonconforming use of premises was discontinued future use should be in conformity with ordinance, means something more than mere suspension, and did not mean temporary nonoccupancy of building or temporary cessation of business, but word “discontinuance” as used was synonymous with abandonment, and connoted voluntary affirmative completed act. Zoning ordinance did not destroy owner's right to continue nonconforming use of premises merely because tenant became insolvent.”

(G) In **P Ramanatha Aiyar's “The Law Lexicon” with Legal Maxims**, Latin Terms and Words & Phrases, Second Edition (1997), published by Wadhwa and Company Law Publishers, at page 562:

“Discontinuance. Default; a discontinuance in practice is the interruption in proceedings occasioned by the failure of plaintiff to continue the suit from time to time as he ought, or failure to follow up his case: A break or chasm in a suit arising from the failures of the plaintiff to carry the proceedings forward in due course of law.

Discontinuance is either voluntary, as where plaintiff

withdraws his suit or involuntary, as where in consequence of some technical omission, misleading, or the like, the suit is regarded as out of courts, A discontinuance means no more than a declaration of plaintiff's willingness to stop the pending action; it is neither an adjudication of his cause by the proper tribunal nor an acknowledgement by him that his claim is not well founded."

(H) In "**Jowitt's Dictionary of English Law**" Vol. 1 Second Edition-1977, Second Impression-1990, published by London Sweet & Maxwell Limited, at pages 621-622:

"Discontinuance, an interruption or breaking off. This happened when he who had an estate tail granted a larger estate of the land than by law he was entitled to do; in which case the estate was good so far as his power extended to make it, but no further (Finch L. 190; 1 Co. Rep. 44).

Formerly, in the law of real property, discontinuance was where a man wrongfully alienated certain lands or tenements and dies, whereby the person entitled to them was deprived of his right of entry and was compelled to bring an action to recover them,. The term was specially applied to alienations by husbands seised jure uxoris, by exxlesiastics seised jure ecclesiae, and by tenants in tail: thus, if a tenant in tail alienated the land and died leaving issue, the issue could not enter on the land but was compelled to bring an action (Litt. 470, 592, 614; Co. Litt. 325A; Termes de la Ley; 3 Bl. Comm. 171).

The principal action appropriate to discontinuance were formedon, cui in vita, and cui ante divortium. The effect of discontinuance was taken away by the Real

Property Limitation Act, 1833, s. 39. See Miscontinuance; Recontinuance; Withdrawal.

In the procedure of the High Court discontinuance is where the plaintiff in an action voluntarily puts an end to it, either by giving notice in writing to the defendant not later than fourteen days after service of the defence (R.S.C. Ord. 21, r. 2(1)) or later with leave of the court (r.3). The effect of discontinuance is that the plaintiff has to pay the defendant's costs (R.S.C. Ord. 62, r. 10(1)) and any subsequent action may be stayed until these costs are paid (R.S.C. Ord. 21, r. 5). A defendant may withdraw his defence at any time and may discontinue a counterclaim by notice not later than fourteen days after service of a defence to the counterclaim (r. 2(2)). A counterclaim may be discontinued later by leave of the court (r.3). He must pay the costs of the plaintiff (R.S.C. Ord. 62, r. 5). If all the parties consent the action may be withdrawn without leave of the court (r.2(4)).

2221. The term “dispossession” and “discontinuance of possession” in Article 142, Act IX of 1908 came to be considered before the Calcutta High Court in **Brojendra Kishore Roy Chowdhury (supra)** and the Court held:

“Dispossession implies the coming in of a person and the driving out of another from possession. Discontinuance implies the going out of the person in possession and his being followed into possession by another.”

2222. In **Basant Kumar Roy (supra)**, the Court explained the term 'dispossession' in Article 142 of Limitation act of 1877:

“The Limitation Act, of 1877, does not define the term “dispossession”, but its meaning is well settled. A man may

cease to use his land because he cannot use it, since it is under water. He does not thereby discontinue his possession : constructively it continues until he is dispossessed; and, upon the cessation of the dispossession before the lapse of the statutory period, constructively it revives. "There can be no discontinuance by absence of use and enjoyment, when the land, is not capable of use and enjoyment", It seems to follow that there can be no continuance of adverse possession, when the land is not capable of use and enjoyment, so long as such adverse possession must rest on de facto use and occupation."

2223. The distinction between "dispossession" and "discontinuance" has been noticed in **Gangu Bai Vs. Soni 1942 Nagpur Law Journal 99** observing that "dispossession" is not voluntary, "discontinuance" is. In dispossession, there is an element of force and adverseness while in the case of discontinuance, the person occupying may be an innocent person. For discontinuance of possession, the person in possession goes out and followed into possession by other person.

2224. In **Agency Company Vs. Short, 1888 (13) AC 793** the Privy Council observed that there is discontinuance of adverse possession when possession has been abandoned. The reason for the said observation finds mention on page 798 that there is no one against whom rightful owner can bring his action. The adverse possession cannot commence without actual possession and this would furnish cause of action.

2225. Dispossession is a question of fact. The term refers to averments in the plaint exclusively and cannot be construed as referring to averments in the plaint in the first instance and at

a later stage to the finding on the evidence. The indicias of discontinuance are also similar to some extent. It implies going out of the person in possession and is being followed into possession by another. In **Abdul Latif Vs. Nawab Khwaja Habibullah 1969 Calcutta Law Journal 28**, the Court observed that discontinuance connotes three elements i.e. actual withdrawal, with an intention to abandon, and another stepping in after the withdrawal. Same is the view taken by this Court and Kerala High Court in **Qadir Bux Vs. Ram Chandra AIR 1970 All. 289 (FB)** and **Pappy Amma Vs. Prabhakaran Nair AIR 1972 Kerala 1 (FB)**.

2226. In order to wriggle out of the limitation prescribed under Article 142 of the Limitation Act, it has to be shown by the plaintiff that he was in possession of the disputed land, within 12 years of the suit and has been dispossessed, as observed by the Apex Court in **Sukhdev Singh Vs. Maharaja Bahadur of Gidhaur (supra)**.

2227. In **Wahid Ali & another Vs. Mahboob Ali Khan AIR 1935 Oudh 425**, referring to Article 142 of Limitation Act, 1908 the Court held where the plaintiff or the Muslim community whom they represent were dispossessed from the land in question belonging to the graveyard by the erection of a house thereon and the suit is filed after 12 years therefrom, it would be barred by Article 142 of the Limitation Act.

2228. In **R.H.Bhutani Vs. Miss Mani J. Desai AIR 1968 SC 1444**, the Court said that dispossession means to be out of possession, removed from the premises, ousted, ejected or excluded. It applies when a person comes in and drives out others in possession.

2229. In **Shivagonda Subraigonda Patil Vs. Rudragonda**

Bhimagonda Patil 1969 (3) SCC 211, the Court held that dispossession for the purpose of this Article must be by the defendant and that must be the basis of the suit. If there is no dispossession by the defendant, this Article would have no application. The dispossession, therefore, implies taking possession without consent of the person in possession and is a wrong to the person in possession. It must result in termination of possession of the person in possession earlier.

2230. Application of Article 142 and 144 of L.A. 1908 was considered in **Jamal Uddin and (supra)** and in para 29 the Court said:

“29. The next point that was urged by the counsel for the appellants was that the courts below committed a legal error in applying Art. 144 of the Limitation Act, 1908, to the suit and placing the burden on the defendants to prove their adverse possession for more than twelve years, while the suit on the allegations contained in the plaint clearly fell within the ambit of Art. 142 and the burden was on the plaintiffs to prove their possession within twelve years. This contention also is quite correct. It was clearly alleged by the plaintiffs that they had been dispossessed by the contesting defendants before the filing of the suit. As such, the suit would be governed by Article 142 and the residuary Article 144 will have no application. The courts below have unnecessarily imported into their discussion the requirements of adverse possession and wrongly placed the burden on the defendant to prove those requirements. Now the trial Court has approached the evidence produced by the parties would be evident from the following observation contained in its judgment.

“The onus of proving adverse possession over the disputed land lies heavily upon the defendants and their possession has to be proved beyond doubt to be notorious, exclusive, openly hostile and to the knowledge of the true owner as laid down in AIR 1938 Mad 454.”

After a consideration of the documentary and oral evidence produced by the defendants to prove their possession the trial Court has opined that the document on record do not prove the title and possession of the defendants to the hilt in respect of the disputed land. So far as the plaintiffs' evidence is concerned it was disposed of by the trial Court with the following observations:

“No doubt, the oral evidence of the plaintiffs about the use of the land for saying the prayers of 'Janaze Ki namaz' and about the letting out of the land in suit for purposes of 'D or Sootana' is equally shaky and inconsistent. But as already pointed out above the plaintiffs have succeeded in proving their title over the disputed land and as such possession would go with the ownership of the land. The defendants cannot be allowed to take advantage of the plaintiffs' faulty evidence and it was for them to prove beyond any shadow of doubt that they were actually in possession over the disputed land as owners and that they exercised this right openly hostile to the plaintiffs with the latter's knowledge. Judged in this context, the evidence of the defendant falls short of this requirement.”

2231. The learned counsel for the Pro-Mosque parties as well as Nirmohi Akhara sought to argue that since the property in dispute was attached by the Magistrate under Section 145 Cr.P.C. and this attachment continued, the question of

dispossession by an individual private party as such may not arise or is of no consequence. The Magistrate was not handing over possession to the rightful owner, it gave a (fresh) cause of action, which was continuing and hence Articles 142 or 144 or even 120 need not be gone into in these cases.

2232. This requires us to have a bird eye view not only of Section 145 Cr.P.C., its connotation, implication, scope and consequences in the matter. What is evident from record is that the property in dispute, as specified in Suit-4, was not in its entirety placed under attachment.

2233. The case of the plaintiffs (Suit-4) is that in the night of 22nd/23rd December, 1949 some Hindu people surreptitiously placed the idols inside the disputed building under the central dome and thereby interfered and obstructed the right of worship of the Muslim parties. It is admitted by almost all the witnesses of the plaintiffs (Suit-4) that on and after 23rd December 1949, no Muslim has entered the disputed premises and no Namaz has been offered therein. In fact, this is what has been the case set out by the plaintiffs, as is evident from para 11 of the plaint, which reads as under:

"That the Muslims have been in peaceful possession of the aforesaid mosque and used to recite prayer in it, till 23.12.2949."

2234. The possession of the parties of the inner courtyard thereafter was disturbed inasmuch on 29th December, 1949, the City Magistrate passed an order under section 145 Cr.P.C. attaching the property due to apprehension of breach of peace and appointed Receiver giving in his possession a part of the disputed property, i.e., the inner courtyard which, in fact, was taken in charge by Receiver, Priya Dutt, on 5th January, 1950.

2235. Nirmohi Akhara has claimed that the possession of the outer courtyard remained with them, as it was earlier, till 1982, when in some other suit between the people of Nirmohi Akhara, the same was also attached and placed in the hands of a Receiver. It has also been said that infact the same Receiver was given charge, who was already having the charge of the premises in the inner courtyard. These facts we find have not been disputed by any of the parties and in fact there is nothing on record to contradict it.

2236. It would thus be appropriate first to consider Section 145 Cr.P.C., 1898 as it stood in 1949-50 when the proceedings were initiated thereunder.

2237. Section 145 Cr.P.C., 1898, as it stood then, i.e., prior to its amendment by Amendment Act, 1955, was as under:

"145. (1) Whenever a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section the expression "land or water" includes building, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) *A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.*

(4) *The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject:*

Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:

Provided also, that if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) *Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.*

(6) *If the Magistrate decides that one of the parties*

was or should under the second proviso to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction and when he proceeds under the second proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed

under section 107."

2238. The nature of the proceedings under Section 145 Cr.P.C. are not judicial. The Magistrate is not supposed to deal with the matter as if it is a Civil Suit. A party to a proceeding under Section 145 is not in a position of a plaintiff in a Civil Suit who has set the Court in motion and has a right to require a decision upon the questions raised by him.

2239. Privy Council in **Dinomoni Chowdhvani & Brojo Mohini Chowdhvani 29 IA 24 (PC)** observed that the proceedings under Section 145 do not constitute a trial and are not in the nature of a trial. They are in the nature police proceedings in order to prevent the commission of offence. The nature of the proceedings under Section 145 Cr.P.C. has been described in different terms like quasi-civil (**Bande Ali Vs. Rejaullah 25 Cr.L.J. 303**), quasi-executive (**Madho Kunbi Vs. Tilak Singh AIR 1934 Nagpur 194**), quasi-judicial (**Muhammad Araf Vs. Satramdas Sakhimal & others AIR 1936 Sind 143**), quasi-criminal (**K.S. Prahladsinhji Vs. Chunilal B. Desai AIR 1950 Saurashtra 7**).

2240. The object of section is merely to prevent breach of peace by maintaining one or the other of the parties in possession and where it is not possible to place any of the parties in possession, to appoint Receiver and to take the property in the custody of the Court, i.e., *custodia legis*. These proceedings are not to protect or maintain any body in possession (**Musammatt Phutania Vs. Emperor 25 Cr.L.J. 1109**).

2241. In **Doulat Koer Vs. Rameshwari Koeri alias Dulin Saheba (1899) ILR 26 Cal. 635**, the Court said that this Section is to enable a Magistrate to intervene and pass a temporary order

in respect to the possession of the property in dispute having effect until the actual right of one of the parties is determined by any competent Court in more lengthy proceedings. In order to attract proceedings under Section 145, Lahore High Court in **Agha Turab Ali Khan Vs. Shromani Gurdwara Parbandhak Committee AIR 1933 Lahore 145** has said that the power or competency of the Magistrate to interfere depends on the very fact that the possession of the land is in dispute. The dispute means actual disagreement, struggle, scramble or quarrel for possession of the land existent between the disputants at the time of proceedings with reference to the merits of their respective claim to possess the land. It is nobody's case that such proceedings were not initiated or that the same were initiated wrongly or that the procedure prescribed thereof under the statute was not followed.

2242. The order dated 29.12.1949 is a preliminary order referable to Section 145 Sub-section (1) read with Sub-section (4) second proviso. It is an admitted position by all the parties that the Receiver appointed by Magistrate took the possession of the property and such possession continued till it was replaced by the statutory Receiver under the Act of 1993. It is pointed out that when a Receiver is appointed by the Court, his possession is the possession of the Court. He is Officer through whom the Court exercises its power of management. Such an officer cannot be correctly described as party interested in the dispute likely to cause a breach of peace. No final order in the case in hand could be passed by the Magistrate. It appears that on 16.1.1950 an injunction order was passed by the Civil Judge in Suit-1. The aforesaid order was modified on 19.1.1950 and the modified order was confirmed by the Civil Judge as well as this

Court on 26.04.1955.

2243. Despite filing of the civil suit and injunction order passed therein, the City Magistrate could not drop the proceedings and passed an order for deferring the said proceedings. Sri Jilani & Siddiqui, learned counsels for the plaintiffs have castigated the said approach of the Magistrate stating that he ought to have passed final order in one or the other manner or should have dropped the proceedings but by keeping the matter pending, parties were left in lurch, and therefore, for such a situation created by City Magistrate, the plaintiffs' suit cannot be held barred by limitation and it should be deemed that every order passed by the City Magistrate resulted in a fresh cause of action for filing civil suit by the plaintiffs.

2244. We however, find it difficult to agree. From perusal of injunction order passed by the Civil Court, we find that on 16th January, 1950 a simple order, in terms of the prayer made in the interim injunction application, was passed directing the parties to maintain status quo. Thereafter on 19th January, 1950, the order was modified but the Civil Court did not appoint a Receiver of its own and also did not direct the City Magistrate to get the possession transferred to any other person or another Receiver of the Court instead of the Receiver appointed by the Magistrate. On the contrary, in Suit-1, the City Magistrate was also impleaded as one of the defendant and the Civil Court passed an order directing the defendants to maintain status quo. It also clarified that the Sewa, Puja as was going on, shall continue. Quite visible, the Magistrate could not have ignored this order by dropping the proceedings as that would have resulted in discharge of Receiver and release of the property

attached and placed in his charge. In other words, it could have construed by the Civil Judge as an order disobeying the order of statue quo. Had the Civil Judge passed an order appointing a Court's Receiver and directing the Magistrate to hand over possession of the property to him, the position might have been different. In these circumstances, if the Magistrate did not drop the proceedings but deferred it, we find no fault on his part. Moreover, when the earlier order of the Magistrate, attaching the property and placing it in the charge of Receiver, could not have resulted in giving a cause of action to the plaintiffs to file suit, we fail to understand as to how the subsequent order, which merely deferred the pending proceedings, would lend any help. The order of attachment passed by the Magistrate itself does not give a cause of action and on the contrary it only makes the things known to the party that there appears to be some dispute about the title and/or possession of the property concerned and also there is apprehension of disturbance of public peace and order. The cause of action virtually is known to the party that there exists some dispute and not the order of the Magistrate whereby he attached the property in question and placed it in the charge of the Receiver.

2245. We find that in the context of Section 145 Cr.P.C., 1973, a three-Judge Bench of the Apex Court in **Amresh Tiwari Vs. Lalta Prasad Dubey & another 2000 (4) SCC 440** following an earlier decision in **Ram Sumer Puri Mahant Vs. State of U.P. and others 1985 (1) SCC 427** said:

"12. The question then is whether there is any infirmity in the order of the S.D.M. discontinuing the proceedings under Section 145 Criminal Procedure Code. The law on this subject-matter has been settled by the

decision of this Court in the case of Ram Sumer Puri Mahant v. State of U.P., reported in, (1985) 1 SCC 427 : (AIR 1985 SC 472 : 1985 Cri LJ 752). In this case it has been held as follows:

"When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal Court in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the civil Court, the Criminal Court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the Civil Court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue."

13. We are unable to accept the submission that the principles laid down in Ram Sumers case (AIR 1985 SC 472 : 1985 Cri LJ 752) would only apply if the civil Court has already adjudicated on the dispute regarding the property and given a finding. In our view Ram

Sumers case is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over meaningless litigation. On this principle it has been held that when possession is being examined by the civil Court and parties are in a position to approach the civil Court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 proceedings should not continue.

14. Reliance has been placed on the case of *Jhummamal alias Devandas v. State of Madhya Pradesh* reported in, (1988) 4 SCC 452 : (AIR 1988 SC 1973 : 1989 Cri LJ 82). It is submitted that this authority lays down that merely because a civil suit is pending does not mean that proceedings under Section 145, Criminal Procedure Code should be set at naught. In our view this authority does not lay down any such broad proposition. In this case the proceedings under Section 145, Criminal Procedure Code had resulted in a concluded order. Thereafter the party, who had lost, filed civil proceedings. After filing the civil proceedings he prayed that the final order passed in the Section 145 proceedings be quashed. It is in that context that this Court held that merely because a civil suit had been filed did not mean that the concluded order under Section 145 Criminal Procedure Code should be quashed. **This is entirely a different situation.** In this case the civil suit had been filed first. **An Order of status quo had already been passed by the competent civil Court.** Thereafter Section 145 proceedings were commenced. No final order had been passed in the proceedings under

Section 145. In our view on the facts of the present case the ratio laid down in Ram Sumers case (AIR 1985 SC 472 : 1985 Cri LJ 752) (supra) fully applies. We clarify that we are not stating that in every case where a civil suit is filed. Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil Court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil Court would be binding on the Magistrate."

2246. In **Sadhuram Bansal Vs. Pulin Behari Sarkar and others 1984 (3) SCC 410**, a three-Judge Bench of the Apex Court observed in para 62, that the pendency of the proceeding under Section 145 Cr.P.C. and order, if any, passed thereon does not in any way affect the title of the parties to the disputed premises though it reflects the factum of possession. It followed an earlier decision in **Bhinka and others Vs. Charan Singh (supra)**.

2247. The provision as existed in Cr.P.C. in 1989 before its amendment in 1955 though went under some change in 1955, but it appears that under the new Cr.P.C., 1973 Section 145 is virtually same as was before 1955 amendment. This has been noticed by the Apex Court in **Mathura Lal Vs. Bhanwar Lal and another 1979 (4) SCC 665** as under:

"The provisions of Sections 145 and 146 of the 1973 Code are substantially the same as the corresponding

provisions before the 1955 amendment. The only noticeable change is that the second proviso to Section 145 (4) (as it stood before the 1955 amendment) has now been transposed to Section 146 but without the words "pending his decision under this Section" and with the words "at any time after making the order under Section 145(1)" super-added. The change, clearly, is in the interests of convenient draftsmanship. ..."

2248. The above discussion, in our view, would show that the proceedings under Section 145 Cr.P.C. and the orders passed therein would not help the plaintiffs in the matter of limitation particularly when it is virtually admitted in the plaint that they discontinued with possession at least from 23rd December, 1949. It is their own version and this disturbance is on account of a title dispute of the property in question. Moreover, all the plaintiffs do not claim themselves to be the owner of the property in question or the legal custodian thereof. None of the plaintiffs is claimed to be Mutwalli of the alleged waqf. It is only a Mutwalli of a waqf who can claim possession of the property in question according to Islamic Law. However, no such person is before us seeking the relief of possession or to seek a declaration in his capacity as Mutwalli. Plaintiffs No.1 Sunni Central Waqf Board is a supervisory controlling body of the Sunni Waqfs in the State of U.P. but on its own has no power to claim possession or custody of any waqf. At least no such provision has been shown. The other individual plaintiffs claimed themselves to be the worshippers i.e. the beneficiaries of the alleged waqf. If there is any obstruction in the right of worship of an individual, he can come to the Court for protection of such right of worship but cannot claim possession

of such property since he is neither owner nor legal custodian of the property. Similarly, right of worshiper is confined for the period the subject matter is in existence and vanishes as soon as the right of the owner or that of legal custodian goes or the subject matter disappears, as observed in the case of **Masjid Shahid Ganj (Supra)**.

2249. Had it been a suit for a mere injunction for protection of right of worship, something might have been said, but no such relief has been sought by the plaintiffs in the case in hand and we cannot read a prayer which is neither incidental nor otherwise connected but totally different to the real prayer made in the suit. The effect of the property being attached by the Magistrate shall neither result in extension of limitation for the plaintiffs nor in exclusion of certain period for the purpose of limitation to some extent or to the extent of the period the property remained under attachment or in any other manner.

2250. We may consider whether the effect of the property being attached by the Magistrate will give any benefit to the plaintiffs either for extension of limitation or for excluding some period for the purpose of limitation to some extent or to the extent the property remained under attachment or in any other manner can help.

2251. Where one person claims to be in possession to the exclusion of others and alleges that some other person seeks unlawfully or by force to interfere with his possession and if it is likely to lead to a breach of peace, it will be justifiable and necessary for a Magistrate to take action under Section 145(1) Cr.P.C., (in the present case Cr.P.C. of 1898). Such an order passed is only a police order and in no sense is a final one. The possession contemplated under Section 145 is actual physical

possession on the subject matter. The possession, so taken over by Receiver, appointed by a criminal Court after attachment, merely passes the property into custodia legis and is not dispossession within the meaning of Article 142 of L.A. 1908, as observed in **Pappy Amma (supra)**. The legal possession of the land attached, for the purpose of limitation, will be constructively with the person who was entitled to the property on the date of attachment. Magistrate cannot be regarded as having dispossessed either party and he cannot legally be made a party to the suit of either of the claimants.

2252. It is submitted that since no final order has been passed by the Magistrate so far, there is no question of limitation applying in this case and, therefore, it cannot be pleaded that the suit is barred by limitation under any of the provisions of L.A. 1908. Article 142 and 144 would not apply. Let us examine the legal position when the property is attached.

2253. The possession of the part of the property (the inner courtyard of the disputed premises) was placed with a Receiver by an order of City Magistrate passed under section 145 Cr.P.C.. At the time when the suit was filed the possession was not with any adversary but in the hands of a statutory authority who has been held to possess the property on behalf of real owner.

2254. In **Everest Coal Company Pvt. Ltd. Vs. State of Bihar and others, 1978 (1) SCC 12** though in a different context, expressing its opinion on the status/capacity of receiver appointed by the Court, the Apex Court said, “*when a court puts receiver in possession of a property, the property comes under court's custody, the receiver being merely an officer/agent of the Court.*” It further says that “*receiver represents neither party being an officer of the Court.*”

2255. In **Rajah of Venkatagiri Vs. Isakapalli Subbiah & others (supra)**, the Madras High Court held, if a suit is filed for declaration of title to immovable property, Article 142 of the Second Schedule to Act XV of 1877 would not be attracted. But where a suit for possession is filed by a person who was earlier in possession and was dispossessed or discontinued of possession, it would be governed by Article 142. However, it was further clarified where the property has been attached by a Magistrate under Section 145, Article 142 will not be attracted since the Magistrate cannot be regarded as having dispossessed either parties or that has discontinued possession thereof. The Nature of attachment by Magistrate vis-a-vis possession of the property is explained as under :

“Under section 146, Criminal Procedure Code, the Magistrate is bound to continue the attachment and have statutory possession of the lands for purposes of continuing the attachment until a competent Civil Court determines the rights of the parties to the dispute before him or the person entitled to the possession of the lands and he cannot deliver the property to any of the parties or other person without an adjudication by a Civil Court. During the continuance of the attachment, the legal possession for purposes of limitation will constructively be in the person who had the title at the date of the attachment and such title cannot be extinguished by the operation of section 28 of the Limitation Act, however, long such attachment may continue.”

2256. The Court also held that to commence limitation or whether a cause of action is a continuing one, the criteria would be “whether the wrong is a continuing one” and not “whether

the right is a continuing one". It reiterated the view that attachment of property does not amount to either dispossession