

Reserved

**In the High Court of Judicature at Allahabad,
Lucknow Bench, Lucknow
O.O.S.3 of 1989**

1. Nirmohi Akhara situate in Mohalla Ramghat City, Ayodhya through Mahant Jagan Nath Das, aged about 54 years Chela of Mahant and Sarbarahkar, Resident of Nirmohi Akhara, Mohalla Ramghat, Ayodhya District Faizabad—Substituted vide order dated 23.07.66.
2. Vaishnab Das R/o Nirmohi Bazar, Ramghat Haveli, Oudh City, Ayodhya, District-Faizabad—**Amended vide court's order dated 8.7.67 and Amended vide court's order dated 1.9.95**
..... Plaintiffs

Versus

1. Shri Jamuna Prasad Singh, Receiver, R/o Deo Kali Road, City Faizabad—**Amended vide the order dated 23.10.89 44(0) by this Hon'ble Court dated 28.10.89**
2. State of Uttar Pradesh.
3. Deputy Commissioner, Faizabad.
4. City Magistrate, Faizabad.
5. Superintendent of Police, Faizabad.
- 6/1. Haji Mehboob (Adult), R/o Mohalla Terhi Bazar, City Ayodhya Teh. and Distt. Faizabad.
6. Haji Phekku aged 70 years son of unknown, R/o Mohalla Terhi Bazar (died), Ayodhya, District Faizabad.
- 6/2. Haji Abdul Ahed, R/o Mohalla Terhi Bazar, City Ayodhya Teh. and Distt. Faizabad.
7. Mohd. Faiq aged 50 years son of Haji Ramzan resident of Terhi Bazar—**Amended under the court's order dated 20.9.61**
8. Mohd. Achhan Mian aged about 55 years son of unknown resident of Mohalla Katra.
9. U.P. Sunni Central Board of Waqfs through its Secretary, Lucknow—**Amended vide order dated 23.8.89 of this Hon'ble Court.**

(6 to 8) City Ayodhya Pargana Haveli Oudh Tahsil and district Faizabad on behalf of themselves and all other members of the Muslim Community.

10. Umesh Chandra Pandey aged 34 years S/o Shri Ram Shanker Pandey S/o Rampali Ayodhya City Distt. Faizabad (Haveli Oudh)--**Amended vide court's order 28.1.89.**
11. Mohd. Farook S/o Zahoor Ahmad r/o Singarhat, Ayodhya Distt. Faizabad—**Amended by the order of this Hon'ble Court dated 3.12.91.**

.....Defendants

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

This suit has been filed by Nirmohi Akhara situate in Mohalla Ram Kot, City Ayodhya through its Mahant with a prayer that a decree be passed in favour of the plaintiffs against defendants for removal of defendant no.1, namely, Sri Jamuna Prasad Singh, Receiver, resident of Deo Kali Road, City Faizabad, from the management and charge of the temple Ram Janam Bhoomi and for that delivering the same to the plaintiff through its Mahant and Sarbarahkar Mahant Jagan Nath Das.

According to the plaint averment there exists in Ayodhya, since the days of Yore an ancient Math or Akhara of Ramanandi Varagis called Nirmohi with its seat at Ramghat known as Nirmohi Akhara, plaintiff no. 1 which is the religious establishment of a public character. The Janam Sthan now commonly known as Janam Bhumi, the birth place of Lord Ram Chandra, situate in Ayodhya belongs and has always belonged to the plaintiff no.1 who through its reigning Mahant and Sarbrahkar has ever since been managing it and receiving offerings made there at in form of money, sweets, flowers

and fruits and other article and things.

The said Asthan of Janam Bhumi is of an ancient antiquity and has been existing since before the living memory of man and lies within the boundaries shown by letters A B C D in the sketch map appended with the plaint. The temple building of Janam Bhumi has been marked by letters E F G K P N M L E is the building denoted by letters E F G H I J K L E of the main temple of Janam Bhumi wherein is installed the idol of Ram Chandra Ji with Lakshman Ji, Hanuman Ji and Saligramji. It has further been averred that the said temple has ever since been in the possession of the plaintiffs and none others but Hindus have ever since been allowed to enter or worship therein and offerings made therein are in the form of money sweets, flowers, fruits other articles and things have always been received by the plaintiffs through their pujaries. Before the judgment of the writ petition of 11.12.92 on 6th December, 1992 the temple of Nirmohi Akhara were also demolished by some miscreants who had no religion caste or creed. The main temple was demolished on 6.12.1992 and further cause of action against defendants no. 1 to 5 arose during pendency of the suit when the property and temples of plaintiff were demolished on 6th December, 1992.

Nirmohi Akhara is the Panchyati Math of Ram Nandi sect of Bairagies and as such is a religious denomination following its own religious faith and pursuit according to its own custom prevalent in Vairagies sect of Sadhus. The customs of Akhara Nirmohi have

reduced in writing on 19.03.1949 by registered deed.

The plaintiff Nirmohi Akhara owns several temples in it and all of such temples through Panches and Mahant's of Akhara. The whole temples and properties vest in Akhara i.e. plaintiff. The plaintiff being a Panchyati Math acts on democratic pattern. The management and right to manage all temples of Akhara vest absolutely with Panches of Akhara and Mahant being a formal head of Institution is to act on majority opinion of Panches.

The plaintiff went on to state that no Mohamman could or ever did enter in the said temple building. But even if it is attempted to be proved that any Mohamman ever entered it, it would be totally wrong and is denied by the plaintiffs. No Mohamman has ever been allowed to enter into it or has ever attempted to enter into it at least ever since the year 1934. It has further been averred in the plaint that in the year 1950, the City Magistrate, Faizabad, the defendant no. 4 without any lawful cause and with the active connivance of defendants no. 2, 3 and 5 and under the wrong persuasion of defendants nos. 6 to 8 who claim to represent the Muslim Community, attached the main temple, shown by letter E F G H I J K L I in the said sketch map with all the articles mentioned in list 'A' appended with the plaint in a proceedings under Section 145 Cr.P.C., and placed the said temple and the articles under the charge of defendant no.1 as a Receiver on 5.1.1950.

Plaintiffs have been wrongfully deprived of their management and charge of the said temple due to illegal under Section 145 Cr.P.C.

Proceedings are unduly prolonged and lingered with the connivance of all the defendants and since no immediate termination of the same seems to be in sight and since the defendant no.4 refuses in connivance with other defendants to hand over charge and management of the temple to the plaintiffs from the hands of the receiver, the institution of the present suit has become inevitable.

The plaintiffs are entitled for the management and charge of the said temple and it should be delivered to him through the former's Mahant and Sarbarhkar.

The defendants no. 6 to 8 claimed to be the representatives of the Muslim community who have got themselves interested in the subject-matter of the suit and are not getting the charge and management of the temple delivered to the plaintiffs and are exercising undue influence on the defendants no. 1 to 5. They are sued in their representative capacity on behalf of the entire Muslim community with the permission of the court.

The cause of action for the suit arose on 5.1.1950 on the defendant no. 4 illegally taking over the management and charge of the temple of said articles and entrusting it to the said receiver i.e. defendant no.1.

The notice as required by Section 80 C.P.C. has been given to the defendants 1 to 5 which was delivered to them between 6.10.59 and 12.10.59 and which has been replied by them through the defendant no.3 intimating their decision to defend the present suit.

The permission of the court to file the suit against the

defendants 6 to 8 on behalf of themselves and all other members of the Muslim community has been obtained under Order 1 Rule 8 C.P.C. A list of 20 Articles has been given in the appendix dated 17.12.59 which was taken into possession by the Receiver.

Defendants no. 6 to 8 have filed their written statement and denied all the averments made by the plaintiff in para 1 to 14 of the plaint. In their additional pleas they have stated that the property in suit has been constructed by the Emperor Babar which is called Babri Masjid and was constructed through Mir Baqi, the minister of Emperor Babar in 1528. This property was given in Waqf for common Muslim since then every Muslim has right of prayer in the mosque. A sum of Rs. 60/- per year was granted by Emperor Babar for the maintenance of the mosque which continued during Mughal period and Nawab of Oudh. This amount was enhanced and a sum of Rs. 302, 3 ana and 6 pai was fixed as an annual grant for the maintenance of the aforesaid mosque. This continued during the regime of British Government and in lieu of cash grant, grant free land were given in villages Solapuri, Ghuranpur and Bahoranpur.

It has further been stated that in 1885 Raghubar Das Mahant, Janam Sthan Ayodhya filed a suit against the Secretary of State for India in Council and Mohd. Asgar Mutwalli and Khatib Masjid Babri Majakur filed a suit in the court of Sub-Judge, Faizabad. A site plan was also appended with the plaint by the plaintiffs in which mosque was clearly shown and no objection was made by the plaintiffs in this regard. The plaintiff of this suit had sought relief only with regard to

a platform (chabutra), therefore, the averments made by the plaintiffs in the present suit that all the disputed property belongs to the temple Ram Janam Bhumi is completely false and groundless and has been framed with bad intention for the purpose of this very suit. The Sub-Judge, Faizabad on 24.12.85 dismissed the plaintiff's suit. This verdict was upheld by the appellate court and the remark relating to the title of the plaintiffs regarding platform (Chabutra) was struck off and appeal was accordingly dismissed. So many Mahants of Ayodhya on behalf of the Hindus had filed the suit and they had full knowledge of this litigation as per the provisions of Muslim Waqf Act No.13 of 1936. The Chief Commissioner of the Waqf was appointed who after inspection of mosque Babri decided that Emperor Babar had constructed this mosque and acknowledged this property as Sunni Waqf. Accordingly legal notification was issued which has become final and the possession of the Muslim community as Waqf on Babri Mosque has continuously in existence. Therefore, if plaintiffs or any other Hindu succeed in proving that prior to the construction of Babri mosque there existed any temple on the site in dispute to which defendants vehemently deny, in that situation also on the ground of being in possession for more than 400 years all the rights of plaintiffs have extinguished. Plaintiffs were never in possession over property in suit, therefore, being time barred this suit is liable to be dismissed. The suit is defective for want of notice against defendants no. 1 to 5. Defendants have no knowledge as to whether any idol has been installed in the property in suit or not as

till 16.12.49 Namaz has continuously been offered in the property in suit and there was no idol by that time. If any idol has been installed surreptitiously even then the nature of mosque will not alter and if any person wants to visit the disputed place for offering prayer and enters into it for this purpose, it will be an offence. In these circumstances, civil court has no jurisdiction to grant the relief as sought by the plaintiff of above suit. As far as defendants, they know that proceedings of Section 145 Cr.P.C. have been initiated by the defendant no.5 which is false against justice and has been done with the aid and help of Sri K.K.Nayar, Deputy Commissioner, Faizabad and Sri Guru Dut Singh, the then City Magistrate, Faizabad. There is another temple at Ayodhya which is known as temple Janam Sthan Ram Chandra Ji and is in existence for a very long time where the idols of Ram Chandra Ji and other Gods are installed. There lie graveyard towards east-southern and south of the mosque wherein graves of Muslims are present. There is no place known Shankar Chabutra, Sita Kop, Lomas Chaura, Hanumat Dwar and Barah Bhagwan or Samadhi of Markandey as shown in the plaint map are not there in the disputed land and has been shown by the plaintiffs with the mala fide intention. The plaintiffs have not shown since when and how they became the owner of the property in suit, for want of this fact it is not possible for the defendants to file complete written statement. Two suits are already pending which has been filed by Gopal Singh Visharad and Param Hans Ram Chandra Das. Since property in suit has been attached under Section 146 Cr.P.C., no

regular suit could be filed by the plaintiff in this regard.

The suit is not maintainable as the defendants have no knowledge about the proceedings under Order 1 Rule 8 C.P.C. The defendants are entitled for special cost and suit is liable to be dismissed. The plaintiffs have filed their replication dated 13.5.63 in which all averments made in the plaint have been reiterated.

Defendants have also filed additional written statement in which it is stated that on 6.12.1992 the so called Ram Chabutra was demolished by the miscreants collected at the instance of Vishwa Hindu Parishad. On 6.12.1992 the building of the mosque was demolished and the same could not be called or alleged to be the Main Temple.

Sri Umesh Chandra Pandey, has also filed his written statement wherein he has stated that Mahant Raghu Nath Das died and there has been no proper substitution in his place. It has further been stated that Janam Sthan is a holy place of worship and belongs to the deity of Bhagwan SHRI RAM LALA VIRAJMAN there. It never belonged to and could not have belonged to the plaintiff no.1. The holy JANAM STHAN OR JANAM BHUMI is actually very old temple, whereas the plaintiff AKHADA on the other hand is an institution and owes its existence for no longer than two hundred years. The main presiding deity is BHAGWAN SHRI RAM, although there are several idols of other deities, termed as RAM DARBAR and are worshiped. Besides, there are other symbols, such as, 'CHARAN', SITA RASOI,' etc. to whom the deity of BHAGWAN SHRI RAM

therein is worshiped at SHRIM RAM JANAM BHUMI. In 1857 A.D. the Britishers in order to divide the Hindus and Muslims divided Sthan by creating an inner enclosure and describing the boundary within the inner enclosure as a mosque but no Muslim who was a true Muslim, could appear to have frequented it for offering his prayer as the same is prohibited by the SHARIYAT. Moreover, even ALAMGIR (EMPEROR AURANGZEB) issued a mandate, known as FATWA-E-ALAMGIRI which clearly prohibits the offering of prayer by Muslim at such places. More so the KASAUTI pillars and the carvings of Gods and Goddesses thereon will clearly show that this place could not be used by a true Muslim for offering his prayers therein. The suit is barred by the provisions of Indian Evidence Act. The plaintiffs had adequate remedies under Cr.P.C. against the order of Additional City Magistrate, Faizabad. It has further been stated that the suit is liable to be tried separately and is liable to be dismissed with costs.

The plaintiffs have filed replication to the written statement of defendant no.10 reiterating the earlier facts given in the plaint.

Issues framed in the court of Civil Judges Faizabad on 17.5.1963

1. Is there a temple of Janam Bhumi with idols installed therein as alleged in para 3 of the plaint ?
2. Does the property in suit belong to the plaintiff No.1 ?
3. Have plaintiffs acquired title by adverse possession for over 12 years ?
4. Are plaintiffs entitled to get management and charge of the said temple ?

5. Is the property in suit a mosque made by Emperor Babar Known as Babari masjid ?
6. Was the alleged mosque dedicated by Emperor Babar for worship by Muslims in general and made a public waqf property?
- 7(a) Has there been a notification under Muslim Waqf Act (Act no.13 of 1936) declaring this property in suit as a Sunni Waqf ?
- 7(b) Is the said notification final and binding ? Its effect.
8. Have the rights of the plaintiffs extinguished for want of possession for over 12 years prior to the suit ?
9. Is the suit within time ?
- 10(a) Is the suit bad for want of notice u/s 80 C.
- 10(b) Is the above plea available to contesting defendants ?
11. Is the suit bad for non-joinder of necessary defendants ?
12. Are defendants entitled to special costs u/s 35 C.P.C. ?
13. To what relief, if any, is the plaintiff entitled ?
14. Is the suit not maintainable as framed ?
15. Is the suit properly valued and Court-Fee paid sufficient ?
(Already decided)
16. Is the suit bad for want of notice u/s 83 of U.P. Act 13 of 1936 ?
17. (Added by this Hon'ble Court order dated 23.2.96) “Whether Nirmohi Akhara, Plaintiff, is Panchayati Math of Rama Nandi sect of Bairagies and as such is a religious denomination following its religious faith and per suit according to its owner custom.”

Statement under Order 10 Rule 2 C.P.C. in O.O.S. No. 3 of 198917.5.63

Present:- Sri Sarav Jeet Lal, advocate for plaintiff.
And Sri Mohd. Ayub, advocate for defendants 7 & 8.

Shri Sarab Jeet Lal, advocate states as follows:-

The plaintiff claims that this property in suit is believed to be the birth place of Lord Ram Chandra Ji. So there is a temple of Lord Ram Chandra on it. The plaintiff claims that this temple is in the management and of control of the plaintiff. It is further clarified that this property is not dedicated to the Idol although the temple is made in the land which is the birth place of Lord Ram. It is owned by the plaintiff and the temple was made by the plaintiff. It is added that the present suit is confined to property shown by letters E, F, G, I, J, K, L. although in directions were shown by letters E, F, G, H, P, N, M, L, E belongs to the plaint.

Sd/-illegible
Sarab Jeet Lal & Mohd.Ayub

Sd/-illegible
Civil Judge,
17.5

FINDINGS**ISSUES NO. 1, 5 AND 6**

1. Is there a temple of Janam Bhumi with idols installed therein as alleged in para 3 of the plaint ?
5. Is the property in suit a mosque made by Emperor Babar Known as Babari masjid ?
6. Was the alleged mosque dedicated by Emperor Babar for

worship by Muslims in general and made a public waqf property ?

FINDINGS

These issues are interrelated. I have already recorded finding in leading case O.O.S No.4 of 1989. The copy of the judgment be placed on record. In view of the finding of issues no. 1, 1(a),(b), 1-B(b),19(d), 19(e) and 19(f) no separate finding is required as the issues are identical issues in this case. These issues are decided in terms of the decision of issues no. 1, 1(a), 1(b), 1B(b), 12, 19(d), 19(e) and 19(f) of O.O.S. No. 4 of 1989. The disputed structure has already been demolished on 06.12.1992 and there is no evidence to establish that at the disputed structure there was any temple inside the structure belonging to plaintiff no.1, in which he installed the idol of Lord Ram Chandra Ji, Laxman Ji and Saligram Ji from times immemorial.

ISSUES NO. 2, 3,4 AND 8

- 2. Does the property in suit belong to the plaintiff No.1 ?**
- 3. Have plaintiffs acquired title by adverse possession for over 12 years ?**
- 4. Are plaintiffs entitled to get management and charge of the said temple ?**
- 8. Have the rights of the plaintiffs extinguished for want of possession for over 12 years prior to the suit ?**

FINDINGS

These issues are interrelated and can be taken up together. These issues are identical to the issues already decided in O.O.S.

No.4 of 1989. Thus, in view of the findings of issue no.1B(c), 2, 4, 10, 11, 12, 13, 14, 15, 19(a), 19(b), 19(c), 27 & 28 no separate finding is required. Accordingly, the above issues are decided in terms of issues already decided in O.O.S. No.4 referred to above.

ISSUES NO. 7(a), 7(b) & 16

- a. **Has there been a notification under Muslim Waqf Act (Act no.13 of 1936) declaring this property in suit as a Sunni Waqf ?**
- b. **Is the said notification final and binding ? Its effect.**
16. **Is the suit bad for want of notice u/s 83 of U.P. Act 13 of 1936 ?**

FINDINGS

These issues are interrelated can conveniently be decided at one place. In the leading case issues no. 5(a), 5(b), 5(c), 5(d), 5(e), 5(f), 7(b), 17, 18, 20(a), 20(b), 23, 24, 25 and 26 in O.O.S No. 4 of 1989 relate to the above issues. Accordingly, in view of the findings in the leading case, issues no. 7(a), 7(b) and 16 are decided.

ISSUE NO.9

9. **Is the suit within time ?**

FINDINGS

The instant suit was filed on 17.12.59, admitting that the property was attached on 29.12.49. The suit is covered by Article 120 of the Limitation Act, 1908. It should have been filed within six years of the institution of the suit.

This issue is identical to the issue no. 3 decided in O.O.S. No. 4 of 1989. Accordingly, the issue is decided in terms of the finding of issue no.3 of O.O.S. No. 4 of 1989.

ISSUE NO.10(a) & 10(b)

- a. **Is the suit bad for want of notice u/s 80 C.**
- b. **Is the above plea available to contesting defendants ?**

FINDINGS

Issues No. 10(a) and 10(b) are interrelated and they can be decided at one place. It has been contended on behalf of plaintiff that the suit was instituted after giving a valid notice under Section 80 of C.P.C. On behalf of defendants it has been denied but they have failed to substantiate as to how they were not served with the notice before institution of the suit. It further provides that it is not the case of the plaintiffs that they were not served with the notice nor it has been alleged from their side that the notice was defective. Consequently, there is no material before this Court to substantiate the plea raised before this Court by the defendants. Issue No.10(a) and 10(b) are decided, accordingly, in favour of the plaintiff and against the defendants.

ISSUE NO.11

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

FINDINGS

This issue is identical to issue no.21 of O.O.S. No. 4 of 1989. In view of the finding on the leading case, the issue is decided accordingly.

ISSUE NO.14

Is the suit not maintainable as framed ?

FINDINGS

On behalf of defendants it has nowhere been argued as to how the suit has wrongly been framed. The suit was properly registered. No material has been placed before this Court to show as to how the suit is not maintainable. Consequently, issue no.14 is decided in favour of the plaintiffs and against the defendants.

ISSUE NO.17.

**(Added by this Hon'ble Court order dated 23.2.96)
 "Whether Nirmohi Akhara, Plaintiff, is Panchayati Math of Rama Nandi sect of Bairagies and as such is a religious denomination following its religious faith and per suit according to its owner custom."**

FINDINGS

Plaintiff claims at para 1 and 4(a) of O.O.S. No.3/89 as under:-

Thus, according to the plaintiffs, Nirmohi Akhara is a religious denomination and prior to the filing of the suit on 19.3.49 a deed was also registered regarding the customs of the Akhara. The Deed has also been filed. Defendants have simply denied the aforesaid facts. But on behalf of the plaintiffs, Mahant Bhaskar Das, DW3/1 has been produced. He has proved the averments made in the plaint referred to above. It has also been submitted that it is a religious denomination. The witnesses were examined but there is no material on record to discredit the aforesaid version. It has further been urged that this Akhara which is a religious denomination was founded by Ramanandi in the 14th century and thereafter various Mahant looked

after the Akhara whose names are referred at paras 42 and 43 of the statement of the witnesses. There is nothing in the cross-examination to discredit the testimony of the aforesaid witnesses.

The aforesaid version has been corroborated by the statement of Raja Ramachandracharya, DW3/20. He has corroborated the assertion of Mahant Bhaskar Das. Thus, on the basis of the testimony of these two witnesses and when there is no proper challenge on the part of the defendants, I hold that Nirmohi Akhara is a Panchayati of Ramanandi sect of Baragies and as such is religious denomination. The custom has already been registered in the year 1949. Issue no. 17 is decided in favour of the plaintiff and against the defendants.

ISSUE NO.15

Is the suit properly valued and Court Fee paid sufficient?

FINDINGS.

This issue has already been decided which shall form part of the judgement.

ISSUES NO.12 & 13

12. Are defendants entitled to special costs u/s 35 C.P.C. ?

13. **To what relief, if any, is the plaintiff entitled ?**

FINDINGS

The plaintiffs are not entitled for the relief claimed but on

behalf of the defendants no case for special costs is made out. The suit is liable to be dismissed with easy cost.

Order

The suit is dismissed with easy costs.

(Dharam Veer Sharma)

*Tanveer/Akhilesh/
Padam P. Srivastava/Raghvendra*