10 Madras 375 held as under:

"The origin of these associations, their constitution and development, form part of the history of the establishment and spread of the Brahminical system of religious doctrine among the Sudra communities in Southern India. Originally, the ascetic, who renounced the world and devoted himself to religion, confined his attention to the study of theology, to imparting religious instruction to his disciples, and to complying with the ordinances prescribed for the guidance of his order. He then owned no property, except his cloths, sandals, religious books and the idol he kept for his personal worship and a few other articles of trifling value which were absolutely necessary (Mitakshara, Chap. II, s. 8, para. 8). He had no fixed residence and moved from village to village, accepting such lodgings and food as were provided for him by pious laymen, who were in their turn enjoined by the Shastras to honour and support him. This is the mode in which Brahman Sanniyasis live even at the present time. In several villages pious laymen erected buildings for the residence of hermits when they visited their villages, and these were called Mutts. In its original and narrow sense, then, the term "Mutt" signified the residence of an ascetic or Sanniyasi or Paradesi.

But when the Buddhists assailed the Brahminical religion and when Sankarachariyar, the founder of the Advaita or non-dualistic school of philosophy, ultimately prevailed against them, he established some Mutts in order to maintain and strengthen the doctrine and the system of religions philosophy he taught, Sanniyasis being placed at

the head of those institutions. After Sankarachariyar, the founders of the Vaishnava, Madhva and other schools of religious philosophy in this Presidency established Mutts for a similar purpose. In former times these institutions exercised considerable influence over the laymen in their neighbourhood; they became centres of classical and religious learning and materially aided in promoting religious knowledge and in encouraging religious and other charities. The ascetics who presided over them were held, owing to their position as religious preceptors, and often also in consequence of their own learning and piety, in great reverence by Hindu princes and noblemen, who from time to time made large presents to them and endowed the Mutts under their control with grants of land. Thus, a class of endowed Mutts came into existence in the nature of monastic institutions, presided over by ascetics or Sanniyasis who had renounced the world. Thus, the ascetic who originally owned little or no property, came to own the Matam under his charge and its endowment, in trust for the maintenance of the Mutt, for his own support, for that of his disciples, and for the performance of religious and other charities in connection with it, according to usage."

684. In **Vidyapurna Tirtha Swami Vs. Vidyanidhi Tirtha Swami 1904 ILR Vol. XXVII Madras 435,** the Madras High Court following its earlier decision in **Sammantha Pandara Vs. Sellappa Chetti (supra)** observed with respect to original growth of 'Math' in this country as under:

"The origin and growth of mutts in this country is thus described in the two judgments of this Court already referred to : "A preceptor of religious doctrine gathers

around him a number of disciples whom he initiates into the particular mysteries of the order and instructs in its religious tenets. Such of these disciples as intend to become religious teachers renounce their connection with the family and all claims to the family wealth and, as it were, affiliate themselves to the spiritual teacher whose school they have entered. Pious persons endow the schools with property which is vested in the preceptor for the time being and a home for the school is erected and mattam constituted" (Giyana Sambandha Pandara Sannadhi v. Kandasami Tambiran I.L.R., 10 Mad., 375). "The ascetics who presided over them were held, owing to their position as religious preceptors and often also in consequence of their own learning and piety, in great reverence by Hindu princes and noblemen who, from time to time, made large presents to them and endowed the mutts under their control with grants of land. Thus a class of endowed mutts came into existence, in the nature of monastic institutions, presided over by ascetics or sanniyasis who had renounced the world." The object of these mutts is generally the promotion of religious knowledge, the imparting of spiritual instruction to be disciples and followers of the mutt and "the maintenance and strengthening of the doctrines and tenets of particular schools of philosophy."

685. What has been said in **Giyana Sambandha Pandara Sannadhi (supra)** has been followed in **Kailasam Pillai Vs. Nataraja Thambiran and Ors. 1910 I.L.R. 33 Madras 265** at page 267.

686. The Privy Council in **Ram Parkash Das Vs. Anand Das and Ors. AIR 1916 Privy Council 256** had also occasion to

consider about 'Math' and observed:

> *"An asthal, commonly known in Northern India as a muth, is an institution of a monastic nature. It is established for the service of a particular cult, the instruction in its tenets and the observance of its rites. The followers of the cult and disciples in the institution are known as chelas; the chelas are of two classes celibate and non-celibate. In the asthal now being dealt with, the religious brethren were the bairagi or celibate chelas; the lay brethren were girhast or householder chelas. The mahant must, by the custom of the muth, be a bairagi or religious chela."*

687. Again in **Sri Vidya Varuthi Thirth Swamigal Vs. Baluswami Ayyar and Ors. AIR 1922 P.C. 123** the Privy Council expressed its views on page 126 about "Maths" in the following words:

> *"In many cases in Southern India, especially where the diffusion of Aryan Brahmanism was essential for bringing the Dravidian peoples under the religious rule of the Hindu system, colleges and monasteries under the names of Mutt were founded under spiritual teachers of recognised sanctity. These men had and have ample discretion in the application of the funds of the institution, but always subject to certain obligations and duties, equally governed by custom and usage."*

688. All the aforesaid decisions were considered by the Apex Court in **Shri Krishna Singh Vs. Mathura Ahir and others 1981 (3) SCC 689=AIR 1980 SC 707**. In para 19, the Apex Court concluded as under:

> ***"19.*** *.....Math means a place for the residence of ascetics and their pupils, and the like. Since the time of*

Sankaracharya, who established Hindu maths, these maths developed into institution devoted to the teaching of different systems of Hindu religious philosophy, presided over by ascetics, who were held in great reverence as religious preceptors, and princes and noblemen endowed these institutions with large grants of property."

689. In **Krishna Singh (supra)** the Court also observed that a Math is an institutional sanctum presided over by a superior who combines in himself the dual office of being the religious or spiritual head of the particular cult or religious fraternity, and of the manager of the secular properties of the institution of the Math. It also held that the principles noticed in the above cases would make it sufficiently clear that *"a math is an institutional sanctum presided over by a superior who combines in himself the dual office of being the religious or spiritual head of the particular cult or religious fraternity, and of the manager of the secular properties of the institution of the math."*

690. Concept of Mutt, private and public, has been considered in **Bihar State Board of Religious Trust Vs. Mahant Sri Biseshwar Das AIR 1971 SC 2057** and in para 17 the Court observed :

"A religious mutt in northern India is usually known as asthal, a monastic institution founded for the maintenance and spread of a particular sampradaya or cult. The distinction between dedication to a temple and a mutt is that in the former case it is to a particular deity, while in the latter, it is to a superior or a mahant. ... A mutt can be dedicated for the use of ascetics generally or for the ascetics of a particular sect or cult, in which case it would be a public institution. Mutts have generally sadavrats, i.e.

arrangements for giving food and shelter to wayfarers and ascetics attached to them. They may have temples to which the public is allowed access."

691. A "Math" is not a Temple inasmuch it is a place for rendering charitable and religious services in general. Merely there are idols in the Math, it cannot be treated as a Temple. Similarly, an institution which is in its origin a Math, cannot be treated as a temple because idols are also worshipped in the Math. The Math can not be treated as a place of public religious worship mere by reason of the worship of idols. The primary purpose of a Math is to encourage and foster spiritual learning by maintenance of a competent line of teachers who impart religious instructions to the disciples and followers of the Math and try to strengthen the doctrines of the particular school or order of which they profess to be adherents. The deity or an idol may be an essential element in a Math if the worship of a personal God in a certain form is an essential feature of the religious doctrine of a certain order. The worship of God in that form would be a part of their religious teaching which it would be the duty of any Math of that order to foster and encourage, otherwise it may not be necessary. This has been pointed out in Mukherjea's Hindu Law (supra), 4th Edn. at page 331-332 as under :

"...there are religious orders like those of the Shankara School which believe in monastic doctrines of the Vedanta and to not regard the worship of a personal God as a necessary or essential part of the religious teachings. Even in Shankar Mutts, there may exist a shrine for a particular idol but it cannot be said that the presiding element in a Mutt must be a deity or that there cannot be a Mutt without

an idol. A shrine or a temple may ordinarily be seen as an adjunct to a Mutt, but it is not a necessary one and even when it exists, it is not the chief or the indispensable part of the institution. It is only ancillary to the main purpose for whicht he Mutt is endowed and the presiding element in a Mutt is always the Mohunt or the spiritual preceptor."

692. A place of worship is not a necessary part of a Math, though it is often found in such institution and although primarily intended for the use of inmates, the public may also be admitted to such places of religious worship. (See **Thamba Vs. Arundel I.L.R. 6 Mad. 287**).

693. The presiding element in a Math is an ascetic or a religious teacher, who together with his disciples and co-disciples form spiritual family. It owe its existence to benefactions or grants of property made by pious benefactors. The object of the benefaction is the creation of an institution for the benefit of a fraternity of religious men at the head of which stands the superior or Mahant (also termed as "Mohunt"), who represents the entire institution. (vide **Satya Charan Sarkar Vs. Mohanta Rudrananda Giri AIR 1953 Cal. 716**).

694. In **Shri Krishna Singh Vs. Mathura Ahir (supra)**, the Apex Court also quoted the relevant extracts from Mukherjea's Hindu Law (supra) as to what a “Math” would signify. It further held that the property belong to a Math is in fact attached to the office of Mahant, and passed by inheritance to no one who does not fill the office. The head of a Math, as such, is not a trustee in the sense in which that term is generally understood, but in legal contemplation he has an estate for life in its permanent endowments and an absolute property in the income derived from the offerings of his followers, subject only to the "burden

of maintaining the institution". He is bound to spend a large part of income derived from the offerings of his followers on charitable or religious objects.

695. The words "the burden of maintaining the institution" must be understood to include the maintenance of Math, the support of its head and his disciples and the performance of religious and other charities in connection with it, in accordance with usage.

696. According to Hindu jurisprudence, religious institutions such as a "Math" is treated a “juristic entity” with a legal personality capable of holding and acquiring property. The ownership of property vest in the institution. From the very nature of Math, it can act and assert its rights only through a human agency known as "Mahant", Shebait or Dharmakarta or sometimes known as trustee. The Apex Court in **Shri Krishna Singh (supra)** quoted the following observation of the Bombay High Court *(Jenkins, C.J. in* **Babajirao Vs. Laxmandas 1904 ILR 28 Bom. 215 at 223***)* with approval which defines the true notion of a “Math” in the following terms :

> *"A math, like an idol, is in Hindu law a judicial person capable of acquiring, holding and vindicating legal rights, though of necessity it can only act in relation to those rights through the medium of some human agency."*

697. In **H.H. Shri Swamiji of Shri Amar Mutt and others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and others 1979 (4) SCC 642**, Hon'ble P.N. Shinghal, J., in a separate judgment, though concurring with the conclusion of majority view of the Constitution Bench, in para 47 observed *"A Mutt is a monastic institution for the use and benefit of ascetics belonging to a*

particular order presided over by a superior who is its religious teacher. The Mutt property, though originally given by a donor, belongs to that spiritual family represented by the superior or Mahant. It does not, however, vest in him, as he is some sort of a "shebait", and vests in the Mutt as a juristic person."

698. The term "Mahant" has been descried in the Law Lexicon-The Encyclopaedic Law Dictionary by P. Ramanatha Aiyer (1997) on page 1161 as under:

> *"**Mahant.** (H.) The head of a religious establishment of the medicant orders of the Hindus. (Wil. Gloss. 317.)*
>
> *A Mahant or the head of a Math is not a "trustee" in the sense in which that term is understood in English law. The only law as to a Mahant and his office, functions and duties, is to be found in custom and practice, which is to be proved by testimony. But though a Mahant is not a trustee, in the English sense, he is, in view of the obligations and duties resting on him, answerable, as a trustee in the general sense, for the proper administration of the institution of which he is the head. The existence of a very wide discretion in the Mahant as to the application of the income of the Math or asthal is by no means inconsistent with a fiduciary obligation so to manage the property of the Math that the objects for which the Math exists shall be effectively serve. (Kesho Das v. Amar Dasji and others, 14 Pat 379=156 IC 1093=8 RP 62=16 Pat LT 35=AIR 1935 Pat 111)"*

699. The position of a "Mahant" of a "Math" is like that of a "Head of the institution". He is neither a corporation nor a life tenant in respect to the Math property. He is also not a trustee in the sense in which the term is understood in English law. Call

by whatever name, he is the manager or custodian of the institution. The property which he holds does not vest in him; it vests in the institution and is held by him as a Manager of the same. [See **Vidyavaryathi Vs. Baluswami (Supra**)].

700. In **Krishna Singh (supra)** regarding the succession of Mahantship of a Math or religious institution the Apex Court said:

> *"30. The law is well settled that succession to mahantship of a math or religious institution is regulated by custom or usage of the particular institution, except where a rule of succession is laid down by the founder himself who created the endowment. See: Genda Puri v. Chatar Puri (1886) 13 Ind App 100 (PC); Sital Das v. Sant Ram AIR 1954 SC 606 and Mahalinga Thambiran v. La Sri Kasivasi (1974) 2 SCR 74."*

701. According to usage, wide discretion in the application of funds of the institution is possessed by the "Mahant" but it is always subject to certain obligations and duties equally prescribed by customs and usages.

702. Then comes the next question as to what is a "Panchayati Math". The answer to this question is also found in the learned work of Mukherjea's Hindu Law (supra). It appears that in general, there are three kinds of Maths according to different ways in which the heads or superiors are appointed, i.e., Mourasi, Panchayati and Hakimi. In the first category, the office of the Mahant is hereditary and devolves upon the Chief disciple of the existing Mahant, who usually nominates him as his successor. In the second category, i.e. Panchayati, the office is elective and the presiding Mahant is elected by an assembly of Mahants. In the last category, the appointment of Mahants is

vested in the ruling power or in the party who has endowed the temple. We are not going into further details of other kinds of Maths and confine our discussion to “Panchayati Math”.

703. As we have already observed the mode of appointment of Mahant is by election in a Panchayati Math. As to who would constitute the electoral body depends upon the customs of the particular institution. Normally the Mahants of the same sect in a particular locality or Mahants having a common origin assemble and elect the successor of the Mahant of the institution.

704. Before coming to third aspect, namely, “religious denomination”, we may refer to one more aspect of a Math, i.e., public and private Maths. B.K. Mukherjea in Hindu law (supra) has discussed about such Maths and observed that there can be a private Math depending upon the construction of the grant, customs and usage of the institution etc. However, it has further observed that where the body is created for the benefit of the public generally, the Math is dedicated for the use of ascetics generally, such Math would be regarded as public institution. Maths have generally Sadavrats or arrangement for feeding and giving shelter to wayfarers and ascetics attached to them. They may also have Temples to which the public is allowed access. Such circumstances might indicate the public character of the endowment but nevertheless it is probable to have a private Math where the endowment is not intended to confer benefit upon the public generally or even upon the members of a particular religious sect or order.

705. Now we come to the third aspect of the matter as to what is a "religious denomination". These words have attained significance in view of the expression “religious denomination”

contained in Article 26 and 27 of the Constitution of India. To understand the meaning of the expression “religious denomination”, we have to understand the meaning of the expressions "religion" and “denomination”.

706. Obviously, the words "religion" and “denomination” both are not defined in the Constitution, though they occur in Articles 15 (1), 15 (2), 16 (2), 16 (5), 23 (2), 25 to 28, 29 (2) and 30. In order to understand its scope it would be useful to refer the aforesaid provisions as under :

> ***15.*** *(1) The State shall not discriminate against any citizen on grounds only of* ***religion****, race, caste, sex, place of birth or any of them.*
>
> *(2) No citizen shall, on grounds only of* ***religion****, race, caste, sex, place of birth or any of them, be subject to any disability,liability, restriction or condition with regard to-*
>
> *(a) access to shops, public restaurants, hotels and place of public entertainment; or*
>
> *(b) the use of wells, tanks, bathing ghats, roads and place of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.*
>
> ***16.*** *(2) No citizen shall, on grounds only of* ***religion****, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.*
>
> *(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any* ***religious*** *or* ***denominational*** *institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular*

denomination.

23. *(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of* ***religion****, race, caste or class or any of them.*

25. *(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate* ***religion****.*

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with ***religious*** *practice;*

(b) providing for social welfare and reform or the throwing open of Hindu ***religious*** *institutions of a public character to all classes and sections of Hindus.*

26. *Subject to public order, morality and health, every* ***religious denomination*** *or any section thereof shall have the right-*

(a) to establish and maintain institutions for ***religious*** *and charitable purposes;*

(b) to manage its own affairs in matter of ***religion****;*

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

27. *No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any*

particular ***religion*** *or* ***religious denomination****.*

28. *(1) No* ***religious*** *instruction shall be provided in any educational institution wholly maintained out of State funds.*

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that ***religious*** *instruction shall be imparted in such institution.*

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any ***religious*** *instruction that may be imparted in such institution or to attend any* ***religious*** *worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.*

29. *(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of* ***religion****, race, caste, language or any of them.*

30. *(1) All minorities, whether based on* ***religion*** *or language, shall have the right to establish and administer educational institutions of their choice.*

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on ***religion*** *or language. (emphasis added)*

707. Religion is certainly a matter of faith with individuals or

communities. Religion has its basis in a system of beliefs or doctrine which are regarded by those, who profess that religion are conductive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral part of religion and these forms and observances might extend even to matters of food and dress.

708. The expression “religion” has been defined in the “Words and Phrases”, Permanent Edition, Vol. 36-A, page 461-463 and onwards, and reads as under :

> *"The terms 'religion' and 'religious' in ordinary usage are not rigid concepts.*
>
> *'Religion' has reference to one's views of his relations to his Creator and to the obligations they impose of reverence for his being and character and of obedience to his will.*
>
> *"The word 'religion' in its primary sense (from 'religare' to rebind-bind back), imports as applied to moral questions, only a recognition of a conscious duly to obey restraining principles of conduct. In such sense we suppose there is no one who will admit that he is without religion.*
>
> *"'religion' is bond uniting man to God and virtue whose purpose is to render God worship due him as source of all being and principle of all government of things.*
>
> *"'Religion' has reference to man's relation to divinity to the moral obligation of reverence and worship. Obedience, and submission. It is the recognition of God as an object of worship, love and obedience; right feeling*

ship, love and obedience; right feeling towards God, as highly apprehended.

"'Religion' means the service and adoration of God or a God as expressed in forms of worship; and apprehension, awareness, or conviction of the existence of a Supreme Being; any system of faith, doctrine and worship, as the Christian religion, the religions of the Orient; a particular system of faith or worship.

"'The term 'religion' as used in tax exemption law, simply includes (1) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organisation within the cult designed to observe the tenets or belief, the content of such belief being of no moment.

"while 'religion' in its broadest sense includes all forms of belief in the existence of superior beings capable of exercising power over the human race, as commonly accepted it means the formal recognition of God, as members of societies and association, and the term 'a religious purpose', as used in the constitutional provision exempting from taxation property used for religious purposes, means the use of property by a religious society or body of persons as a place for public worship.

"'Religion' is a squaring human life with superhuman life. Belief in a superhuman power and such an adjustment of human activities to the requirements of that power as may enable the individual believer to exist more happily is common to all 'religions'. The term 'religion' has reference

to one's views on his relations to his Creator, and to the obligations they impose on reverence for His being and character and obedience to his will.

"The term 'religion' has reference to one's view of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. With obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the law of society designed to secure its peace and prosperity, and the morals of its people, are not interfered with."

709. In Corpus Juris Secundum Vol. LXXVI (1952), pages 727-729, the word "religion" has been described as under:

"RELIGION. *The word "religion" is derived from "religare," meaning to rebind, to bind back; and in its most general sense it means devotion or fidelity, as to a principle or practice; scrupulous conformity; conscientiousness; deep attachment like that felt for an object of worship.*

There is not complete agreement on a definition of the word "religion" as it is used in the theological sense, and the content of the term is found in the history of the human race and is incapable of compression into a few words. It is not defined in the Bible or in various state constitutions, and although the word is used in the First Amendment to the Constitution of the United States, see Constitutional Law § 206 a, it is not defined in the Constitution, and it is therefore necessary to go elsewhere to ascertain the meaning of the term, and it has been said

that there is nowhere to go more appropriately than to the history of the times in the midst of which the Bill of Rights of the federal Constitution was adopted.

What has been referred to as a "minimum definition" of the word "religion" as stated by a legal philosopher is that the term "religion" has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for His being and character, and of obedience to His will.

As stated by a religious philosopher, religion is squaring human life with superhuman life, and what is common to all religions is belief in a superhuman power and an adjustment of human activities to the requirements of that power, such adjustment as may enable the individual believer to exist more happily.

As generally accepted, "religion" may be defined as a bond uniting man to God and a virtue whose purpose is to render God the worship due to him as the source of all being and the principle of all government of things; the recognition of God as an object of worship, love, and obedience; the service and adoration of God or a god as expressed in forms of worship, in obedience to divine commands, especially as found in accepted sacred writings or as declared by recognized teachers and in the pursuit of a way of life regarded as incumbent on true believers; an apprehension, awareness, or conviction of the existence of a Supreme Being, or, more widely, of supernatural powers or influences controlling one's own, humanity's, or nature's destiny; also, such as apprehension, etc., accompanied by or arousing reverence, love, gratitude, the will to obey and

serve and the like; religious experience or insight; often, specifically, the awakening of religious belief, convictions, etc., as in conversion; a belief in an invisible superhuman power, or powers, conceived of after the analogy of the human spirit, on which, or whom, man regards himself as dependent, and to which, or whom, he thinks himself in some degree responsible, together with the feelings and practices which naturally flow from such a belief; some system of faith and practice resting on the idea of the existence of one God, the creator and ruler, to whom His creatures owe obedience and love. More specifically, the word "religion" is understood to mean conformity in faith and life to the precepts inculcated in the Bible, respecting conduct of life and duty toward God and man; the Christian faith and practice.

The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation, and it includes a way of life as well as beliefs on the nature of the world. ***In its broadest sense "religion" comprehends all systems of belief in the existence of being superior to, and capable to exercising an influence for good or evil on, the human race, and all forms of worship of service intended to influence or give honor to such superior powers; any system of faith and worship; morality with a sanction drawn from a future state of rewards and punishment.****" (emphasis by Court)*

710. Black's Law Dictionary, Seventh Edition, page 1293 describe it as under:

*"**religion.** A system of faith and worship usu. involving belief in a supreme being and usu. containing a moral or*

ethical code; esp., such a system recognized and practiced by a particular church, sect, or denomination. In construing the protections under the Establishment Clause and the Free Exercise Clause, courts have interpreted the term religion quite broadly to include a wide variety of theistic and nontheistic beliefs."

711. Law Lexicon-The Encyclopaedic Law Dictionary by P. Ramanatha Aiyer (1997) describe "religion" at page 1646-1647 as under:

*"**Religion.** (Religio). Virtue, as founded on reverence of God, and Expectation of future rewards and punishments; a system of Divine Faith and Worship as opposed to others. (Johns) That habit of reverence towards the Divine Nature, whereby we are enabled and inclined to serve and worship him, after such a manner as we conceive most acceptable to him, is called Religion. (Tomlins Law Dic.)*

"What is Religion? Is it not what a man honestly believes in an approves of and thinks it is duty to inculcate on others, whether with regard to this world or the next? A belief in any system of retribution by an overruling power. It must, I think include the principle of gratitude to an active power who can confer blessings" (per Willes, J., Baxter v. Langley, 38 LJMC 5).

In all countries the word "religion" is ordinarily understood to mean some system of faith and practice resting on the idea of the existence of one God, the creator and ruler, to whom his creatures owe obedience and love.

Religion is morality, with a sanction drawn from a future state of rewards and punishments.

The word "religion" in its primary sense imports, as

applied to moral questions, only a recognition of a conscious duty to obey restraining principles of conduct. In such sense we suppose there is no one who will admit that he is without religion.

By the generic word "religion" is not meant the Christian religion or Bible religion, but it means the religion of man, and not the religion of any class of men.

"I for one would never be a party, unless the law were clear, to saying to any man who put forward his views on those most sacred things, that he should be branded as apparently criminal because he differed from the majority of mankind in his religious views or convictions on the subject of religion. If that were so, we should get into ages and times which, thank God, we do not live in, when people were put to death for opinions and beliefs which now almost all of us believe to be true."--[Lord Coleridge, C.J., Reg. v. Bradlaugh and others, (1883) 15 Cox. C.C. 230]

"All persecution and oppression of weak consciences on the score of religious persuasions, are highly unjustifiable upon every principle of natural reason, civil liberty, or sound religion." Sir Wm. Blackstone, (1765) Com. Bk. IV, ch. 4, p. 40.

The teachings of Sri Arubindo is only philosophy and not religion. S.P. Mittal v. Union of India, AIR 1983 SC 1, 4, 33. Auroville (Emergency Provisions) Act (59 of 1980)

The expression "religion" mentioned in cl. (b) of Art. 26, includes not only the philosophical side of religion, but also religious practices as laid down in the tenants of any religious sect. Ram Chandra Deb v. State of Orissa, AIR 1959 Ori 5, 10.

The word 'religion' means the distinct religion and all recognized practices thereof. Arya Samaj Educational, Trust, Delhi v. the Director of Education Delhi Administration Delhi, AIR 1976 Del 207, 211.

The term "religion" whatever its best definition, clearly refers to certain characteristic types of data (beliefs, practices, feelings, moods, attitudes etc.). It primarily involves some immediate consciousness of transcendent realities of supreme personal worth vitally influencing life and thought, expressing themselves in forms which are conditioned by the entire stage of development reached by the individual and his environments and tending to become more explicit and static in mythologies, theologies, philosophies and scientific doctrines. Ramanasramam v. Commissioner for Hindu Religions and Charitable Endowments, AIR 1961 Mad 265, 269.

Religion is concerned with man's relations with God. If reason leads people not to accept Christianity or any known religion, but they do believe in the excellence of qualities such as truth, beauty and love, or believe in the Platonic concept of the ideal, their beliefs may be to them the equivalent of a religion, but viewed objectively they are not religion, Barralet v. Attorney General, (1980) 3 All ER 918, 924."

712. In the New Lexicon Webster's Dictionary of the English Language Deluxe Encyclopedic Edition, page 841, define "religion" :

*"**re-li-gion** n. man's expression of his acknowledgment of the divine, a system of beliefs and practices relating to the sacred and uniting its adherents in a community, e.g.*

Judaism, Christianity, adherence to such a system, a man without religion, something which has a powerful hold on a person's way of thinking, interests etc."

713. The Apex Court in **Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt AIR 1954 SC 282** also considered the same and in para 17, it said :

"*17.....Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of belief or doctrines which are regarded by those who profess that religion as conductive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress."*

714. In **Ratilal Panachand Gandhi Vs. The State of Bombay and others, AIR 1954 SC 388** the Court observed:

"A 'religion' is not merely an opinion, doctrine or belief. It has its outward expression in acts as well. Religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines. Thus if the tenets of the Jain or the Parsi religion lay down that certain rites and ceremonies

are to be performed at certain times and in a particular manner, it cannot be said that these are secular activities partaking of commercial or economic character simply because they involve expenditure of money or employment of priests or the use of marketable commodities. No outside authority has any right to say that these are not essential parts of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like under the guise of administering the trust estate."

715. Another Constitution Bench in **S.P. Mittal Vs. Union of India AIR 1983 SC 1** considered the "religion" and in para 12 of the judgment, it said :

"12.....The Constitution considers Religion as a matter of thought, expression, belief, faith and worship, a matter involving the conscience and a matter which may be professed, practised and propagated by anyone and which may even have some secular activity associated with it....."

716. In **S.P. Mittal (supra)** the Court also held:

"'Religion' is morality, with a sanction drawn from a future state of rewards and punishments. The term 'religion' and 'religious' in ordinary usage are not rigid concepts. 'Religion' has reference to one's views of his relations to his Creator and to the obligations they impose of reverence for his being and character, and of obedience to his will. The word 'religion' in its primary sense (from 'religare', to rebind, bind back), imports, as applied to moral questions, only recognition of a conscious duty to obey restraining principles of conduct. In such sense we suppose there is no one who will admit that he is without

religion. Religion is bond-uniting man to God, and virtue whose purpose is to render God worship due him as source of all being and principle of all government of things. 'Religion' has reference to man's relation to divinity; to the moral obligation of reverence and worship, obedience, and submission. It is the recognition of God as an object of worship, love and obedience; right feeling toward God, as highly apprehended. 'Religion' means the service and adoration of God or a god as expressed in forms of worship; an apprehension, awareness, or conviction of the existence of a Supreme Being; any system of faith, doctrine and worship, as the Christian religion, the religions of the Orient; a particular system of faith or worship. While 'religion' in its broadest sense includes all forms of belief in the existence of superior beings capable of exercising power over the human race, as commonly accepted it means the formal recognition of God, as members of societies and associations, and the term, 'a religious purpose', as used in the constitutional provision exempting from taxation property used for religious purposes, means the use of property by a religious society or body of persons as a place for pubic worship. 'Religion' is squaring human life with superhuman life. Belief on a superhuman power and such an adjustment of human activities to the requirements of that power as may enable the individual believer to exist more happily is common to all 'religions'. The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. With man's relations to his Maker and the

obligations he may think they impose, and the manner in which he of his belief on those subjects shall make an expression, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with."

717. In **Most Rev. P.M.A. Metropolitan and others Vs. Moran Mar Marthoma and another, 1995 (Supple) (4) SCC 286** the word religion was described as under:

"Religion" is the belief, which binds spiritual nature of men to supernatural being. It includes worship, belief, faith, devotion etc. and extends to rituals. Religious right is the right of a person believing in a particular faith to practice it, preach it and profess it."

718. In **A.S. Narayana Deekshitulu Vs. State of A.P. and others, 1996(9) SCC 548** the Court described "religion" with reference to Articles 25 and 26 of the Constitution as under:

"'Religion' as used in these articles must be construed in its strict and etymological sense. 'Religion' is that which binds a man with his Cosmos, his Creator or Super force. It is difficult and rather impossible to define or delimit the expressions 'religion' or "matters of religion' used in Article 25 and 26. Essentially, religion is a matter of personal faith and belief of personal relations of an individual with what he regards as Cosmos, his maker or his creator, which, he believes, regulates the existence of insentient beings and the forces of the universe. 'Religion' is not necessarily theistic and in fact there are well-known religions in India itself like Buddhism and Jainism, which do not believe in the existence of God. In India, Muslims

believe in Allah and have faith in Islam; Christians in Christ and Christianity; Parsis is Zoroastrianism; Sikhs in Guru Granth Sahib and teachings of Guru Nanak Devji, its founder, which is a facet of Hinduism like Brahmo Samaj, Arya Samaj etc. A religion undoubtedly has its basis in a system of beliefs and doctrine, which are regarded by those who profess religion to be conducive to their spiritual well being. A religion is not merely an opinion, doctrine or belief. It has outward expression in acts as well.----------"

719. In **T.K. Gopal alias Gopi Vs. State of Karnataka, 2000 (6) SCC 168** the Court said:

"'Religion' is a matter of faith stemming from the depth of the heart and mind. 'Religion' is a belief, which binds the spiritual nature of man to a supernatural being; it is an object of conscientious devotion, faith and pietism. Devotion in its fullest sense is a consecration and denotes an act of worship. Faith in the strict sense constitutes firm reliance on the truth of religious doctrines in every system of religion. Religion, faith or devotion is not easily interchangeable."

720. In **Ms. Aruna Roy and others Vs. Union of India and others, JT 2002 (7) SC 103** it was said:

"The word 'religion' has different shades and colours. Important shade is dharma (duty), that is to say, duty towards the society and the soul. It should not be misunderstood nor contention could be raised that as it is used in the national policy of education, secularism would be at peril."

721. In **P.M.A. Metropolitan (supra)** the Court in respect to faith and belief also observed: *"Religion is founded on faith and*

belief. Faith emanates from conscience and belief is result of teaching and learning." (para 3)

722. The word "denomination" has been described in Black's Law Dictionary Seventh Edition on page 446 as under:

> *"**denomination. 1.** An act of naming. **2.** A collective designation, esp. of a religious sect."*

723. In "Words and Phrases", Permanent Edition, Vol. 12 (1962), page 105, defines it as under :

> *"A "denomination" is a religious sect having a particular name. Hale v. Everett, 53 N.H. 9, 92, 16 Am.Rep. 82.*
>
> *A "denomination" is defined by Webster as "A class or collection of individuals called by the same name; a sect." Wilson v. Perry, 1 S.E. 302, 304, 314, 29 W.Va. 169.*
>
> *In an indictment charging the larceny of national bank bills, the number and denomination of which are to the grand jury unknown, "denomination" refers to the value or number of dollars the several bills represented, as the denomination of $500, etc. Duvall v. State, 63 Ala. 12, 17.*
>
> *"Religious sect, order, or denomination," as used in V.A.M.S. Const. 1865, art, 1, § 13, providing that a "religious sect, order, or denomination" was capable of receiving a devise, etc., is not to be limited in meaning to such religious bodies as are composed of many local congregations linked together by rules of the sect, order, or congregation, so that what property one holds belongs in some sense to the whole, but includes a local congregation uncontrolled by any general ecclesiastical organization. Boyce v. Christian, 69 Mo. 492, 494."*

724. The Law Lexicon-The Encyclopaedic Law Dictionary by P. Ramanatha Aiyer (1997) describe "denomination" on page 521:

> ***"Denomination.*** *A class or collection of individuals called by the sane name; a sect; a class of units in money (coins of small denomination); a distinctively named church or sect (as, elergy of all denominations).*
>
> *A class or society of individuals called by the same name especially a religious group or a community of believers called by the same name."*

725. New Lexicon Webster's Dictionary of the English Language, Deluxe Encyclopedic Edition, at page 256 defined the word "denomination" as under:

> *"**de-nom-i-na-tion** n. the act of denominating, a name, esp. one given to a class or category, one of a series of units in numbers, weights or money, a religious sect, Protestant denominations."*

726. The term "denomination" came to be considered by the Apex Court in **Bramchari Sidheswar Shai and others Vs. State of West Bengal AIR 1995 SC 2089** and in para 14 of the judgement referring to Oxford Dictionary, the Apex Court quoted from **Sri Shirur Mutt (supra)** as under :

> *"...The word denomination has been defined in the Oxford Dictionary to mean a collection of individuals classed together under the same name: a religious sect of body having a common faith and organisation and designated by a distinctive name....."*

727. In **Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and others Vs. State of U.P. and others, 1997(4) SCC 606** the court said:

"On the practices of the Math, the meaning of the connotation "denomination" in that behalf, it was held that each such sect or special sects which are founded by their organizer generally by name be called a religious denomination as it is designated by distinctive name in many cases. It is the name of the founder and has common faith and common spiritual organization. Article 26 of the Constitution contemplates not merely a religious denomination but also a section thereof. The words "religious denomination" under Article 26 of the Constitution must take their colour from the word religion and if this be so the expression religious denomination must be (1) a collection of religious faith, a system of belief, which is conducive to the spiritual well-being, i.e, a common faith; (2) Common organization; (3) a designation by a distinctive name."

728. In Corpus Juris Secundum Vol. LXXVI (1952) on page 738 the word "religious sect or denomination" has been described as under:

> *"The term "religious sect or denomination" refers to people believing in the same religious doctrines who are more or less closely associated or organized to advance such doctrines and increase the number of believers therein; a body or number of persons united in tenets but constituting a distinct organization or party by holding sentiments or doctrines different from those of other sects or people.*
>
> *The term "religious sect or denomination" refers to people believing in the same religious doctrines who are more or less closely associated or organized to advance such doctrines and increase the number of believers therein; a church, or body of persons in some way united*

for purposes of worship, who profess a common religious faith, and are distinguished from those composing other such bodies by a name of their own; a body or number of persons united in tenets but constituting a distinct organization or party by holding sentiments or doctrines different from those of other sects or people.

Denomination. A class or collection of individuals called by the same name; a sect. It has been said to be equivalent to, or synonymous with, "persuasion."

Persuasion. In religious affairs, a creed or belief; hence a sect or party adhering to a creed or system of opinions."

729. The word "religious denomination or religious sect" has been described in Words and Phrases Permanent Edition Vol. 36A (1962) on page 479:

"A religious sect is a body or number of persons united in tenets, but constituting a distinct organization or party, by holding sentiments or doctrines different from those of other sects or people. State v. Hallock, 16 Nev. 373, 385.

"People believing in the same religious doctrines, who are more or less closely associated or organized to advance such doctrines and increase the number of believers therein," constitute a religious sect. State v. District Board of School Dist. No. 8, 44 N.W. 967, 973, 76 Wis. 177, 7 L.R.A. 330, 20 Am.St.Rep. 41.

"Religious sect, order, or denomination," as used in V.A.M.S. Const. 1865, art, 1, § 13, providing that a "religious sect, order, or denomination" was capable of receiving a devise, etc., is not to be limited in meaning to

such religious bodies as are composed of many local congregations linked together by rules of the sect, order, or congregation, so that what property one holds belongs in some sense to the whole, but includes a local congregation uncontrolled by any general ecclesiastical organization. Boyce v. Christian, 69 Mo. 492, 494."

Within Const. Art. 1, § 1, par. 14, providing that no money shall be taken from the public treasury in aid of any church, sect, denomination, or sectarian institution, a "religious sect" is a body or number of persons united in tenets and constituting a distinct organization or party holding sentiments or doctrines different from those of other sects or people, and having a common system of faith. Every such sect is "sectarian," and a "church" is an organization for religious purposes or for the public worship of God. Benett v. City of La Grange, 112 S.E. 482, 485, 153 Ga. 428, 22 A.L.R. 1312."

730. The term "religious sect" is described in the Law Lexicon-The Encyclopaedic Law Dictionary by P. Ramanatha Aiyer (1997) at page 1648 as under:

*"**Religious sect.** "People believing in the same religious doctrines, who are more or less closely associated or organized to advance such doctrines and increase the number of believers therein," constitute a religious sect. A religious sect is a body or number of persons united in tenets, but constituting a distinct organization or party, by holding sentiments or doctrines different from those of other sects or people."*

731. In the New Lexicon Webster's Dictionary of the English Language Deluxe Encyclopedic Edition at page 841 the word

"religious" has been described as under:

> *"re-li-gious 1. adj. of, pertaining to, or concerned with religion, faithful in religion, associated with the practice of religion, a religious rite (of behavior) governed by principles adhered to as strictly as if they were those of a religion, a religious regard for accuracy, of or pertaining to a monastic order 2. pl. re-li-gious n. someone who has made monastic vows."*

732. The term "religious denomination" came up for consideration before the Apex Court in **Sri Shirur Mutt (Supra)** and after referring to the Oxford Dictionary, the Court observed that the meaning of "religious denomination" is a collection of individuals classed together under the same name; a religious sect or body having a common faith and organization and designated by a distinctive name. The Court held that different sects or sub-sects can certainly be called a religious denomination as it is designated by a distinctive name, has a common faith and common spiritual organization.

733. In **S.P. Mittal (supra)** the Court also considered the term 'religious denomination' and said:

> *"The word 'religious denomination' in Article 26 of the Constitution must take their colour from the word 'religion' and if this be so, the expression 'religious denomination' must also satisfy three conditions". It must be a collection of individuals who have a system of beliefs or doctrines, which they regard as conducive to their spiritual well being, that is, a common faith; Common organization; and Designation by a distinctive name."*

734. In **S. R. Bommai and others Vs. Union of India and others AIR 1994 SC 1918** and **M/s Radhasoami Satsang,**

Saomi Bagh, Agra Vs. Commissioner of Income Tax 1992 (1) SCC 659 the aforesaid tests for determination of "religious denomination" were reiterated.

735. In **Nallor Marthandam Vellalar and others Vs. Commissioner, Hindu Religious and Charitable Endowments and others 2003 (10) SCC 712**, it was held that the words "religious denomination" take their colour from the word "religion". The Court further said that the expression "religious denomination" must satisfy three requirements- (1) it must be collection of individuals, who have a system of beliefs or doctrine which they regard as conducive to their spiritual well-being, i.e. a common faith, (2) a common organization; and (3) designation of a distinctive name. It necessarily follows that the common faith of the community should be based on religion in that they should have common religious tenets and basic cord which connects them, should be religion and not merely consideration of caste of community or social status.

736. Following the view taken with regard to "religious denomination" in **Sri Shirur Mutt (supra)**, a three-Judge Bench of the Apex Court in **Acharya Jagdishwaranand Avadhuta and others Vs. Commissioner of Police, Calcutta and another 1983 (4) SCC 522** held that "Ananda Marga", which is a collection of individuals who have a system of beliefs which they regard as conducive to their spiritual well being; a common organization; a definite name could be regard as a "religious denomination" within Hindu religion as it satisfies the test laid down by the Constitution Bench in **Sri Shirur Mutt (supra).**

737. In **Bramchari Sidheswar Shai (supra)**, the Court held that Ram Krishna Mission is also a "religious denomination", and while expressing so, the Court in para 51 of judgment said :

"51. No good reason is shown to us for not accepting the view of the Division Bench of the point that Ramakrishna Mission or Ramakrishna Math is a religious denomination. It is not in dispute and cannot be disputed that Sri Ramakrishna could be regarded as religious teacher who expounded, practised and preached the principles of Vedanta on which Hindu religion is founded, to meet the challenges posed to humanity in the changing world and made his disciples to spread the principles so expounded by him not only in India but all over the world as the basic principles of Hinduism. It cannot also be disputed that the disciples of Ramakrishna formed Ramakrishna Math and Ramakrishna Mission for propagation and promotion of the principles, so expounded, practised and preached by Ramakrishna Parmahansa, by way of publications and building of temples, prayer halls and building of educational, cultural and charitable institutions as performance of sevas resulting in the coming up of organisations as Ramakrishna Maths and Ramakrishna Missions, all over the world. These Maths and Missions of Ramakrishna composed of the followers of principles of Hinduism as expounded, preached or practised by Ramakrishna as his disciples or otherwise form a cult or sect of Hindu religion. They believe in the birth of sage Ramakrishna in Dakshineswar as an Avatar of Rama and Krishna and follow the principles of Hinduism discovered, expounded, preached and practised by him as those conducive to their spiritual well-being as the principles of highest Vedanta which surpassed the principles of Vedanta conceived and

propagated by Sankaracharya, Madhavacharya and Ramanunjacharya, who were earlier exponents of Hinduism. Hence, as rightly held by the Division Bench of the High Court, followers of Ramakrishna, who are a collection of individuals, who adhere to a system of beliefs as conducive to their spiritual wellbeing, who have organised themselves collectively and who have an organisation of definite name as Ramakrishna Math or Ramakrishna Mission could, in our view, be regarded as a religious denomination within Hindu religion, inasmuch as they satisfy the tests laid down by this Court in Sri Shirur Math's case (AIR 1954 SC 282) (supra) for regarding a denomination as a religious denomination."

738. It may be noticed at this stage the scope of judicial review about what constitute religious belief or what is essential religious practices or what rites and ceremonies are essential according to the tenets of a particular religion. It is not the subject to the belief of faith of a judge but once it is found that a belief, faith, rite or ceremony is genuinely and consciously treated to be part of the profession or practice of a religion by the segment of people of distinct group, believing in that particular religion, suffice it to constitute "religion" within the term of Article 25 of the Constitution whereunder the persons of the said segment have a fundamental right to practice their religion without any interruption from the State. This right is subject only to public order, morality and health and to the other provisions of Part III of the Constitution as well as the power of the State to make laws in respect to the matter provided in Article 25(2) of the Constitution. This right is conferred to the persons professing, practising and propagating the concerned

religion.

739. In **Jamshed Ji Vs. Soonabai, (1909) 22 Bom 122** Hon'ble Davar, J. in respect to the belief of a community regarding religion observed:

> "*If this is the belief of the community and it is proved undoubtedly to be the belief of the Zoroastrian community,- a secular Judge is bound to accept that belief-it is not for him to sit in judgement on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind."*

740. The above view has been quoted with approval in **Ratilal Panachand Gandhi (supra)** and in **Bijoe Emmanuel and others Vs. State of Kerala and others, 1986(3) SCC 615** wherein after quoting the above observation the Apex Court approved the same in the following words:

> *"We do endorse the view suggested by Davar J.'s observation that the question is not whether a particular religious belief or practice appeals to our reason or sentiment but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion. Our personal views and reactions are irrelevant. If the belief is genuinely and conscientiously held it attracts the protection of Article 25 but subject, of course, to the inhibitions contained therein."*

741. The contents and the scope of Article 25 and 26 of the Constitution have been considered by the Apex Court in a number of decisions and it would be suffice to refer a Constitution Bench decision in **Sardar Syedna Tahel Saifuddin Saheb Vs. State of Bombay, AIR 1962 SC 853** wherein,

referring to its earlier decisions, the Apex Court in para 34 observed:

> *"The content of Arts. 25 and 26 of the Constitution came up for consideration before this Court in 1954 SCR 1005: (AIR 1954 S.C. 282), Ramanuj Das v. State of Orissa, 1954 SCR 1046: (AIR 1954 SC 400), 1958 SCR 895: (AIR 1958 S.C. 255); (Civil Appeal No. 272 of 1960 D/- 17-3-1961: (AIR 1961 SC 1402), and several other cases and the main principles underlying these provisions have by these decisions been placed beyond controversy. The first is that the protection of these articles is not limited to matters of doctrine or belief, they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion. The second is that what constitutes an essential part of a religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion."*

742. Here referring as to what constitute "religious denomination", the Court also observed that the identity of a "religious denomination" consists in the identity of its doctrine, creeds and tenets and these are intended to ensure the unity of the faith which its adherents profess and the identity of the religious views and the bonds of the union which binds them together as one community. In the absence of conformity to essentials, the denomination would not be an entity cemented into solidity by harmonious uniformity of opinion, it would be a mere incongruous heap of, as it were, grains of sand, thrown

together without being united, each of these intellectual and isolated grains differing from every other, and the whole forming a but nominally united while really unconnected mass; fraught with nothing but internal dissimilitude, and mutual and reciprocal contradiction and dissension. (This is a quote from the passage of Lord Halsbury in Free Church of Scotland Vs. Overtoun; 1904 AC 515 which in turn refer to the observations of "Smith B." in Dill Vs. Watson, (1836) 2 Jones Rep. (Ir Ex) 48).

743. The Apex Court further observed that a denomination within Article 26 and persons who are members of that denomination are under Article 25 entitled to ensure the continuity of the denomination and such continuity is possible only by maintaining the bond of religious discipline which would secure that continued adherence of its members to certain essentials like faith, doctrine, tenets and practices. The right guaranteed by Article 25(1) is not confined to freedom of conscience in the sense of the right to hold a belief and to propagate that belief, but includes the right to the practice of religion, the consequences of that practice must also bear the same complexion and be the subject of a like guarantee.

744. In **Sardar Sarup Singh and others Vs. State of Punjab and others, AIR 1959 SC 860** another Constitution Bench observed that freedom of religion in our Constitution is not confined to religious beliefs only but extends to essential religious practices as well subject to the restriction which the Constitution has laid down. Referring to **Shirur Mutt (supra)** it also held that a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the

religion they hold. Similarly referring to **Venkataramana Devaru Vs. State of Mysore, AIR 1958 SC 255** the court said that matters of religion in Article 26(b) include practices essential according to the community as part of its religion.

745. In the light of the above discussion, let us examine as to what are the characteristics of Nirmohi Akhara, plaintiff, so as whether it can be called "the Panchayati Math of Ramanandi sect of Bairagies" and also a "religious denomination following its religious faith and pursues according to its own customs".

746. Sri R.L. Verma, Advocate, learned counsel for plaintiffs (Suit-3) placed before us Exhibit-1 (Suit-3), which is a copy of a registered document containing in writing the customs and practices to be observed by Nirmohi Akhara. The document is registered with the Sub-Registrar, Faizabad under Registration Act, 1908 on 26.3.1949. It states that about 500 years back, Sri Brijanand and Sri Balanand Ji constituted 3 Anni, namely, (1) Nirmohi, (2) Digamber and (3) Nirwani and thereunder constituted seven Akharas, namely, (1) Sri Panch Ramanandi Nirmohi Akhara, (2) Sri Panch Ramanandi Nirwani Akhara, (3) Sri Panch Ramanandi Digambari Akhara, (4) Sri Panch Ramanandi Santoshi Akhara, (5) Sri Panch Ramanandi Khaki Akhara, (6) Sri Panch Ramanandi Niralambi and (7) Sri Panch Ramanandi Maha Nirwani. These bodies were constituted for protection and development of "Chatuha Sampraday". All these seven Akharas were based on military training of Sadhus. The existing Mahant of Nirmohi Akhara was Sri Raghunath Das, but in hierarchy the Panchayat has twelve other Mahants or may be called "Sub-Mahants". Nirmohi Akhara has a lot of property including several temples, namely, Ramjanam Bhumi Temple at Mohalla Ram Kunj, Temple Akhara at Mohalla Rajghat etc. The

appointment and removal of the Mahant shall be by panchayat. The property shall be in the name of Mahant, but would belong to Nirmohi Akhara. Any legal proceeding shall be taken through Mahant. However, Mahant would not work contrary to the decision of Panch. The Akahara shall follow and propound the religious tenets of "Chatuha Sampraday" with further provision of giving military training to its Sadhus for the protection of its Sampraday.

747. Sri Verma submitted that Ramanand Sect has its origin with Lord Ram who is treated to be the first superior of the sect. It has derived its continuance since then. Sri Ramanandacharya, however, was a person who formally established it sometimes in 13th Century. The military training commenced in the sect by Sri Anubhavanandacharya in the 16th Century and was given a final shape by Sri Balanandacharya. In support of his submissions he placed before us a book "Smritigranthah" 30th Edition published by Sri Ramanand Darshan Shodh Sansthan on 27.01.2000 (Paper No. 43-C1/6). Page 543/279 contains some details of Sri Anubhavanandacharya showing his period from Samvat 1503-1611 (1446 AD-1554 AD). Similarly page 695/431 gives the details of Sri Balanandacharya showing his period as Samvat 1710-1852 (1653 AD-1795 AD). From page 73/49 it is evident that Sri Ramanandacharya himself was born in Samvat 1356 (1299 AD) at Prayagraj i.e. Allahabad and died in Samvat 1532 (1475 AD) at Varanasi.

748. He further relied on **Yadunath Sarkar's "History of Bairagi Akharas**" to show existence of Vairagis and their activities in Kumbh Mela in the year 1796 AD and 1882 AD.

749. He also relied on certain other books which are as under.

750. "**A Historical Sketch of Tahsil Fyzabad, Zillah**

Fyzabad" by P. Carnegy printed at the Oudh Government Press, Lucknow in 1870 (in short "P. Carnegy's Historical Sketch"). P. Carnegy was officiating Commissioner and Settlement Officer at Faizabad. Besides others, he has also dealt with the Akharas of Ayodhya in his book from Page 19 to 20, as under :

"The monastic orders.- There are seven Akharas or cloisters of the monastic orders, or Bairagis, disciples of Vishnu, in Ajudhia, each of which is presided over by a Mahant or Abbot; these are :-

1. Nirbani, or silent sect, who have their dwelling in Hanuman Garhi.

2. The Nirmohi, or void of affection sect, who have establishments at Ramghat, and Guptarghat.

3. Digambari, or naked sect of ascetics.

4. The khaki or ash-besmeared devotees

5. The Maha-nirbani, or literally dumb branch.

6. The Santokhi, or patient family.

7. The Nir-alambhi, or provisionless sect.

The expenses of these different establishments of which the first is by far the most important, are met from the Revenues of lands which have been assigned to them; from the offerings of pilgrims and visitors; and from the alms collected by the disciples in their wanderings all over India.

The Nirbani sect,- I believe the Mahant of the Nirbani Akhaara or Hanumangarhi, has 600 disciples, of whom as many as 3 or 400 are generally in attendance, and to whom rations are served out at noon daily. The present incumbent has divided his followers into four Thoks or parties, to whom the names of four disciples, as

marginally noted, have been given.

There appear to be as I have already pointed out in my "Notes on Races, &c.," several grades of discipleship in connexion with these establishments.

I. There are the ordinary worshippers of all the different Hindu castes, who still retaining their position in the world and their home ties, become disciples in the simple hope that their prayers offered under the auspices of their spiritual guides, will be heard and their temporal wishes granted.

II. There are also those who forsaking the world and their homes, join the fraternity of devotees in view solely to their eternal well being, a privilege which is within the reach of all castes of Hindus. Of these latter those who were Brahmins and Chhatris before initiation are exempted from manual labour, while the menial offices of cooking, sweeping, water drawing &c. devolve upon those of the brethren who were originally of the lower castes.

A disciple of the 2nd is for a time admitted as a novice and entrusted with unimportant secular offices only. He is then required to make a round of the great places of pilgrimage such as Dwarka Jagarnath, Gya &cs. &c., and on his return thence he is finally admitted to all the privileges of the order; celibacy is enforced, and those who surreptitiously marry, or steal, are expelled from the brotherhood. Brahmins and Chhatris are admitted to membership without limit as to age, but candidates, of other castes must be under the age of sixteen years, so that they may readily inbibe the doctrines of the order. The orders of the Mahant and his advisers, the heads of Thoks,

must be implicitly obeyed. The best of the disciples are chosen to remain at the temple to conduct the devotions in solitude.

Nirmohi sect.- It is said that one Gobind Das came from Jaipur some 200 years ago and having acquired a few Bighas of revenue-free land, he built a shrine and settled himself at Ram Ghat. Mahant Tulshi Das is the sixth in succession. There are now two branches of this order, one at Ram Ghat, and the other occupying the temples at Guptar Ghat. They have rent free holdings in Basti, Manakpur and Khurdabad.

The Digambari sect.- Siri Balram Das came to Ajudhia 200 years ago, whence it is now known, and having built a temple settled here. Mahant Hira Das is the seventh incumbent. The establishment of resident disciples is very small being limited to 15; they have several revenue free holdings in the district.

The Khaki sect.- When Remchandr became an exile from Ajudhia his brother Lachhman is said in his grief to have smeared his body with ashes and to have accompanied him. Hence he was called Khaki, and his admiring followers bear that name to this date. In the days of Shuja-ud-Dowla one Mahant Dya Ram is said to have come from Chitrkot, and having obtained 4 bighas of land, he thereon established the Akhara, and this order of Bairagis now includes 180 persons, of whom 50 are resident and 100 itinerant. This establishment has some small assignments of land in this, and in the Gondah district. Ram Das the present Mahant is seventh in succession from the local founder of the order.

The Mahanirbani sect.- Mahant Parsotam Das came to Ajudhia from Kotah Bundi in the days of Shuja-ud-Dowla, and built a temple at Ajudhia. Dial Das the present incumbent is the sixth in succession. He has 25 disciples, the great majority of whom are itinerant mendicants. The words Mahanirbani imply the worshipping of God without asking for favours, either in this world or the next.

The Santoki sect.- Mahant Rati Ram arrived at Ajudhia from Jaipur in the days of Mansur Ali Khan, and building a temple founded this order. Two or three generations after him the temple was abandoned by his followers, and one Nidhi Singh, an influential distiller in the days of the Ex-king, took the site and built thereon another temple. After this Khushal Das of this order returned to Ajudhia and lived and died under an Asok tree, and there the temple which is now used by the fraternity, was built by Ramkishn Das the present head of the community.

The Niralambhi sect.- Siri Birmal Das is said to have come from Kotah in the time of Shuja-ud-Dowla, and to have built a temple in Ajudhia, but it was afterwards abandoned. Subsequently Narsing Das of this order erected a new building near Darshan Sing's temple. The present head of the fraternity is Ram Sevak, and they are dependent solely on the offerings of pilgrims."

751. "**Fyzabad: A Gazetteer being Vol. XLIII of the District Gazetteers of the United Provinces of Agra and Oudh**" by **H.R. Nevill** published by **Government Press, United Provinces** in **1905** (Book No. 4) also gives some details about the Ramanandis and Vairagi Akharas of Ayodhya as under:

"Hinduism in this district is naturally influenced in a large degree by the presence of Ajodhya, the birthplace of Rama, so that it is only to be expected that the Vaishnavite form should predominate. The census returns show, however, that the professed followers of Vaishavism amount to only a small proportion of the Hindu population. No more than 7.7 per cent. were returned as Vaishnavites and 5.5 per cent. as Ramanandis. In both cases the proportions are high, but still the great mass of the Hindus appear to belong to no particular sect, as is generally the case throughout Oudh.

Among the numerous Faqirs whose home is at Ajodhya there are many Bairagis, who are included in the Vaishnavites. ***These Bairagis belong to regularly constituted religious bodies and are devided among seven different akharas or orders.*** *The disciples have to pass through a series of stages, which are identical in all cases. They are admitted while under the age of sixteen, although the rule is relaxed in the case of Brahmans and Rajputs, who also enjoy other privileges, especially in the matter of exemption from menial service. The first stage is known as Chhora and lasts for three years: the work of the novice consists of servile offices, such as cleaning the smaller utensils of the temple and of the common mess, carrying wood, and performing puja path. The second stage is also for three years and is known as bandagidar. The disciple now draws water from the well, cleans the larger vessels, cooks the food, as well as doing puja. At the expiration of this period there follows a third stage of equal duration, known as hurdanga. In this the work consists in*

taking the daily food to the idols, distributing the daily rations given at midday to the brethren, doing puja and carrying the nishan or temple standard. In the tenth year the disciple enters on a fourth period of three years called naga. During this stage he leaves Ajodhya with his contemporaries and goes the round of all the tiraths or sacred places of India, subsisting all the time on mendicancy. At his return he reaches the fifth and final stage called atith, which continues till his life's end. He now ceases to work, except in the matter of puja path, and is provided with food and clothing.

The seven orders have a regular system of precedence which is observed in ceremonial processions and on similar occasions. *In front come the Digambaris, followed by the Nirbanis on the right and the Nirmohis on the left. In the third rank behind the Nirbanis march the Khakis on the right and the Niralambhis on the left; and after the Nirmohis come the Santokhis and Mahanirbanis in the same order. Between each body a space is left, both in front and on the flanks. The Digambaris or naked ascetics are said to have been founded by one Balram Das, who came to Ajodhya over two hundred years ago and built a temple here. The present head of the college is the eleventh mahant. The order is a small one, as the number of resident brethren is limited to fifteen; it is on the other hand possessed of considerable wealth, having several revenue-free holdings in Gorakhpur and two villages, Puraina in tahsil Fyzabad and Kalupur in Tanda, recently purchased in this district. The largest community is that of the Nirbanis, who live in the celebrated Hanuman Garhi*

temple. They are very numerous, but there are not more than 250 resident disciples who obtain daily rations. The Nirbanis are divided into four thoks or pattis, which go by the names of Hardwari, Basantia, Ujainia and Sagaria, each with its own mahant; but over all is a single presiding mahant, chosen by common consent, who occupies the gaddi in the verandah in front of the temple. The Nirbanis are very wealthy: besides owning revenue-free lands in Fyzabad, Gonda, Basti, Pratabgarh and Shahjahanpur, they carry on an extensive business as moneylenders and dealers in elephants, and have purchased several villages with the proceeds. Their revenue from the offerings made by pilgrims is also very large. ***The Nirmohi sect claim spiritual descent from one Gobind Das of Jaipur. They formerly held the Janamasthan temple in Ramkot, the remains of which still belong to them; but on its destruction by the Musalmans they moved to Ramghat. Subsequently a quarrel arose among them on a question of succession and a split occurred, a branch leaving Ramghat and settling at Guptarghat. The mahant of the Ramghat branch is the ninth in succession from the founder. The Nirmohis of Guptarghat have some revenue-free lands in Basti, Mankapur and Khurdabad, but the others are wholly dependent on the temple offerings. The name signifies "void of affection."*** *The Khaki or ash-besmeared akhara was established in the days of Shuja-ud-daula by one Daya Ram from Chitrakot, who obtained four bighas of land in Ajodhya and built thereon a temple. The order numbers 180 persons, of whom 50 are resident and the rest itinerant. The present head is*

eleventh in succession from the founder. The khakis own some land in Basti and hold the lease of one village in Gonda. The sect called Niralambhi, or provisionless, dates from the same period, having been founded by Birmal Das of Kotah, who came to Ajodhya and built a temple which was afterwards abandoned. One of his successors, Narsingh Das, erected a new temple near that of Darshan Singh. The fraternity is a small one and depends solely on the offerings of pilgrims. The Santokhis or patient faqirs are a small and poor sect without any endowment. The akhara was founded in the time of Safdar Jang by Rati Ram of Jaipur, who built a temple in Ajodhya. This was subsequently abandoned and the site taken for another temple by Niddhi Singh, an influential Kalwar in the days of Wajid Ali Shah. After this, one Khushal Das of the Santokhi sect returned to Ajodhya, and his successor, Ramkishan Das, built the present temple. In 1900 the mahant died and for some time the Akhara was deserted and no successor appointed. Lastly come the Mahanirbanis or dumb faqirs, the word implying worship without asking for favours either in this work or the next. The present mahant is the seventh in succession from the founder, one Parsotam Das, who came to Ajodhya from Kotah Bundi in the reign of Shuja-ud-daula, and built a temple. There are twenty-five brethren, the majority of whom are itinerant mendicants." (emphasis added)

752. "**Ayodhya Ka Itihas**" written by **Sri Avadhwasi Lala Sitaram** (first published in **1932 and reprinted in 2001**) (Book No. 46) is the next work. Page 35 thereof reads as under:

"इन सातों अखाड़ों के नियमित क्रम हैं जिसके अनुसार ये बड़े–बड़े

मेलों और ऐसे ही अवसरों पर चलते हैं। पहले दिगंबरी रहते हैं, फिर उनके बाद निर्वाणी दाहिनी ओर, और निर्मोही बाई ओर, तीसरी पंक्ति में निर्वाणियों के पीछे खाकी दाहिनी ओर, और निरालंबी बाईं ओर। और निर्मोहियों के पीछे संतीषी और महानिर्वाणी। हर एक के आगे और पीछे कुछ स्थान खाली रहता है।''

"There is successive order for these seven Akharas, according to which they move in big fairs and similar occasions. First of all Digambaris find place then, Nirvani on right side and Nirmohi on left side, in third line behind Nirvanis towards right side Khaki and towards left side Niralambi find place. Behind Nirmohis, Santishi and Mahanirvani move. Some place remains vacant in front and backward side of each. " (E.T.C.)

753. Next is **"Rajasthan Ki Bhakti Parampara Evam Sanskriti"** by **Sri Dinesh Chandra Shukla and Onkar Narain Singh** published at Rajasthani Granthagar, Jodhpur (Book No. 73). Sri Dinesh Chandra Shukla was Associate Professor, History Department, Jodhpur University, Jodhpur and Sri Onkar Narain Singh was Senior Research Assistant, History in the same University. In the Schedule A on page 223 under the heading "Madhyakalin Rajasthan Me Vaishnav Bhakti Parampara", he has not only given the reference of origin of Vaishnav faith in Rajasthan but has also given pedigree of Ramanandacharya and his disciples related with Rajasthan as under:

''यद्यपि राजस्थान में रामानन्द की परम्परा के विकास के पूर्व ही जांभोजी और जसनाथ जी ने वैष्णव मत के प्रचार–प्रसार हेतु पृष्ठभूमि एवं समयुगीन नाथ–पंथियों के विकृत पतितशील तथा क्रिया–कलापों के विरोध में वातावरण का निर्माण कर दिया था। तथापि परवर्ती काल में उदार वैष्णव–प्रकृति को भक्ति धारा द्वारा संचित कर समस्त राजस्थान को लहलहित करने का श्रेय रामानन्द परम्परा के शिष्यों और अनुयायी गणों को

ही है।

इन शिष्यों में अनन्तानन्द का सांभर आना तथा मारवाड़ नरेश मालदेव को शिष्यत्व प्रदान करना सुविख्यात है। राजस्थान के प्रसिद्ध वैष्णव भक्त कृष्णदास पयहारी (1502–27 ई0) जिन्होंने गलता (जयपुर) की नाथ–मतावलम्बी गद्दी को अधिकृत कर वैष्णव–जनों की सर्वप्रथम और सर्व–प्रधान गद्दी स्थापित की थी, इन्हीं अनन्तानन्द के शिष्य थे। इसी काल में आमेर–नरेश पृथ्वीराज और महारानी बालाबाई इनके शिष्य बने। पयहारीजी के शिष्य अग्रदास ने आमेर नरेश मानसिंह को भारत के अनेक मन्दिरों के पुनरूद्धार हेतु अभिप्रेरित किया था। फलतः वृन्दावन के अनेक मन्दिर एवं घाट, पटना का वैकुण्ठपुर (गुरू गोविन्दसिंह जन्म स्थली) तथा जगन्नाथ धाम की प्रतिष्ठा की गई। भक्तमाल के सुप्रसिद्ध रचयिता नाभादास इन्हीं अग्रदास के शिष्य थे। पयहारीजी के दूसरे शिष्य कील्हदास ने राम–भक्ति के साथ योगाभ्यास को भी प्रश्रय देते हुए रामानन्द की वैरागी–परम्परा में योग–साधना का समावेश कर 'तपसी शाखा' का प्रवर्तन किया।

रामानन्द के सबसे छोटे शिष्य सुरसुरानन्द रामानन्द की राजस्थान यात्रा के समय से ही राजस्थान से सम्बन्धित रहे।

इनकी परम्परा में केवलानन्द और माधवानन्द हुए। केवलानन्द की परम्परा में ***अनुभवानन्द, ब्रह्मानन्द, बृजानन्द, बालानन्द*** *और* ***गोविन्दजी*** *हुए जिन्होंने ब्रज–भूमि से भगवान श्रीकृष्ण के विभिन्न श्री–विग्रह राजस्थान के नाथद्वारा, कांकरोली, कोटा और जयपुर लाकर प्रतिष्ठित करने की महत्वपूर्ण भूमिका अदा की। माधवानन्द की परम्परा में नरहरिदास हुए, जिन्हें गोस्वामी तुलसीदास का गुरू माना जाता है। इनका 'झीतडा' (मारवाड़) में 'फूवा मठ' के नाम से प्रसिद्ध स्थान है।*

रामानन्द की राजस्थान से सम्बद्ध शिष्य–प्रशिष्य परम्परा निम्नांकित तालिका द्वारा प्रदर्शित की जा सकती है।–

रामानन्द

अनन्तानन्द — *सुरसुरानंद*

कर्मचन्द (इनकी परम्परा में कालान्तर रामस्नेही मत की सिंहथल व खेडापा पीठ के प्रवर्तक हरिराम दास और रामदास आते हैं)	कृष्णदास पयहारी (रसिक सम्प्र– दाय के प्रवर्तक) / नाभादास (भक्तमाल के रचयिता) (इनकी परम्परा में कालांतर रामस्नेही मत की रेण व शाहपुरा पीठ के संस्थापक दरियावजी और रामचरण आते हैं।)	केवलानन्द / **अनुभवानन्द** / **ब्रह्मानन्द** / **बृजानन्द** / **बालानन्द** / गोविन्द जी (इन्हें ब्रज–भूमि से लाकर प्रदेश में श्रीकृष्ण–विग्रहों का प्रतिष्ठापक तथा बल्लभ–सम्प्रदाय का प्रसारकर्ता माना जाता है।)''	माधवानन्द / नरहरिदास (इन्हें गोस्वामी तुलसीदास का गुरू माना जाता है)

(emphasis added)

"Although before the growth of Ramanandian tradition in Rajasthan, Jambho Ji and Jasnath Ji had created a background for propagation of Vaishnavism and an atmosphere against the degenerated and retrogressive activities of contemporary 'Nath-panthi', still the credit for imbuing the entire Rajasthan in the later period by instilling liberal Vaishnavism with devotional cult goes to disciples and followers of Ramanandian tradition.

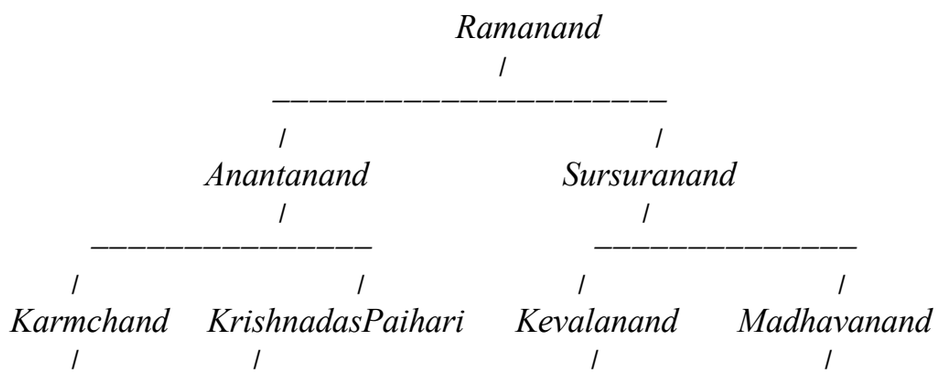
Out of these, the arrival of Anantanand in Sambhar as also the initiation of Marwar king Maldev, is very famous. The famous Vaishnava devotee of Rajasthan, Krishandas Paihari (1502-27 AD), who took over the seat of Nath cult followers at Galta (Jaipur) and set-up the first and foremost seat of Vaishnavites, was a disciple of this very Anantanand. In this very period, Amer king Prithviraj and queen Bala Bai became his disciples. Paihari's disciple Agradas had prompted Amer king Maan Sing to renovate many temples of India. Consequently, many temples and

Ghats of Vrindavan, Vaikunthpur (birthplace of Guru Govind Singh) at Patna and Jagannath Dham were established. Nabhadas, famous composer of Bhaktmal, was disciple of this very Agradas. The other disciple of Paihari, Kilhdas propagated 'Tapsi Shakha' (school of asceticism) by promoting Yogic practices with devotion to Rama and by blending Yoga practices with Ramanandian Vairagi practices.

The youngest disciple of Ramanand, Sursuranand remained associated with Rajasthan right from the times of Ramanand's Rajasthan visit.

There were Kevalanand and Madhavanand in his cult. Anubhavanand, Brahmanand, Brijanand, Balanand and Govind Ji were there in the cult of Kevalananad, who played important part in bringing various Shri-Vigrah of Lord Shri Krishna from Brij Bhumi and installing them at Nathdwara, Kankroli, Kota and Jaipur in Rajasthan. In the cult of Madhavanand was Narharidas, who is considered to be the 'Guru' (master) of Goswami Tulsidas. His 'Jhitada' (Marwar) is a place famous as 'Fuwa Math'.

The 'Shishya-Prashishya Parampara' (cult of disciples-disciples of disciples) of Ramanand associated with Rajasthan, can be shown by the following table:



(In later period of his cult, come Hariramdas and Ramdas, promoter of Singhsthal and Khedapa seats of Ramsanehi cult)

Agradas (Promoter of Rasik cult)

Nabhadas (composer of Bhaktmal)

In later period of his cult, come Rend of Ramsanehi Cult, Dariyavji founder of Shahpura Seat & Ram Charan)

Anubhavanand

Brahmanand

Brijanand

Balanand

Govind Ji

(He is considered to have established Sri Krishna-Vigrahas in the State after bringing them from Brijbhumi and promoter of Ballabh Cult)

Kilhdas (Tapsi Branch)

Narharidas (He is said to be Master of Goswami Tulsidas)

(emphasis added)

754. **"Sri Ram Janmabhumi-Pramarik Itihas"** by **Dr. Radhey Shyam Shukla (1986 Edition)** (Paper No. 107 C1/154/35) (Exhibit No.24) is relied to show that notice of Nirmohi Akhara was taken therein also.

755. Certain witnesses were also produced to depose about the constitution, status and nature of Nirmohi Akhara and about its practices and religious beliefs.

756. Mahant Bhashkar Das (75 years age), DW 3/1 claim himself Sarpanch of Sri Manch Ramanandiya Nirmohi Akhara, Ramghat, Ayodhya. In his deposition in paras 5, 6, 7, and 40 to 44 he said :

> *"5– जब मैं 1946 में अखाडा के रीतिरिवाज अनुसार बाबा बलदेव दास का शिष्य बना तो उस समय निर्मोही अखाड़ा रामघाट, अयोध्या के महन्त, महन्त रघुनाथ दास जी थे। उस समय अखाड़े के अन्तर्गत है। .....और निर्मोही अखाडे में महन्त व पंच जो वहां रहते थे के अलावा पचीसवें बैरागी साधु भी रहते थे। ..... मैं अपने गुरू जी के साथ जन्मभूमि जाता था और वहॉ रहता भी था। अखाड़े के रीतिरिवाज की जानकारी मुझे रामजन्मभूमि मंदिर पर रह कर पूरी तरह हुई। .....*
>
> *रामानन्दीय बैरागी सम्प्रदाय के संस्थापक स्वामी रामानन्दाचार्य भी थे।"*

"5- When in 1946, I became disciple of Baba Baldeo Das, as per the customs of Akhara, at that time, Mahant Raghu Nath Das Ji was Mahant of Nirmohi Akhara, Ramghat, Ayodhya. At that time under Akharas.....and in Nirmohi Akharas, besides Mahant and Panches who reside there, 25th Baraigi Saints also lived. .....I used to go to Janam Bhumi along with my teacher and also lived there. On living at Ram Janam Bhumi, I gained knowledge about the customs of Akharas.....

The founder of Ramanandi Bairagi Sect was also Swami Ramanandacharya." (E.T.C.)

"6– ये रामानन्दीय बैरागी सम्प्रदाय के ***अखाड़ों की स्थापना बाला नन्द जी महाराज अरसा 500 वर्ष पूर्व किया था।*** *उत्तर भारत में निर्मोही अखाड़ा की कई बैठकें है। इन सभी बैठकों के अन्तर्गत कई मन्दिर हैं। अयोध्या में उक्त निर्मोही अखाड़ा की प्राचीन बैठक रामघाट अयोध्या में है।*

अखाडा एक सार्वजनिक, धार्मिक न्यास स्वयं है।

अयोध्या में रामानन्दीय बैरागी के सात अखाडे हैं।

1– दिगम्बर अखाड़ा 2– निर्वाणी अखाड़ा 3– निर्मोही अखाड़ा 4–सन्तोषी अखाड़ा 5– खाकी अखाड़ा 6– महा निर्वाणी अखाड़ा 7–निरालम्बी अखाड़ा।

हर अखाड़ा में अनेक मंदिर हैं और अलग–अलग देवता विराजमान हैं। जैसे–निर्वाणी अखाड़े में हनुमान मंदिर, जिसमें हनुमन्त लाल विराजमान हैं। नरसिंह मंदिर, जिसमें नरसिंह भगवान विराजमान हैं। रामजानकी मंदिर जिसमें राम जानकी विराजमान हैं। ये सभी मंदिर अखाड़े में निहित हैं । और ऐसे ही निर्मोही अखाड़े में विजय राघव मंदिर जिसमें राम जानकी विराजमान है जिनके साथ दरबार है,–जैसे लक्ष्मण, भरत, शत्रुघ्न, गरूण जी हैं। और निर्मोही अखाडे के अन्तर्गत राम जन्मभूमि मंदिर है जिसमें रामलला विराजमान हैं जिनके साथ उनके तीन भाई की मूर्तियां हैं।"

"6- ***Establishment of these Akharas*** *of Ramanandi Bairagi Sect* ***was made by Bala Nand Ji Maharaj 500***

years ago. *There are several assemblies of Nirmohi Akharas in North India. Under all these assemblies there are several temples. The ancient assembly of the aforesaid Nirmohi Akhara is in Ramghat, Ayodhya.*

Akhara itself is a public, religious trust. *In Ayodhya there are seven Akharas of Ramanandi Baraigis: 1. Digambar Akhara 2. Nirvani Akhara 3. Nirmohi Akhara, 4. Santoshi Akhara 5. Khaki Akhara 6. Maha Nirvani Akhara 7. Niralambi Akhara.*

There are many temples in every Akhara wherein different deities are ensconced, e.g., Hanuman Temple in Nirwani Akhara wherein Hanumant Lal is enthroned, Narsingh Temple in which Lord Narsingha is ensconced, Ram Janki Temple wherein Ram Janki is placed. All these temples are vested in Akharas. And under a similar Akhara in Vijay Raghav Mandir wherein Ram-Janki is enthroned with court,-e.g., Lakshman, Bharat, Satrughna, Garun Ji and Ram Janam Bhumi Temple is under Nirmohi Akhara in which Ram Lala is enthroned and with whom there are idols of his three brothers." (E.T.C.)

"40– निर्मोही अखाड़े के सुसंगत महन्तों का सजरा निम्नलिखित हैः–

माखन दास जी
/
तुलसीदास जी
/
बलदेव दास जी
/
नरोत्तम दास
/
महन्त राम चरन दास
/
महन्त रघुनाथ दास, चेला धर्मदास
/
महन्त प्रेम दास
/

महन्त रघुनाथ दास
।
महन्त रामेश्वर दास, चेला ईश्वर दास
।
महन्त रामकेवल दास, चेला गोपाल दास (जिनसे इस्तीफा लिया गया)
।
महन्त जगन्नाथ दास, चेला–वैष्णव दास''

''40. Pedigree of relevant Mahants of Nirmohi Akhara is as under:

Makhan Das Ji
I
Tulsidas Ji
I
Baldev Das Ji
I
Narottam Das
I
Mahant Ram Charan Das
I
Mahant Raghunath Das, Chela Dharamdas
I
Mahant Prem Das
I
Mahant Raghunath Das
I
Mahant Rameshwar Das, Chela Ishwar Das
I
Mahant Ram Kewal Das, Chela Gopal Das (from whom resignation was obtained)
I
Mahant Jagannath Das, Chela-Vaishnav Das''
(E.T.C.)

''41– रामानन्द के बारह शिष्यों का विवरण

सुरसुरानन्द
।
अनुभवानन्द
।
श्यामनन्द
।
गोविन्द दास

माखन दास जी के ऊपर दस पीढ़ियां और जो निम्नवत् हैः–

1– महन्त गोविन्द दास जी

2– महन्त अयोध्या दास जी

3– महन्त गोपाल दास जी

4– महन्त जयराम दास जी

5– महन्त रतन दास जी

6– महन्त अनन्त दास जी

7– महन्त मंगल दास जी

8– महन्त जगन्नाथ दास जी

9– महन्त कोशल्या दास जी, जो महन्त माखन दास जी के गुरूभाई थे।"

"41. Description of twelve disciples of Ramanand:

Sursura Nand
I
Anubhavanand
I
Shyama Nanad
I
Govind Das

Ten generations prior to Makhan Das Ji are as under:

1. *Mahant Govind Das Ji*
2. *Mahant Ayodhya Das Ji*
3. *Mahant Gopal Das Ji*
4. *Mahant Jairam Das Ji*
5. *Mahant Ratan Das Ji*
6. *Mahant Anant Das Ji*
7. *Mahant Mangal Das Ji*
8. *Mahant Jagannath Das Ji*
9. *Mahant Koshalya Das Ji, who was Teacher's brother of Makhan Das Ji" (E.T.C.)*

"42– **रामानन्द जी का प्रादुर्भाव 14 वीं शताब्दी के शुरू में हुआ,** द्वादश शिष्यों में कबीरदास जी भी थे, रामानन्द जी के दो शिष्य अनन्तानन्द, सुरसुरा नन्द और सुरसुरा नन्द जी के दो शिष्य केवलानन्द,

माधवानन्द और केवलानन्द जी के बाद अनुभवा नन्द, ब्रह्मानन्द, बृजानन्द, बालानन्द रहे थे। माधवानन्द के शिष्य नरहरि दास और नरहरि दास के शिष्य तुलसीदास जी जो मानस के रचयिता रहे हैं।"

*"42. **Appearance/origin of Ramanand Ji was in the beginning of 14th century,** amongst his twelve disciples , was Kabir Das Ji too, Ramanand Ji's two disciples were Anantanand, Sursuranand and two disciples of Sursura Nand Ji were Kevalanand and Madhavanand and after Kevalanand Ji were Anubhava Nand, Brahmanand, Brijanand and Balanand. Narhari Das was disciple of Madhavanand and Narhari Das's disciple was Tulsi Das who has been composer of Manas." (E.T.C.)*

*"43– **अनुभवा नन्द व उनके उप शिष्य बालानन्द ने श्री चतुर सम्प्रदाय के प्रचार जागृत व उन्नति रक्षा के लिए तीन अन्नई एवं सात अखाड़े का निर्माण किया** जो सैनिक पद्धति पर आधारित रहे हैं, **जो लगभग छः सौ वर्ष पूर्व से चला आ रहा है।** रामानन्द सम्प्रदाय के श्रीमठ् बनारस हैं। इसके गद्दी पर इस समय जगत्गुरू हरियाचार्य जी हैं और इनमें पहले जगत्गुरू श्री शिवरामाचार्य जी थे।"*

*"43. **Anubhava Nand and his Deputy disciple Balanand Ji created three Annais and seven Akharas** which has been based on army system, **for publicity, awakening, promotion and sustenance of Sri Chatur Sect, and has been persisting for about last six hundred years.** Sri Math (main math) of Ramanand Sect is in Banaras. Presently Jagadguri Hariyacharya is enthroned on it and prior to him, was Jagatguru Sri Shivramacharya Ji." (E.T.C.)*

*"44– **मैं करीब आठ–नौ साल से सरपंच हूं** इसके पहले उप सरपंच था और उसके पहले पंच था। निर्मोही अखाड़ा के साबिक महन्तों का महन्त रघुनाथ दास जी के समय से मुख्तार रहा है। जैसे रघुनाथ दास*

जी, रामकेवल दास थे।''

*"44. **For 8-9 years I am Sarpanch** and earlier I was Deputy Sarpanch and prior to that Panch. Former Mahants of Nirmohi Akhara have been Mukhtar from the time of Mahant Raghunath Das Ji. Such as, Raghunath Das Ji, Ram Keval Das Ji." (E.T.C.)*

757. In cross-examination at page 173 to 176, the witness DW 3/1 said :

''गवाह को उनकी मुख्य परीक्षा के शपथ–पत्र का पैरा–41 दिखाया गया और यह पूछा गया कि इसमें क्या माखन दास जी के ऊपर दस पीढ़ियों का नाम दिया है और नौ महंतों का उल्लेख किया है, क्या ये नौ महंत वही हैं, जिनके बारे मे आपने ऊपर कहा है कि माखन दास जी से पहले निर्मोही अखाड़े के 8–10 महंत हुए थे? उपरोक्त को देखकर गवाह ने कहा कि–ये वही महंत हैं, परन्तु मुझे उनके नाम याद नहीं थे। ***इस पैरा–41 के उल्लेख के अनुसार महंत गोविंद दास जी निर्मोही अखाड़ा के पहले महंत हुए थे। महंत गोविंद दास जी ने निर्मोही अखाड़ा की स्थापना नहीं की थी, बल्कि स्वामी बालानन्दाचार्य जी ने निर्मोही अखाडा की स्थापना की थी।*** *मुझे नहीं मालूम कि स्वामी बालानन्दाचार्य ने महंत गोविंद दास जी को निर्मोही अखाड़ा का महन्त बनाया था अथवा नहीं।* ***मैं नहीं बता पाऊंगा कि गोविन्द दास जी जयपुर में निर्मोही अखाड़ा के महंत हुए थे या अयोध्या में।***

प्रश्न– गोविंद दास जी किस काल में निर्मोही अखाड़ा के महंत हुए थे?

*उ0–**गोविंद दास जी 600 वर्षो के अन्तर्गत निर्मोही अखाड़ा के महंत हुए।***

यह बात मैंने पूर्वजों के बताने के आधार पर कही है और किताबों में भी पढ़ी है। शायद ''रामजन्मभूमि का रक्तरंजित इतिहास'' में मैंने यह बात पढ़ी है कि गोविंद दास जी 600 वर्षो के अन्तर्गत निर्मोही अखाड़े के महंत हुए हैं।

विद्वान जिरहकर्ता अधिवक्ता द्वारा गवाह को उनकी मुख्य परीक्षा के शपथ–पत्र का पैराग्राफ–42 दिखाया गया और यह पूछा गया कि–क्या

रामानन्द जी और तुलसीदास जी का भी कोई संबंध निर्मोही अखाड़ा से रहा है।''

*''उपरोक्त पैरा–42 को देखकर गवाह ने उत्तर दिया कि–**स्वामी रामानन्दाचार्य जी ने इस सम्प्रदाय की स्थापना की थी, जो रामानन्दीय कहलाते हैं और उनके शिष्य–परशिष्यों में आगे चलकर तुलसी दास जी, नरहरियानन्द जी के शिष्य हुए। निर्मोही अखाड़ा की स्थापना उनके बाद हुई और बालानन्दाचार्य जी ने की।** अपने शपथ–पत्र के पैरा–42 में जो मैंने बालानन्द नाम लिखा है, उससे मेरा तात्पर्य बालानन्दाचार्य जी से ही है।*

*विद्वान जिरहकर्ता अधिवक्ता द्वारा गवाह को उनकी मुख्य परीक्षा के शपथ–पत्र के पैरा –42 एवं 47 दिखाये गये और यह पूछा गया कि– उपरोक्त पैराग्राफ में रामानन्द जी से बालानन्दाचार्य जी का जो सम्बन्ध बताया गया है, क्या उससे यह तात्पर्य है कि बालानन्द जी अनुभवानन्द जी के शिष्य थे या वे केवलानन्द जी के शिष्य थे? उपरोक्त दोनों पैराग्राफ्स को पढ़कर गवाह ने उत्तर दिया कि– **बालानन्द जी बृजानन्द जी के शिष्य थे।** इसी पैराग्राफ–43 को दिखाकर गवाह से पूछा गया कि इसमें जो अनुभवानन्द व उनके उप–शिष्य बालानन्द लिखा है, उससे आपका क्या तात्पर्य है उपरोक्त को देखकर गवाह ने उत्तर दिया कि–**इससे मेरा तात्पर्य यह है कि बालानन्द जी अनुभवानन्द जी के नाती–परनाती चेला थे।***

*अपने शपथ–पत्र के पैराग्राफ–42 को देखकर गवाह ने कहा कि–इसकी नीचे से तीसरी लाइन में अनुभवानन्द, ब्राह्मानन्द, बृजानन्द, बालानन्द लिखा है, उससे मेरा तात्पर्य यह है कि अनुभवानन्द के शिष्य ब्राह्मानन्द थे और अनुभवानन्द और नरहरिदास समकालीन थे। अनुभवानन्द जी का निधन ढाई सौ वर्ष की आयु में हुआ था। मैं यह नहीं बता पाऊंगा कि अनुभवानन्द जी का निधन कब हुआ था, यह भी नहीं बता पाऊॅगा कि औरंगजेब के जमाने में हुआ था या उसके बाद हुआ था। यह मुझे मालूम है कि तुलसीदास जी बादशाह अकबर के जमाने के थे। उन्हें, यानी तुलसीदास जी को मैंने नरहरिदास जी का शिष्य लिखा है। बालानन्द जी तुलसीदास जी के समय के पहले के थे। **बालानन्द जी तुलसीदास जी के समय से 200 साल पहले के थे।** मैं यह नहीं बता पाऊॅगा कि बादशाह अकबर का काल 16वीं शताब्दी का था या*

उससे बाद का था।

प्रश्न– आपने अपने बयान में ऊपर यह कहा है कि – निर्मोही अखाड़ा व 6 अन्य अखाड़ों व 3 अनी की स्थापना बालानन्द जी ने की थी, परन्तु आपके शपथ पत्र के पैरा–43 में यह लिखा है कि – अनुभवानन्द व उनके उप–शिष्य बालानन्द ने . . . . . तीन अन्नई एवं सात अखाड़े का निर्माण किया। इस प्रकार आपके उपरोक्त बयान और शपथ–पत्र के इस उल्लेख में अन्तर क्यों है?

उत्तर– उपरोक्त को देखकर गवाह ने उत्तर दिया कि–अन्तर कुछ नहीं है और ***अनुभवानन्द जी की प्रेरणा से बालानन्द जी ने अखाड़ों की स्थापना की थी। जिस समय इन अखाड़ों की स्थापना हुई थी, उस समय अनुभवानन्द जी जीवित थे।***

प्रश्न– क्या अनुभवानन्द जी भी जयपुर में रहते थे, जहॉ पर आपने उपरोक्त अखाड़ों की स्थापना होना बताया है?

उत्तर– अनुभवानन्द जी उस समय जयपुर में थे अथवा नहीं, यह मैं नहीं बता सकता, क्योंकि ये लोग चलते–फिरते रहते थे।

गवाह ने अपने शपथ–पत्र के पैराग्राफ –43 को देखकर कहा कि–इसमें उल्लिखित है कि– 'रामानन्दीय सम्प्रदाय का श्रीमठ बनारस है'' अर्थात् बनारस में रामानन्द सम्प्रदाय का केन्द्र है। वहॉ स्वामी रामानन्द के रहने के समय से इसका केन्द्र बनारस रहा है, परन्तु उनके शिष्य व पर–शिष्य भारतवर्ष में चारो तरफ़ भ्रमण किया करते थे।'' (पेज 173–176) (emphasis added)

"The witness was shown para 41 of the affidavit of his examination-in-chief and was asked whether the names of 10 generations of Makhan Das are given and reference of nine Mahants have been made, whether these are those nine Mahants about whom you (witness) have stated above that prior to Makhan Das Ji 8-10 Mahants of Nirmohi Akhara became? Seeing the aforesaid the witness said that these are those Mahants but I did not recollect their names. ***According to this mention in para 41, Mahant Govind Das Ji has been the first Mahant of Nirmohi Akhara.***

Mahant Govind Das Ji did not establish Nirmohi Akhara, rather Swami Balalnandacharya Ji had founded Nirmohi Akhara. *I do not know whether Swami Balanandacharya had appointed Mahant Govind Das Ji as Mahant of Nirmohi Akhara or not.* ***I cannot say whether Govind Das Ji has been made Mahant of Nirmohi Akhara in Jairpur or in Ayodhya****.*

Question-In which period Govind Das Ji became Mahant of Nirmohi Akhara?

*Answer-****Govind Das Ji became Mahant of Nirmohi Akhara within 600 years****.*

This statement I have given on the basis of saying by ancestors and also read in book. Probably, in "Ram Janam Bhumi Ka Raktranjit Itihas" I have read it that Govind Das Ji became Mahant of Nirmohi Akhara within 600 years.

The witness was shown paragraph 42 of the affidavit of examination-in-chief by learned counsel cross-examining the witness and was asked whether Ramanand Ji and Tulsidas Ji have been related in any manner with Nirmohi Akhara."

"Seeing the aforesaid para 42 the witness replied that ***Swami Ramanandacharya Ji had established this sect, who are called Ramanandi and later on amongst their disciples-grand-disciples was Tulsidas Ji, disciple of Narhariya Nand Ji. Nirmohi Akhara was established thereafter and was founded by Balanandacharya Ji****. In para 42 of the affidavit where I have written the name Balanand, by which I meant Balanandcharya Ji only.*

The witness was shown paragraph 42 and 47 of the affidavit of examination-in-chief by learned counsel cross-

examining the witness and it was asked whether by the relation between Ramanand Ji and Balanandacharya Ji, as stated in the above paragraph, it meant that Balanand Ji was disciple of Anubhavanand Ji or whether they were disciple of Kevelanand Ji. Reading the aforesaid two paragraphs, the witness replied that-Balanand Ji was disciple of Brijanand Ji. Showing paragraph 43 it was asked from the witness what does he mean by Anubhavanand and his Deputy disciple as written in it, the witness after going through the aforesaid replied-by it I mean that Balanand Ji was grand-grand disciple of Anubhavanand Ji.

Seeing paragraph 42 of his affidavit the witness said that the third line from the bottom makes mention of Anubhavanand, Brahmanand, Brijanand and Balanand by which I mean that Brahmanand was the disciple of Anubhavanand and Brijanand was the disciple of Brahmanand and Balanand was the disciple of Brijanand. Anubhavanand and Narhari Das were contemporary. Anubhavanand Ji died on attaining the age of 250 years. I cannot say as to when Anubhavanand Ji died, I can also not say as to whether he died in the period of Aurangzeb of thereafter. I know that Tulsidas Ji was in emperor Akbar's period. I have written him i.e. Tulsidas Ji as disciple of Narhari Das Ji. Balanand Ji has been 200 years earlier to Tulsidas Ji. I cannot say if the period of Akbar was during 16th Century or subsequent to that.

Question-In your statement you have said above that Nirmohi Akhara, six other Akharas and three Annais were founded by Balanand Ji but in para 43 of your affidavit it is

written that Anubhavanand and his Deputy Disciple Balanand..... formed three Annais and seven Akharas. Thus why is there contradiction in your aforesaid statement and contents of the affidavit?

Answer-Seeing the aforesaid the witness replied that there is no difference at all and Balanand Ji had established the Akharas with the inspiration of Anubhavanand Ji. When these Akharas were founded, at that time Anubhavanand Ji was alive.

Question- Whether Anubhavanand Ji also resided in Jaipur, where, as you have said, the aforesaid Akharas were founded.

Answer: Whether Anubhavanand Ji was in Jaipur or not at that time, I cannot say because these people used to wander.

Seeing para 43 of his statement the witness said that it is written in it that " the chief Math of Ramandiya Sect is in Banaras" or in Banaras there is centre of Ramanand Sect. Since the time of living by Swami Ramanand there, its centre had been Banaras, but his disciples and grand disciples used to roam all around India." (E.T.C.)

758. At page 221 to 222, D.W. 3/1 referred to the book "Smritigranthah" and said :

''विद्वान जिरहकर्ता अधिवक्ता द्वारा गवाह को उनके मुख्य परीक्षा के शपथ पत्र का पैराग्राफ –75 दिखाया गया और यह पूछा गया कि आपने अपनी गुरू परम्परा तथा ''सम्प्रदाय की प्रमाणिक पुस्तकों से'' किस बात की जानकारी होना इस पैराग्राफ में लिखा है? उपरोक्त को देखकर गवाह ने उत्तर दिया कि–इस पैराग्राफ में मैंने अपने पूर्वजों के सम्बन्ध में जो रामानन्दीय सम्प्रदाय के और रामानन्द जी के शिष्य थे, उनके सम्बन्ध में जानकारी होने की बात लिखी है। इस पैरा में उल्लिखित प्रमाणिक पुस्तकों से मेरा तात्पर्य स्मृति ग्रन्थ से है। स्मृति ग्रन्थ एक ग्रन्थ है। उसे गुजरात के

रामानन्दाचार्य जी ने लिखा है। मैंने उसे थोड़ा पढ़ा है। वह किताब इस न्यायालय में दाखिल है। यह पुस्तक अभी हाल ही में दाखिल हुई है और उस पुस्तक में मैंने रामानन्दाचार्य और उनके शिष्यों के बारे में पढ़ा है।

.....

*विद्वान जिरहकर्ता अधिवक्ता द्वारा गवाह को उनके मुख्य परीक्षा के शपथ पत्र का पैरा–76 दिखाया गया और यह पूछा गया, कि इस पैराग्राफ में आपने यह लिखा है कि इस बयान के साथ ''संलग्नक सूची दाखिल कर रहा हूँ'' तो कृपया यह बाताएं कि क्या आपके मुख्य परीक्षा के शपथ–पत्र के साथ कोई संलग्नक सूची लगी है? उपरोक्त को देखकर गवाह ने उत्तर दिया कि–**मेरे मुख्य परीक्षा के शपथ–पत्र के साथ कोई संलग्नक सूची नहीं लगी है।** गवाह को उनके मुख्य परीक्षा के शपथ –पत्र का पैरा 76 का अंश ''जो रामानन्दीय सम्प्रदाय के ....परम्परा है'' दिखाया गया और पूछा गया कि इससे आपका क्या तात्पर्य है? उपरोक्त को देखकर गवाह ने उत्तर दिया कि– **इससे मेरा तात्पर्य यह है कि रामानन्दीय सम्प्रदाय के वंश परम्परा की सूची इस किताब में है। इस किताब का नाम ''स्मृति–ग्रन्थ'' इसी पैराग्राफ–76 में लिखा हैं।'' (पेज 221–222) (emphasis added)*

"The witness was shown paragraph 75 of the affidavit of examination-in-chief by learned counsel cross-examining the witness and it was asked as to derivation of knowledge of which fact from your Teacher's tradition as well as authentic books of the sects, you have written in this paragraph. Seeing the aforesaid paragraph, the witness answered that in this paragraphs I have written with respect to possessing knowledge about my ancestors who were disciples of Ramanandi Sect and Ramananad Ji. By authentic book , as mentioned in this para, I mean-- Smriti Book. Smriti Granth is a book which is written by Ramanandacharya Ji of Gujarat. I have read that a little. That book is filed in this Court. This book has been filed recently and I have read in that book about

Ramanandacharya and his disciples....

The witness was shown paragraph 76 of the affidavit of examination-in-chief by learned counsel cross-examining the witness and it was asked that you have written in this paragraph that alongwith this statement you are filing enclosures' list, please tell whether any enclosure list has been annexed with affidavit of examination in chief ? Seeing that the witness replied that ***alongwith my affidavit in examination-in-chief , no any annexures' list is enclosed****. The witness was shown the portion of para 76 of the affidavit to the effect "Which is of Ramanandi Sect.....customs" and was enquired what did he mean by it. Seeing the above, the witness answered that by it he meant that pedigree of followers of Ramanandi Sect is there in this book.* ***The name of this book "Smriti Granth" is written in paragraph 76."*** *(E.T.C.)*

759. **Shiv Saran Das D.W.3/4,** belong to Nirmohi Akhara and in para 14 and 16 of the affidavit (Examination-in-Chief) he said :

''14– ***निर्मोही अखाड़ा एक धार्मिक न्यास है*** *जिसके अन्तर्गत कई मंदिर हो सकते हैं, निर्मोही अखाड़ा अयोध्या रामघाट की बैठक में प्रसिद्ध श्री राम जन्म भूमि मन्दिर है, राम–घाट विजय राघव मन्दिर और सम्बन्धित कई मंदिर हैं जैसे सुमित्रा भवन, रत्न सिंहासन, लवकुश मन्दिर, राम गुलेला मन्दिर आदि हैं।*

16– ***निर्मोही अखाड़ा एक पंचायती मठ है तथा जिसकी पंचायती – व्यवस्था है।*** *पंचान का निर्णय सर्वोच्च है।* ***महन्थ कोई जायदाद, बिना निर्मोही अखाड़ा के पंचों की अनुमति के न तो बेंच सकता है, न रेहन या न दान कर सकता है।''*** *(emphasis added)*

"14. Nirmohi Akhara is a religious trust *under control of which there may be several temples, In the assembly of*

Nirmohi Akhara, Ayodhya, Ramghat lie the famous Ram Janam Bhoomi Temple, Ram Ghat, Vijay Raghav Temple and related several temples, i.e., Sumitra Bhawan, Ratna Singhasan, Lava Kusha Temple, Ram Gulela Temple etc.

16. ***Nirmohi Akhara is a Panchayati Math whereof there is Panchayati arrangement.*** *Decision of Panches is ultimate.* ***A Mahant cannot sell, nor pledge nor donate any property without permission of Panches of Nirmohi Akhara."*** *(E.T.C.)*

760. However, in cross-examination on page 20 though he (DW 3/4) said that Vaishnav Dharma is followed in all the Akharas of Ramanandiya Sampradaya and training of arms is also given in the Akharas for protection of Hindu Dharma from others but he, however, has no knowledge as to when Nirmohi Akhara was established. About Ramanandi Sampradaya, in the cross-examination at pages 26-27, he said :

''जगद्गुरू श्री रामानन्दाचार्य जी रामानन्दी सम्प्रदाय के पीठाधीश्वर तो हैं ही, इसके अलावा वे वैष्णव सम्प्रदाय के आचार्य भी हैं और इसी कारण उन्हें बहुत आदर व सम्मान प्राप्त है। रामानन्दाचार्य जी के जितने भी अनुयायी हैं, उन सब के लिए रामानन्दाचार्य जी द्वारा बताये हुए रीति–रिवाज का पालन करना अनिवार्य है। रामानन्दी सम्प्रदाय में जो चतुः सम्प्रदाय है, वह जिसे श्रेष्ठ समझता है, वह उसे जगद्गुरू रामानन्दाचार्य के पद से विभूषित करते हैं। इन जगद्गुरू रामानन्दाचार्य जी का सभी वैष्णव लोग आदर व सम्मान करते हैं।'' (पेज 26–27)

"*Jagadguru Sri Ramanandcharya Ji besides being the Supreme Chairperson of Ramanandi Sect, he is also Acharya of Vaishnav Sect and it is for this reason that he commands a lot of honour and respect. For all the followers of Ramanandacharya Ji, it is incumbent to follow the customs and traditions enunciated by Ramanandacharya Ji. In Ramanandi Sect which is*

quadruple-sect, whom it (Sect) considers great, it adorns him with the title of Jagadguru Ramanandacharya. All Vashnavites pay honour and regard to this Jagadguru Ramanandacharya." (E.T.C.)

761. On page 42 of the cross-examination he said :

*"**अयोध्या में निर्मोही अखाड़ा है।** निर्मोही अखाड़ा के सदस्यों की कोई गिनती नहीं है और मैं अंदाज से भी नहीं बता पाऊँगा कि उस अखाड़े के कितने सदस्य हैं। **निर्मोही अखाड़ा 300–400 साल से नहीं, बल्कि उसके बहुत पहले से चल रहा है। निर्मोही अखाड़ा में भी शस्त्रों की ट्रेनिंग दी जाती है।** यह ट्रेनिंग हमारे गुरूजन देते हैं। निर्मोही अखाड़ा अयोध्या के अलावा और भी कई जगहों पर है। शस्त्रों की ट्रेनिंग हर जगह होती है। शस्त्रों से मेरा मतलब है हथियार।" (पेज 42)* (emphasis added)

"In Ayodhya there is Nirmohi Akhara. There is no counting of members of Nirmohi Akhara, nor I can tell by guesswork as to how many members are there in the Akhara. Nirmohi Akhara is existing not for only 300-400 years, but is continuing from much before. In Nirmohi Akhara too, training of arms is imparted. This training is given by our teachers. Nirmohi Akhara is existing at several places besides Ayodhya. Training of arms is imparted at every place. Arms means weapon." (E.T.C.)

762. **DW 3/9, Ram Asrey Yadav** in para 17 of his affidavit has said:

"17. यह कि निर्मोही अखाड़ा एक पंचायती मठ व धार्मिक न्यास यानी संस्था है करीब साढ़े पांच या छः सौ वर्ष के पूर्व से कायम है ऐसा मैंने हनुमानगढ़ी के साधुओं से जाना है और उनके छपे रीति रिवाज में पढ़ा है इकरारनामा पंजीकृत था जो इकरारनामा के रूप में छपी थी 1962 में छपी थी। मैंने देखा है पढ़ा है वही रीति रिवाज कौम बैरागयान निर्मोही अखाड़ा पर भी लागू हैं।"

"17. That the Nirmohi Akhara is a Panchayati Math and

religious trust i.e. institution for the last about 5 ½ – 6 hundred years. I have so learnt from the saints of Hanumangarhi and also from their printed custom-practices. The agreement was registered and published in the year 1962. I have seen and read it. The same custom-practices are applicable over the recluses of Nirmohi Akhara." (E.T.C.)

However, from a bare perusal of the averments it is evident that the same is wholly hearsay and cannot be said to be a statement of fact, being disclosed by a witness who is personally aware of the same.

763. **Jagadguri Ramanandacharya Swami Haryacharya D.W.3/14,** claims himself to be the 25th superior of Ramanandi Sampradaya, holding the office of Rampradayacharya at the Principal Seat of the said Sampradaya. About the "Sampradaya" and "Akhara", in paras 32, 33, 34, 36 and 59 of his affidavit (Examination-in-Chief) he has said :

"32– रामानन्दीय बैरागी सम्प्रदाय में विशिष्टाद्वैत दर्शन का प्रतिपादन स्वामी रामानन्दाचार्य ने लगभग 700 वर्षो के पूर्व किया था ***रामानन्दीय सम्प्रदाय के इष्ट देव भगवान राम हैं।"***

"32- In the sect of Ramanandi Baraigis, induction of "Vishistadwait Darshan" was done bv Swami Ramanandacharya about 700 years ago. ***The ideal deity of Ramanandi Sect is Lord Rama.****" (E.T.C.)*

"33– ***रामानन्दी वैष्णव सम्प्रदाय के अखाड़ों की स्थापना बालानंद जी महराज ने आज से 500 वर्षो पूर्व किया।*** *भारत वर्ष के कई क्षेत्रों में निर्मोही अखाड़ा की कई बैठक है इस अखाड़े के अन्तर्गत कई मन्दिर हैं।"*

"33. ***Establishment of Akharas of Ramanandi Vaishnav Sect was done by Balanand Ji Maharaj about 500 years ago from today.*** *In various parts of India, there*

is a number of assemblies of Nirmohi Akhara and under these Akharas, there are several temples." (E.T.C.)

*"34– **निर्मोही अखाड़ा एक धार्मिक न्यास स्वयं है जिसकी व्यवस्था पंचों के अधीन होती है यह अखाड़ा पंचायती मठ है जिसमें पंचों द्वारा चुना महन्थ होता है जो पंचों के बहुमत राय से कार्य करता है** महन्थ अखाड़े की सम्पत्ति का बैनामा दान पत्र आदि नहीं लिख सकता है।"*

*"34. **Nirmohi Akhara is a religious trust itself, management whereof is under the supervision of Panches. This Akhara is a Panchayati Math, in which a Mahant is elected by Panches, who functions with majority opinion of the Panches.** A Mahant cannot write a sale deed or donation deed etc." (E.T.C.)*

"36– श्री चतुः सम्प्रदाय के वैष्णवों का सैनिक संघटन ही अनी अखाड़े हैं जिसमें रामानन्द विष्णु स्वामी निम्बार्क और मध्वाचार्य हैं। निर्वाणी अनी, निर्मोही अनी व दिगम्बर अनी के रीति रिवाज परम्परा एक ही तरह हैं मैं निर्वाणी अखाड़ा का साधू रहा हूँ। सभी रीति रिवाज परम्परा जानता हूं रीति रिवाज व परम्परा हनुमानगढ़ी वही है जो निर्मोही अखाड़ा व दिगम्बर अखाड़े की है।"

"36. It is Ani Akharas, which are the army organisation of Four-Sect Vaishnavites, in which there are Ramanand, Vishnu Swami Nimbark and Madhvacharya. customs and traditions of Nirvani Ani, Nirmohi Ani and Digambar Ani are alike. I have been a saint of Nirvani Akhara. I know all customs and traditions. Customs and Traditions Hanumangarhi is the same which are of Nirmohi and Digambar Akharas." (E.T.C.)

"59– आनन्द भाष्यकर जगद्गुरू श्री रामानन्दाचार्य जी की 700 वीं जयन्ती स्मारक स्मृति ग्रन्थ "श्री रामानन्द सम्प्रदाय का इतिहास" तथा उन्हीं का जयन्ती स्मारक ग्रन्थ मैंने पढ़ा है इन दोनों ग्रन्थों के सम्पादक मन्डल स्वामी हरिप्रसादाचार्य जी स्वामी सीतारामाचार्य व स्वामी राम

स्वरूपाचार्य जी हैं मुद्रण अहमदाबाद गुजरात से हुआ। यह दोनों पुस्तकें मुझे निर्मोही अखाड़ा के वकील साहेब ने बताया कि मुकदमें में दाखिल है ***दोनों पुस्तकें हमारे सम्प्रदाय में मान्यता प्राप्त हैं।''*** *(emphasis added)*

"A souvenir written by commentator Anand in the memory of 700th anniversary of Jagadguru Sri Ramanandacharya "Sri Ramanand Sampradaya Ka Itihas" and his Jayanti Smrarak Granth, I have read. In editorial board of these two books are Swami Hari Prasadacharya Ji, Swami Sitaramacharya and Swami Ram Swarupacharya Ji. Printing was done in Ahmadabad, Gujarat. I have been told by the counsel for Nirmohi Akhara that these two books are filed in the suit. ***Both the books bear recognition of our Sect."*** *(E.T.C.)*

764. In cross-examination, DW 3/14, in respect to the issue No. 17, at pages 16,17, 21,22, 26, 27, 29, 41-44, 45, 46, 49, 93, 94 said:

"रामानन्द सम्प्रदाय का उद्देश्य तथा विधेय रामानन्दीय सिद्धान्त विशिष्टाद्वैत दर्शन का प्रचार, प्रसार, धर्मोपदेश, व्याख्यान और प्रत्याख्यान करना है। रामानन्दाचार्य जी के इष्टदेव भगवान राम ही थे। वही आचार्य के रूप में राममन्त्र को सर्वप्रथम सीता जी को दिए। रामानन्दीय सम्प्रदाय के जो अन्य अनुयायी हैं, उनके इष्टदेव भगवान सीताराम हैं। रामानन्दीय सम्प्रदाय में मूर्ति पूजा होती है। जन्मस्थली की भी पूजा होती है। पॉच प्रकार की मूर्तियां रामानन्दीय सम्प्रदाय में स्वीकार की जाती हैं। जिनमें धातु की, काष्ठ की, मिट्टी की, चिन्ह की, भूमि की और अक्षर की मूर्तियां होती हैं। विशिष्टाद्वैत दर्शन में मूर्ति के अतिरिक्त जन्मस्थान की भी पूजा होती है।" (पेज – 16–17)

"The objective of the Ramananda School was the publicity, propagation, preaching, exposition and counter-exposition of the Ramananda School of Vishishtadwait (particular monism). The favoured deity of

Ramanandacharya was Lord Rama alone. As a spiritual teacher, he, for the first time, gave Ram mantra to Sita. Lord Sitarama is the favoured deity of the Ramananda school. The Ramanada school practises idol-worship.The birth place is also worshipped. The Ramananda School believes in five types of idols, which are of metal, of wood, of mud, of signs, of ground and of letters. Apart form idols, the Vishishtadwait school of philosophy also worships birth-places." (E.T.C.)

"अयोध्या में रामानन्दीय सम्प्रदाय के तीनों अखाड़े हैं। तीनों अखाड़े अनी अखाड़े हैं। अनी से तात्पर्य सेना से है। प्रत्येक अखाड़ों की व्यवस्था पंचायती है। स्वयं कहा कि अखाड़े के महन्त को समूह चयनित करता है। तीनों अखाड़ों में कोई मुख्य अखाड़ा नहीं है। तीनों अखाड़े बराबर हैं अर्थात् निर्मोही, निर्वाणी एवं दिगम्बर तीनों अखाड़े समान हैं। ऐसा नहीं है कि मुख्य अखाड़ा दिगम्बर अखाड़ा हो। तीनों अखाड़ों की कार्य पद्धति समान है। अखाड़ों में जो मन्दिर हैं, उनमें तीन बार अर्थात् प्रातःकाल, मध्यान्ह काल एवं सायं काल पूजा होना अनिवार्य है। रामानन्दीय सम्प्रदाय के मन्दिरों में कम से कम तीन बार पूजा होती है।" (पेज – 21–22)

"There are three Akharas of the Ramananda school in Ayodhya. The three Akharas are Ani Akharas. The word Ani means 'Sena' (army). The system of each Akhara is on the Panchayat pattern. (Himself stated) The Mahant (head) of the Akhara is selected by a group. None of the three Akharas is the main Akhara. The three Akharas have equal status, that is to say, the three Akharas, viz, Nirmohi, Nirvani and Digambar are at par with each other. It is not that the Digambar Akhara is the main Akhara. The trio of Akharas have the same way of working. In the temples managed by these Akharas, it is mandatory to offer worship three times, that is, in the morning, at noon and in the evening. Worship is offered at least three times in the

temples of the Ramananda school." (E.T.C.)

"आदि रामनंदाचार्य की 700वीं जयंती इसी वर्ष मनायी जायेगी। आदि रामानंदाचार्य रामानंदीय सम्प्रदाय के प्रर्वतक नहीं है वे उसके उद्धरक या उस सम्प्रदाय को गति देने वाले कहे जा सकते हैं। ***रामानंदीय सम्प्रदाय अनादिकालीन हैं। यह सम्प्रदाय रामानंद जी के नाम पर पड़ा हुआ है। रामानंद जी 700 वर्ष पूर्व हुए थे।"*** *(पेज – 26)*

"700th anniversary of First (initial) Ramanandacharya would be celebrated this year. Aadi Ramanandacharya is not founder of Ramanandi Sect, he may be said as saviour or one who gave momentum to that sect. ***Ramanandi sect is in existence from time immemorial. This sect has been titled in the name of Ramanand Ji. Ramanandji lived 700 years ago."*** *(E.T.C.)*

"अपनी मुख्य परीक्षा के शपथ–पत्र में ''अनीं'' शब्द का प्रयोग किया है, जिसका अर्थ तथा भावार्थ सेना होता है। विभिन्न अखाड़ों में सर्वोच्च कोई नहीं होता है। तीनों अखाड़ों के प्रमुख समान होते हैं। किसी विशिष्ट अखाड़े के ''अनी'' के प्रमुख होते हैं, जो कुम्भ के अवसर पर ''अनि'' के प्रमुख रूप में कार्य करते हैं। शेष समय भी वह ''अनि'' के प्रमुख रहते हैं परन्तु ''अनि'' का संचालन कुम्भ के अवसर पर ही होता है। निर्मोही, निर्वाणी के भी ''अनि'' के प्रमुख होते हैं। अखाड़ा भी धार्मिक सैन्य शक्ति का प्रतीक है। हिन्दू धर्म में सैन्य शक्ति की आवश्यकता का अनुभव इसलिए हुआ, क्योंकि आक्रांता लोग हमेशा आते रहे।" (पेज – 27)

" I have used the word "Ani" in the affidavit of my examination in chief, which means and connotes "army". In various Akharas nobody is supreme. Heads of all the three Akharas are equal in rank. It is the Chief of "Ani" of a specific Akhara who functions as the chief of Ani on the occasion of Kumbh. For the remaining period also, they remain the Chief of Ani but commanding of Ani is done on

the occasion of Kumbh. There are Chief of Nirmohi and Nirvani too. Akhara is also a symbol of religious army power. Necessity of religious army power in Hindu religion was felt because invaders always used to come."(E.T.C.)

''विशिष्टाद्वैत को मैं परिभाषित कर सकता हूँ, उसके अनुसार माया जीव ब्रह्म को तीन तत्वों अर्थात् तत्वत्रय (ब्रह्म तत्व) के रूप में स्वीकार किया गया है। इसका सरल अर्थ इस प्रकार है कि जहॉ–जहॉ परमात्मा होगा, वहॉ–वहॉ पर जीव तथा जगत अवश्य होगा। विशिष्टाद्वैत का यही सिद्धांत वैष्णव सम्प्रदाय में स्वीकार किया जाता है। इस सिद्धान्त में आत्मा तथा परमात्मा को भिन्न नहीं माना गया है, इसमें दोनों के एकत्व का प्रतिपादन है। भोक्ता, भोग्य तथा उसके प्रेरक ये तीनों ही परमेश्वर हैं। यह विशिष्टाद्वैत का सिद्धान्त है, जो द्वैत तथा अद्वैत से थोडा भिन्न है। रामानंद सम्प्रदाय के लोग इस विशिष्टाद्वैत सिद्धान्त के अनुयायी हैं। उत्तर भारत के अतिरिक्त दक्षिण भारत में बहुत वृहद रूप से विशिष्टाद्वैत सिद्धान्त को माना जाता है। हिन्दू धर्म में अद्वैत सिद्वान्त को मानने वाले भी है, इसके अनुगमी शैव लोग हैं। द्वैत सिद्वान्त के लोग निम्बार्क तथा मध्व सम्प्रदाय के मानने वाले हैं। रामानंद सम्प्रदाय के पूर्व भी विशिष्टाद्वैत सिद्धान्त था, क्योंकि यह अनादि कालीन है। चारों वेदों में जो प्रथम वेद ऋग्वेद है, उसमें भी राजा दशरथ का वर्णन है। मेरी मुख्य परीक्षा के शपथ–पत्र की धारा 59 जो पृष्ठ 12 पर है, को मैंने पढ़ लिया है, इस धारा में उल्लिखित दोनों पुस्तकों ''श्री रामानंद सम्प्रदाय का इतिहास तथा श्री रामानंदाजयंती स्मारक ग्रन्थ पुस्तकों'' को मैंने तीन दिन पूर्व पढ़ा है। ये दोनों ग्रन्थ अलग–अलग लगभग तीन सौ–चार सौ पृष्ठों के हैं।'' (पेज 29)

''I can define Vishishtadvait. It accepts Maya Jeeva and Brahma as three substances (divine substances). Its plain meaning is that wherever there is God, Jeeva (individual soul) and Jagat (world) will certainly be there. This very principle of Vishishtadvait is accepted in the Vaishnavite sect. This principle does not differentiate 'Atma' (individual soul) from 'Paramatma'(Supreme Soul).

It speaks of the unity of both. The Trio - the user, the used and their encourager are Supreme Being. It is a principle of Vishishtadvait, which is a bit different from dualism and monism. Followers of the Ramananda sect are adherents of Vishitadvait philosophy. The Vishishtadvait philosophy is followed on a very large scale in south India apart from north India. There are also followers of monism in Hindu religion. Its followers are Shaivaites. Adherents of principle of monism in Hinduism are the followers of Nimbark and Madhva sects. Even before the Ramananda sect existed the philosophy of Vishishtdvait, because it is not of the earliest period. The Rigveda, the first of the four Vedas, also speaks of King Dashrath. I have read page 12-para 59 of the affidavit filed in course of my examination-in-chief. I read both the books 'Sri Ramananda Sampradaya Ka Itihaas' and 'Sri Ramanandajayanti Smarak Granth', mentioned in this para, three days ago. Both of these books are separately of 300-400 pages each." (E.T.C.)

"जिन अखाड़ों का मैंने अपने बयान में उल्लेख किया है, वे अखाड़े 15वीं शताब्दी में बने थे। *यह कहना गलत है कि ये अखाड़े 15वीं शताब्दी में जयपुर में बने थे। सही यह है कि ये अखाड़े अनादि काल में बने थे, क्योंकि इनका उल्लेख बाल्मीकि रामायण में है। जयपुर में अखाड़ों के निर्माण के संबंध में कोई घटना नहीं हुई थी। इन अखाड़ों में अस्त्र–शस्त्र चलाने की ट्रेनिंग दी जाती है, उसे पटावाना कहते हैं। पटाबाना में लट्टू, तलवार, लाठी, भाला, बल्लम, छड़ी का प्रयोग होता है। स्वयं कहा कि अनी का अर्थ सेना होता है इसलिए इनमें अस्त्र–शस्त्र का प्रयोग करना सिखाया जाता है। हिन्दुस्तान में अखाड़ों की कुल संख्या 13 नहीं है, बल्कि इनकी संख्या 18 है। सभी अखाड़े कुंभ के अवसर पर पधारते हैं। कुंभ के अवसर पर अखाड़े के लोग एक माह तक ठहरते हैं। कुंभ के अवसर पर उपरोक्त अस्त्र–शस्त्रों को चलाने का कोई प्रशिक्षण नहीं*

दिया जाता है। जिस समय स्नान के लिए शाही जुलूस निकलता है, उस समय साधु लोग पटाबाना खेलते हुए स्नान करने के लिए जाने वाले साधुओं के आगे–आगे चलते हैं। वह जुलूस कितनी अवधि का होता है, उसके लिए सरकार द्वारा अलग–अलग समय निर्धारित है तथा उस समय का निर्धारण अखाड़ों से गंगा की दूरी के आधार पर तय किया जाता है। कुंभ के अवसर पर एक माह के अन्तर्गत मात्र तीन शाही स्नान होते हैं, इन्हीं शाही स्नानों के अवसर पर यह जलूस निकलते हैं। एक माह के कुंभ के दौरान सेवा–पूजा व अभ्यागतों को भोजन देने का कार्य चलता है। उस समय कितने लोगों को भोजन कराया जाता है, उसकी कोई निश्चित संख्या नहीं होती। जितने भी व्यक्ति उस अवसर पर आ जाते हैं, सबको भोजन करा दिया जाता है। जिन 18 अखाड़ों का मैंने ऊपर अपने बयान में उल्लेख किया है उनमें प्रमुख अखाड़े प्रयाग, हरिद्वार नासिक व उज्जैन में हैं। शाही स्नान के समय 18 अखाड़े एक साथ चलते हैं। केवल जगद्गुरू लोग अकेले चलते हैं। श्री ***वैष्णव सम्प्रदाय में चार जगद्गुरू हैं उपरोक्त 18 अखाड़े आज से पांच सौ वर्ष पूर्व बिरजानन्द जी के शिष्य बालानन्दाचार्य जी ने स्थापित किये थे। पहला अखाड़ा राजस्थान में जयपुर में बना था।***

साक्षी को अन्य मूलवाद सं0 4/89 का कागज संख्या 236/52 दिखाया गया, साक्षी ने उक्त रिपोर्ट के दोनों पेजों को पढ़ने के उपरान्त यह कहा कि मुझे इस रिपोर्ट के बारे में जानकारी नहीं है। ***निर्मोही, निर्वाणी तथा दिगम्बर तीनों अखाड़ों का निर्माण स्वामी जी ने एक साथ जयपुर में किया था। तीनों अखाड़ों का निर्माण स्वामी जी द्वारा आज से 500 वर्ष पूर्व किया गया था।*** *मैं यह नहीं बता सकता कि 500 वर्ष पूर्व जयपुर में मुस्लिम शासन न होने के कारण उक्त अखाडों का निर्माण किया गया था। रामानन्दाचार्य जी जयपुर इलाके के रहने वाले नहीं थे, वे प्रयाग, जिसे आजकल इलाहाबाद कहा जाता है, के रहने वाले थे।* ***जयपुर स्वयं रामानन्दाचार्य जी नहीं गये थे, उनके शिष्य बालानन्द जी ने जयपुर में जाकर इन अखाड़ों की स्थापना किया था। पहले तीन अखाड़े बने थे, उनके प्रभेद 18 अखाड़ें हैं। जयपुर में सूत्र रूप में अखाड़ों के निर्माण संबंधी सिद्धान्त बनाये गये थे, परन्तु उसके आधार पर नियम तथा उपनियम बनाने का कार्य बाद में हुआ***

था। *यह नियम तथा उपनियम जयपुर में सिद्धान्तों के निर्णय के बाद छः माह के अन्तर्गत ही बना दिये गये थे। यह नियम तथा उपनियम क्रमशः प्रयाग, हरिद्वार, उज्जैन तथा नासिक में बनाये गये थे। अखाड़ों की विधाओं में नागा, हुडदंगा, छोरा तथा अतीत है, अखाड़ों में शुरू से ही ये चारों प्रकार के लोग रहते चले आये हैं। इसी प्रकार शस्त्रों की शिक्षा भी शुरू से अखाड़ों में दी जाती रही है। जिन तीन अखाड़ों का उल्लेख मैंने ऊपर किया है,* ***ये अखाड़े स्थिर नहीं रहते हैं, ये चलते–फिरते रहते है। अतएव इसी प्रकार ये अखाड़े अयोध्या में पहुंचे।*** *पूरे भारत में अखाड़े के लोग जाते हैं तथा भेंट विदाई प्राप्त करते हैं। स्वयं कहा कि वर्तमान काल में रामानन्द सम्प्रदाय के 90 लाख साधु पूरे भारत में विचरण कर रहे हैं। इन साधुओं में जो लोग अस्त्र–शस्त्र ट्रेनिंग चाहते हैं वे उस ट्रेनिंग को लेते हैं इसके अतिरिक्त जिनकी रूचि पढ़ने–लिखने की होती है, वे पढ़ाई–लिखाई करते हैं।* ***स्वयं कहा कि अखाड़ा एक न्यास हे, जिसमें पंचायती व्यवस्था है।*** *इसलिए जिसकी जैसी रूचि हो, उसी अनुसार पढ़ने लिखने, योगासान सीखने तथा अस्त्र–शस्त्र सीखने की शिक्षा इन अखाड़ों में दी जाती है। राष्ट्रीय स्वयं सेवक संघ का उद्‌भव अखाड़ों से नहीं हुआ है। राष्ट्रीय स्वयं सेवक संघ की स्थापना नागपुर में हेडगेवार ने किया था। उपरोक्त तीन अखाड़ों के अतिरिक्त एक और अखाड़ा निरालम्बी भी अयोध्या में है। निरालम्बी अखाड़ा के महन्त है, इस अखाड़े में जो विद्यार्थी रहते हैं, वे लिखते–पढ़ते हैं। निरालम्बी अखाड़े की कई शाखायें अयोध्या में है। इसके अतिरिक्त अयोध्या के बाहर भी इसकी शाखायें हैं, परन्तु उनकी गिनती मैंने नहीं किया। उपरोक्त अखाड़ों के अतिरिक्त ख़ाकी अखाड़ा भी अयोध्या में है। खाकी अखाड़ा में तीस–चालीस लोग हैं। खाकी अखाड़े के लोगों की संख्या अयोध्या के बाहर हज़ारों की संख्या में है, ये लोग विभिन्न प्रान्तों जैसे गुजरात, राजस्थान व महाराष्ट्र में फैले हुए हैं। यह ट्रेनिंग अखाड़ों में स्थित आश्रम में ही होती है। कहीं बाहर ट्रेनिंग देने के स्थान निर्धारित नहीं है। जो अखाड़ा होता है, उसके पास शस्त्र होते ही हैं अतः उन्हीं अस्त्रों से ट्रेनिंग दी जाती है। रामघाट मोहल्ले में निरालम्बी अखाड़ा है, हनुमानगढ़ी चौराहे के पास ख़ाकी अखाड़ा है। निर्वाणी अखाड़ा हनुमानगढ़ी, दिगम्बर अखाड़ा हनुमानगढ़ी चौराहे से थोडा आगे तथा उसी से थोड़ा आगे निर्मोही अखाड़ा स्थित है। सभी अखाड़ों के नियम भी हैं तथा स्थान भी हैं। अयोध्या में इन अखाड़ों के जो स्थान हैं, उनमें ट्रेनिंग दी*

जाती है। यह ट्रेनिंग शस्त्रों की तथा विद्या की, योगासन की दी जाती है। ***बालानन्दाचार्य, विरजानन्द जी के शिष्य थे।*** *अखाड़े का तात्पर्य अखण्डता से है।* ***यह अखाड़े प्राचीन काल से हैं, परन्तु बालानन्द जी ने इसे गतिमान किया था।"****(पेज–41–44)*
(emphasis added)

"The Akharas which I have referred in my statement, were established in 15th Century. This is wrong to say that these Akharas were founded in 15th century in Jaipur. It is true that these Akharas were created in time immemorial, because its reference is in Balmiki Ramayan. No event regarding formation of Akharas in Jaipur took place. In these Akharas training of using arms and weapons is imparted, which is called Patabana. In Patabana, Lattu, sword, lathi, spear, Ballam and stick are used. Of his own said that Ani means army and therefore, training of using arms and weapons is given. Total number of Akharas in India is not only 13, but it is 18. All Akharas visit on the occasion of Kumbh. On the occasion of Kumbh Akhara people stay for one month. On the occasion of Kumbh no training for using the aforesaid arms and weapons is given. When the procession moves for royal bath, at that time, saints displaying Patabana moves ahead the saints. The period of that procession is determined by the Government with different timings and fixation of the time is made keeping in view the distance of Akharas from Ganges. On the occasion of Kumbh within one month only three royal baths are done. Procession moves only at the time of these three Royal Bath. During the period of one month in Kumbh service, worship etc. and providing food to guests go on. At that time how many persons are fed, the number is not fixed. As many as persons arrive there at that

occasion they are all provided food. Out of 18 Akharas, which I have referred in my statement aforesaid, main are in Prayag, Haridwar, Nasik and Ujjain. At the time of Shahi Snan (Royal Bath) all the 18 Akharas move together. Only Jagadguru moves alone. There are four Jagadguru in Vaishnav Sect. ***The aforesaid 18 Akharas were created 500 years ago since today by Balanandacharya Ji disciple of Birjanand Ji. First Akhara was founded in Jaipur, Rajasthan.***

The witness was shown paper no. 236/52 of Original Suit No. 4/89, after going through two pages of the report, said that he had no knowledge about this report. Swami Ji had founded the three Akharas Nirmohi, Nirvani and Digambar simultaneously in Jaipur. I cannot say that on account of there being no Muslim Rule in Jaipur 500 years ago, these Akharas were created. Ramanand Ji was not resident of Jaipur area. He was a resident of Prayag which is today known as Allahabad. Ramananad acharya Ji himself did not go to Jaipur, his disciple Balanand Ji went Jaipur and founded these Akharas. ***Initially, three Akharas were created and their 18 sub-divisions are there. In Jaipur, in the shape of formulae, principles for creation of Akharas were enacted but on that basis, framing of Rules and Sub rules were done subsequently****. These rules and sub rules were enacted within six months of promulgation of principles in Jaipur. These rules and sub rules were framed in Prayag, Haridwar, Ujjain and Nasik respectively. In the branches or division of Akharas are Nagas, Hurdanga, Chhora and Ateet, and from very beginning these four categories existed. Likewise,*

education of arms and weapons were imparted in the Akharas from inception. ***The three Akharas which I have mentioned above, they are not static and are nomadic.*** *Therefore, in this way, these Akharas reached Ayodhya. Members of Akharas roam through out whole of India and receives meeting-farewell gift. Of his own said, presently, 90 lacs saints of Ramanand Sect are wandering throughout India. The saints wishing to have training of weapons, they get the training and besides it, the saints who are interested in schooling, they do the same. Of his own said that* ***Akhara is a trust with Panchayati system.*** *Therefore, as per one's interest, according to that, schooling, learning Yogasan and training of arms and weapons are imparted in these Akharas. Origin of Rashtriya Swyam Sewak Samgh is not Akharas. Rashtriya Swayam Sewak Sangh was founded in Nagpur by Hedgewar. Apart from the aforesaid three Akharas, one more Akhara--Niralambi is also in Ayodhya. There is a Mahant of Niralambi Akhara. The students living in this Akhara study. There are many branches of Niralambi Akhara in Ayodhya. Besides it, there are its branches out of Ayodhya, but I have not counted them. Besides the aforesaid Akharas, a Khaki Akhara is also in Ayodhya. There are 30-40 people in Khaki Akhara. Number of persons in Khaki Akharas out of Ayodhya is in thousands, these people are scattered in different States i.e., Gujrat, Rajasthan and Maharashtra. This training is imparted in the Huts (Ashram) of these Akharas. No place outside is fixed for giving training. The Akhara has arms and weapons, therefore, training is given with those weapons. In Mohalla Ram Ghat there is a Niralambi*

Akhara and near Hanuman Garhi crossing there is a Khaki Akhara. Nirwani Akhara Hanuman Garhi and Digambar Akhara Hanuman Garhi are a little ahead of crossing and thereafter a little ahead Nirmohi Akhara is situated. All Akharas have rules and places too. A training is imparted in the places of these Akharas. Balanandacharya was a disciple of Birjanandji. Akhare means indivisibility. ***These Akharas exists from ancient period but Balanandji gave momentum to it****." (E.T.C.)*

"रामानन्दी सम्प्रदाय के अन्तर्गत जो संप्रदायाचार्य होते हैं, उनके लिए भी अस्त्र शस्त्र धारण करना जरूरी नहीं है। मैंने भी दण्ड धारण कर रखा है, यह न अस्त्र है, न शस्त्र है। ***रामानन्द जी का जो सिद्धान्त तत्वत्रैय है, उसी का मनसा, वाचा, कर्मणा तीनों तत्वों की स्वीकृति, जिसमें एक बिल्व, पलाश तथा बांस होता है, के प्रतीक के रूप में इसे धारण किया जाता है। इसका तात्पर्य ब्रह्म जीव और माया से है।*** *यह दण्ड लकड़ी का होता है। ऊपर का अंश सुमेरू कहा जाता है, जो ब्रह्म का प्रतीक है। इस* ***दण्ड के ऊपरी भाग में तिलक का चिन्ह बना हुआ है, जो रामानन्दीय सम्प्रदाय का प्रमुख चिन्ह है।"*** *(पेज–45)*

"It is not necessary for Acharya of Ramanandi Sect too to bear arms and weapons. I also bear a Dand (Stick). It is neither an arm nor weapon. It contains a Bilva, Palas and Bamboo and is borne in token of acceptance of the principle of Tatvatraya of Ramanandji, namely, three elements in thought, word and deed. It means Bramha, Jeev and Maya. This stick is made of wood. Upper portion is called Sumeru which is the symbol of Bramha. On the ***upper portion of this stick, a sign of Tilak is made which is the main symbol of Ramanandi Sect."*** *(E.T.C.)*

*"****चतुः सम्प्रदाय का अर्थ है, रामानन्द, निम्बार्क, बल्लभ तथा मध्व।*** *इन्हीं चारों को मिलाकर चतुः सम्प्रदाय कहा जाता है। चारो*

सम्प्रदायों के चार प्रतिनिधि महन्त होते हैं।" (पेज –46)

"Charuh-Sampradaya ***(Quadruple Sect) means, Ramanand, Nimbark, Ballabh and Madhwa.*** *These four together is called Chatuh-Sampradaya (qudruple sect). Mahants are representatives of these four Sects." (E.T.C.)*

"आदि शंकराचार्य का काल रामानंदाचार्य के काल से सौ, दो सौ साल पुराना है।" (पेज 49)

"Aadi Sankaracharya's period is 100-200 years earlier to that of Ramanandacharya." (E.T.C.)

*"**रामानन्दाचार्य रामानन्दीय सम्प्रदाय के आचार्य थे, परन्तु वे इस सम्प्रदाय के संस्थापक नहीं थे। रामानन्दीय सम्प्रदाय की संस्थापक सीता जी हैं।** वे इस सम्प्रदाय की आचार्या हैं, जिन्होंने राममन्त्र की व्याख्या एवं श्रीमत् का प्रचार सर्वप्रथम किया। **सीता जी एवं रामानन्दाचार्य के बीच में जो लोग इस सम्प्रदाय के आचार्य के रूप में जाने जाते हैं, उन लोगों में बोधायन, पाराशर, व्यास जी, हनुमान जी हैं। इन सभी लोगों ने इस सम्प्रदाय को गति प्रदान की। बोधायन किस काल के थे, यह मैं नहीं बता सकता। यह शायद महात्मा बुद्ध के बाद हुए हैं।** बोधायन के बारे में कोई साहित्य प्राप्त नहीं होता है। **वेदव्यास जी को मैंने चिरंजीवी होना बताया है। हनुमान जी देवता थे।** स्वयं कहा कि वह देव और मानव दोनों थे। **रामानन्दाचार्य के पूर्व इस संप्रदाय के सम्बन्ध में साहित्य की रचना करने वाले और किसी व्यक्ति को मैं नहीं जानता हूँ,** केवल सीता जी का भाष्य है, जो जानकी भाष्य के नाम से विख्यात है। **रामानन्दीय सम्प्रदाय के बारे में आजकल जो साहित्य उपलब्ध हैं, उनमें सबसे प्राचीन रामानन्दाचार्य जी का ही साहित्य है। अन्य साहित्य जो इस सम्प्रदाय के बारे में उपलब्ध है वह रामानन्दाचार्य जी के बाद के हैं।"** (पेज–93) *(emphasis added)*

*"**Ramanandacharya was an Acharya of Ramanandi Sect, but he was not a founder of this Sect.***

The founder of Ramanandi Sect is Sita Ji. *She is Acharya (Lady Teacher) of this Sect, who first of all, explained Ram Mantra and and made publicity of Srimat (pious saying of Lord).* ***The persons who are known as Acharya of this Sect in between Sita Ji and Ramanandacharya, are Bodhayan, Parasar, Vyas Ji and Hanuman Ji. All these gave momentum to this Sect. To which period Bodhayan pertained, I cannot say. Probably, he might have been after Mahatma Buddh.*** *No literature is available about Bodhayan.* ***I have said Ved Vyas Ji as immortal. Hanuman Ji was a God.*** *Of his own said, that he was a God and human being both.* ***I do not know any other person, earlier to Ramanandacharya, who might have created literature in respect to this Sect.*** *Only there is a commentary of Sita Ji which is famous by "Janaki Bhashya".* ***Whatever literature of Ramanandi Sect is available today, amongst them the ancient is only the literature of Ramanandacharya Ji. Other literature available with regard to this Sect, is of the period subsequent to that of Ramanandacharya Ji.*** *" (E.T.C.)*

"रामानन्दाचार्य के बारह शिष्यों में से एक शिष्य अनुभवानन्दाचार्य है। ***अनुभवानन्दाचार्य का काल आज से लगभग 500 वर्ष के अन्तर्गत माना जाता है। इनका जन्म सम्वत् 1503 में वाराणसी में हुआ था।*** *अनुभवानन्दाचार्य ने अपने जीवन काल में सैनिक पद्धति का प्रतिपादन किया था और अपने अनुयायियों को उन्होंने भाला, तीर, बरछा आदि चलाने की शिक्षा दी होगी। अनुभवानन्दाचार्य जी के शिष्य विरजानन्दाचार्य थे। विरजानन्दाचार्य के शिष्य बालानन्दाचार्य थे।* ***बालानन्दाचार्य ने अखाड़ों की स्थापना आज से पॉच सौ वर्ष पूर्व किया।*** *रामानन्द जी और उनके शिष्यों का उद्देश्य वैदिक संस्कृति का प्रचार तथा भारतीय शस्त्रों का सैद्धान्तिक विवेचन करना था।"* (पेज–94) *(emphasis added)*

"Amongst 12 disciples of Ramanandacharya, one is Anubhavanandacharya. ***The period of Anubhavanand-acharya is considered within 500 years from today. He was born in Samvat 1503 in Varanasi.*** *Anubhavanand-acharya during his life time had laid down a principle of Army System and might have given training of using Bhala, arrow, spears etc. to his followers. Anubhavanand-acharya's disciple was Virjanandacharya. Balanand-acharya was the disciple of Virjanandacharya.* ***Balanand-acharya founded the Akharas 500 years ago from today.*** *The aim of Ramanand Ji and his disciples was to expand the vedic culture as well as theoretical analysis of Indian scriptures."(E.T.C.)*

765. **D.W. 3/20 Mahan**t Rajaram Chandracharya (aged about 76 years as on 27th October, 2004**)** in his affidavit (Examination-in-chief) has said about Ramanandi Sampraday in paras 46, 47, 48 and 49 as under:

"46. ***निर्मोही अखाड़ा के अन्तर्गत कई मन्दिर हैं।*** *जिसमें से राम कोट स्थित प्रसिद्ध राम जन्म भूमि मन्दिर हैं।* ***निर्मोही अखाड़ा एक पंचायती मठ है जिसकी व्यवस्था पंचो द्वारा होती है।*** *पंच बैठक कर प्रस्ताव पास कर निर्णय करता है जो प्रस्ताव पास होता है। उसे अखाड़े के सभी साधुओं को मानना पड़ता है और महन्त को भी मानना पड़ता है* ***महन्त स्वतंत्र नहीं हैं महन्त पंचों के आधीन ही निर्मोही अखाड़ा के मन्दिर व सम्पत्ति की व्यवस्था करते है।"***

"46. ***There are several temples under Nirmohi Akhara.*** *Out of which, is famous Ram Janam Bhumi situated at Ram Kot.* ***Nirmohi Akhara is a Panchayati Math, which is managed by Panches.*** *Panches pass proposal in meeting and take a decision,the proposal which is passed, all the saints are bound to abide by the same and Mahant has also to follow the same.* ***Mahant is not free and he manages***

the temple of Nirmohi Akhara and its property acting under the control of Panches. *" (E.T.C.)*

"47. ***श्री रामानन्दीय सम्प्रदाय के आदि आचार्य जानकी व श्री राम जी हैं।*** *स्वामी रामानन्द ने विशिष्टाद्वैत दर्शन का प्रतिपादन किया इसलिए उनके नाम पर रामानन्दी वैरागी सम्प्रदाय पड़ा ये रामानन्दीय* ***वैरागी सम्प्रदाय के अखाड़ों की स्थापना बालानन्द जी महराज ने अरसा 500 वर्ष पूर्व किया था*** *उत्तर भारत में निर्मोही अखाड़ा की कई बैठकें हैं। इन सभी बैठकों के अन्तर्गत कई मंदिर हैं। अयोध्या में उक्त निर्मोही अखाड़ा की प्राचीन बैठक रामघाट अयोध्या में है।* ***अखाड़ा एक सार्वजनिक, धार्मिक न्यास स्वयं है।*** *अयोध्या में रामानन्दीय वैरागी के सात अखाड़े हैं। (1) दिगम्बर अखाड़ा (2) निर्वाणी अखाड़ा (3) निर्मोही अखाड़ा (4) संतोषी अखाड़ा (5) खाकी अखाड़ा (6) महानिर्वाणी अखाड़ा (7) निरालम्बी अखाड़ा। हर अखाड़ों में अनेक मन्दिर हैं। और अलग–अलग देवता विराजमान हैं। जैसे निर्वाणी अखाड़े में हनुमान मंदिर, जिसमें हनुमन्त लाल विराजमान हैं। नरसिंह मन्दिर जिसमें नरसिंह भगवान विराजमान हैं। राम जानकी मन्दिर जिसमें राम जानकी विराजमान हैं। ये सभी मन्दिर अखाड़े निहित हैं। और ऐसे ही निर्मोही अखाड़े में विजय राघव मन्दिर जिसमें राम जानकी विराजमान हैं। जिनके साथ दरबार है। जैसे–लक्ष्मण, भरत, शत्रुघ्न, गरूण जी हैं और निर्मोही अखाड़े के अन्तर्गत राम जन्म भूमि मन्दिर है जिसमें रामलला विराजमान हैं जिनके साथ उनके तीन भाई की मूर्तियॉ हैं।* ***निर्मोही अखाड़े के महन्त व सर्वराकार पंचो के चुनाव द्वारा नियुक्ति किया जाता है। वरासत नहीं चलती यानि गुरू के मरणोपरान्त चेला महन्त नहीं होता है।*** *निर्मोही अखाड़े के मन्दिर व अखाड़े के अचल सम्पत्ति पर सरकारी कागजात पर महन्त अखाड़े का नाम दर्ज होता है।* ***अखाड़े के मन्दिर में जो ठाकुर जी विराजमान होते हैं। वे किसी जायदाद के मालिक नहीं है। बल्कि सभी जायदाद मलकियत अखाड़ा रहती है। जो स्वयं में धार्मिक न्यास है।*** *जिन सभी मन्दिर व जायदाद की व्यवस्था अखाड़ा बहैसियत सर्वराकार पंचायती तौर पर महन्त अखाड़ा करता है।"*

"47. ***Aadi Acharya (Initial Teacher) of Ramanandi Sect is Janaki and Sri Ram Ji.*** *Swami Ramanand enunciated*

Vishishtadwait Philosophy, therefore, on his name, it was called Ramanandi Varaigi Sect and ***Akharas of this Vairagi Sect were founded by Balanand Ji Mahraj about 500 years ago.*** *There are a number of assemblies of Nirmohi Akharas in North India. There are many temples under all these assemblies. In Ayodhya the ancient assembly of the aforesaid Nirmohi Akhara is in Ramghat, Ayodhya.* ***Akhara is a public, religious trust.*** *There are seven Akharas of Ramanandi Varaigi in Ayodhya. (1) Digambar Akhara (2) Nirvani Akhara (3) Nirmohi Akhara (4) Santoshi Akhara (5) Khaki Akhara (6) Mahanirvani Akhara (7) Niralambi Akhara. In every Akhara there are several temples. And different deities are enthroned. Such as, Hanuman Temple in Nirvani Akhara, wherein Hanumant Lal is enthroned. Narsingh Temple in which Narsingh Bhagwan is enthroned. Ram Janki Temple wherein Ram Janki is enthroned. All these temples are vested in Akharas. And under a similar Akhara in Vijay Raghav Mandir wherein Ram-Janki is enthroned with court,-e.g., Lakshman, Bharat, Satrughna, Garun Ji and Ram Janam Bhumi Temple is under Nirmohi Akhara in which Ram Lala is enthroned and with whom there are idols of his three brothers.* ***Mahant and Sarvarakar of Nirmohi Akhara are elected by Kar Panches, heritage is not permissible, meaning that after death of Guru (teacher) his disciple does not become a Mahant.*** *In Government records, the name of Mahant is recorded with respect to the immovable property of Nirmohi Akhara and temples.* ***The Thakur Ji who is enthroned in the temple of an Akhara, is not owner of any property, rather all***

the property is of Akhara which in itself is a religious trust. *Management of all these temples and property of Akhara is done by Mahant of Akhara as Sarvarakar under Panchayati system." (E.T.C.)*

"48. निर्मोही अखाड़े के सुसंगत महन्तों का शजरा निम्नलिखित है–

मं0 गोविन्द दास जी

मं0 अयोध्या दास जी

मं0 गोपाल दास जी

मं0 जय राम दास जी

मं0 रतन दास जी

मं0 अन्नत राम दास जी

मं0 मंगल दास जी

मं0 जगन्नाथ दास जी

मं0 कौसल्या दास जी

मं0 माखन दास जी

मं0 तुलसी दास जी

मं0 बलदेव दास जी

मं0 रघुबर दास जी

मं0 नरोत्तम दास चेला रघुबर दास

मं0 राम चरन दास जी

मं0 रघुनाथ दास चेला मं0 धर्म दास

मं0 प्रेमदास मं0 रघुनाथ दास

मं0 रामेश्वर दास चेला ईश्वर दास

मं0 राम केवल दास चेला गोपाल दास जी (इनसे इस्तीफा लिया गया)

मं0 जगन्नाथ दास चेला वैष्णव दास"

"48. Pedigree of relevant Mahants of Nirmohi Akhara is as under:

M. Govind Das Ji

M. Ayodhya Das Ji

M. Gopal Das Ji

M. Jai Ram Das Ji

M. Ratan Das Ji

M. Anant Ram Das Ji

M. Mangal Das Ji

M. Jagannath Das Ji

M. Koshalya Das Ji,

M. Makhan Das Ji

M. Tulsidas Ji

M. Baldev Das Ji

M. Raghubar Das Ji

M. Narottam Das Ji Chela Raghubar Das Ji

M. Ram Charan Das Ji

M. Raghunath Das, Chela Mahant Dharamdas

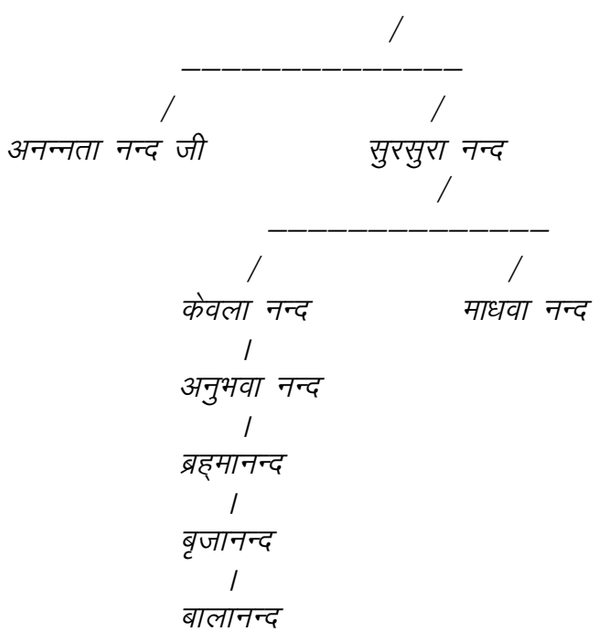
M. Prem Das M. Raghunath Das

M. Rameshwar Das, Chela Ishwar Das

M. Ram Keval Das Chela Gopal Das Ji (from whom resignation was obtained)

M. Jagannath Das Chela Vaisnav Das" (E.T.C.)

''49. रामानन्द जी का प्रादुर्भाव 13वीं शताब्दी के अंत में हुआ। द्ववादस शिष्यों में कबीर दास जी भी थे। रामानन्द जी के दो शिष्य–



माधवानन्द के शिष्य नरहरि दास और नरहरि दास के शिष्य तुलसी दास जी जो मानस के रचयिता हैं ***अनुभवा नन्द व उनके उप शिष्य बालानन्द ने श्री चतुर सम्प्रदाय के प्रचार जागृत व उन्नति रक्षा के लिए तीन अन्य तथा सात अखाड़े का निर्माण किया जो सैनिक पद्धति पर आधारित है जो लगभग 600 वर्ष पूर्व से चला आ रहा है।*** *और रामानन्द सम्प्रदाय के श्री मठ बनारस है। इसके गद्दी पर इस समय जगद्गुरू शिवरामाचार्य जी थे जिन्होंने विश्व हिन्दू परिषद के क्रिया कलापों पर बहुत रोष प्रकट किया अखबारों पर उनका बयान छपा जिसे अखाड़े ने दाखिल किया।'' (emphasis added)*

"49. Appearance of Ramanad Ji was in the end of 13th century. Kabir Das Ji was one of his 12 disciples. Two disciples of Ramanand Ji:

Ananta Nand Ji *Sursura Nand*

Kevla Nand *Madhva Nand*

I
Anubhava Nand
I
Bramha Nand
I
Brija Nand
I
Balanand

Madhavanand's disciple was Narhari Das and Narhari Das's disciple was Tulsidas Ji who is composure of Manas. ***Anubhava Nand and his Deputy disciple Balanand Ji created three Annais and seven Akharas*** *which has been based on army system,* ***for publicity, awakening, promotion and sustenance of Sri Chatur Sect, and has been persisting for about last six hundred years.*** *Sri Math (main math) of Ramanand Sect is in*

Banaras. Presently Jagatguru Sri Shivramacharya Ji is enthroned on it who expressed great anguish on the activities of Viswa Hindu Parishad and his statement was published in newspapers which the Akhara filed." (E.T.C.)

766. In para 57 DW 3/20 has said that history and constitution of the aforesaid Sampraday Akhara is also mentioned in "Smritigranth" published by the Sampraday itself as well as in a Book titled as "Rajasthan Ki Bhakti Parampara Evam Sanskriti" written by Sri Dinesh Chandra Gupta and Onkar Narain Jodhpur. In cross examination, on pages 18, 19, 20, 46/47, 108/109 and 178 he said :

''अखाड़े से तात्पर्य यह है कि धार्मिक संरक्षण एवं सम्वर्धन के लिए जिस संस्था का निर्माण किया जाता है, उसे अखाड़ा कहा जाता हैं। स्वयं कहा कि ''अखण्ड'' शब्द का अपभ्रंश अखाड़ा है। यदि कहीं पर निर्मोही अखाड़े का उल्लेख करना हो तो शुद्ध रूप से उसे ''निर्मोही अखाड़ा'' लिखेगें। यह सही है कि निर्मोही अखाड़े का नाम शुद्ध रूप से ''श्रीपंच रामानन्दीय निर्मोही अखाड़ा'' लिखेंगे। यह अखाड़ा अखिल भारत वर्षीय स्तर पर स्थापित है। इस प्रकार इस अखाड़े का पूरा नाम ''अखिल भारत वर्षीय श्री पंच रामानन्दीय निर्मोही अखाड़ा'' है। इस प्रकार निर्मोही अखाड़े के अतिरिक्त भी जितने अखाड़े हैं, उनके परिचय में इसी प्रकार की शब्दावली प्रयुक्त होती है। ***इन अखाड़ों की स्थापना परम्परा से वर्षो पहले हो चुकी थी। बालानन्दाचार्य जी के समय में उनका संबर्धन व परिष्कृत कार्यक्षेत्र विशेष रूप से स्थापित हुआ।*** *अखाड़ों की स्थापना अमृत मंथन की प्रथा से शुरू होती है। आसुरी व देवी शक्ति के बीच का जो संघर्ष है वहीं पर अखण्ड शक्ति का प्रदर्शन अखाड़ों के उत्पन्न होने का मूलभूत प्रेरक तत्व है। देशकाल को ख्याल में रखते हुए उनका संकोच व विकास समय–समय पर होता रहता है। अमृत मंथन के समय से ही निर्मोही अखाड़ा तथा अन्य अखाड़ों की उत्पत्ति का मूलभूत श्रोत शुरू होता है और परिस्थितियों को ध्यान में रखते हुए बाद में इनके नामकरण भी होते रहे। निर्मोही अखाड़े के नौ विभाग हैं।* ***बालानन्दाचार्य के समय के पूर्व से ही निर्मोही अखाड़ा की उत्पत्ति हो गयी थी।*** *इस*

अखाड़ें का नामकरण संस्कार भी बालानन्दाचार्य के समय में हो चुका था। इन अखाड़ों का नामकरण किस महात्मा व आचार्य के समय में हुआ, यह मैं नहीं बता सकता, परन्तु पूर्वाचार्यों के द्वारा इन अखाड़ों के नाम का उल्लेख होता आया है और ये नाम इसी तरह आज तक चल रहे हैं। ***रामानन्दीय सम्प्रदाय के प्रथम आचार्य रामचन्द्र जी हैं।*** *इस संबंध में एक श्लोक है ''सीतानाथ समारम्भाम रामानन्दाचार्य मध्यमाम् अस्मतदाचार्य पर्यांताम् वन्दे गुरू परम्पराम्'' रामानन्दाचार्य शिष्य परम्परा में 22वें स्थान पर हैं। उनके द्वारदश शिष्यों में सुरसुरा नन्द, उनके शिष्य अनुभवानन्द, उनके शिष्य ब्रह्मानन्द, ब्रह्मानन्द के शिष्य बालानन्द हुए। इस प्रकार रामानन्दाचार्य जी के बाद 23वें नम्बर पर उनके शिष्य सुरसुरानन्द,* ***24 वें नम्बर पर अनुभवानन्द,*** *25वें नम्बर पर ब्रह्मानन्द, 26 वें नम्बर पर गजानन्द,* ***27 वें नम्बर पर बालानन्द जी इस शिष्य परम्परा में हुए।*** *अखाड़ों की स्थापना किसी संघर्ष के बाद होती है।''(पेज 18–20)*

"Akhara means the institution which is created for religious conservation and growth, of his own said, degenerated or corrupt form of the word "Akhand" is "Akhara". If somewhere "Nirmohi Akhare" is to be written, it will correctly be written "Nirmohi Akhara". It is true that correct name of Nirmohi Akhara will be written "Sri Panch Ramanandiya Nirmohi Akhara". This Akhara is established on all India level. Thus, full name of this Akhara is "Akhil Bharat Varshiya Sri Panch Ramanandiya Nirmohi Akhara". Thus, besides Nirmohi Akhara, for introduction of all the Akharas this phrase is used. ***These Akharas had been established years ago by way of custom. In the period of Balanandacharya their growth and purified work field was specially established.*** *Foundation of Akharas begins from the custom of Amrit Manthan. The struggle between divine and evil powers and thereby the emergence of indestructible power is the basic inspiriting element of creation of the Akharas. Keeping in view the*

place and time, process of their reduction and improvement continues. Basic source of origin of Nirmohi Akhara and other Akharas commences right from the time of Amrit Manthan, and subsequently, having regard to the circumstances, their nomenclature was being done. There are nine departments of Nirmohi Akhara. ***From the time before Balanandacharya, Nirmohi Akhara had come into existence****. Rite of nomenclature was also done during the period of Balanandacharya. I cannot say as to within the period of which saint or Teacher, nomenclature of these Akharas were done, but nomenclature was being referred by teachers of past and these names are continuing like this till date.* ***The first teacher (Acharyha) of Ramanandi Sect is Acharya Ram Chandra Ji.*** *In this connection there is a verse: "Sitanath Samarambham Ramanandacharya Madhyamam Asmatdacharya Paryatam Vande Guru Paramparam". Ramanandacharya is at 22nd place in disciple -tradition. Amongst his 12 disciples, are Sursuranand, his disciple Anubhavanand, his disciple Brahmanand and Brahmanand's disciple Balanand. Thus, after Ramanandacharya Ji , at serial no. 23- his disciple Sursuranand, at serial no.* ***24- Anubhavanand,*** *at 25th Brahmanand, at 26th Gajanand and at* ***27th place Balananand became Acharya under the disciple tradition.*** *Akharas are created after any struggle." (E.T.C.)*

''रामानन्दाचार्य का जन्म 13वीं शताब्दी में हुआ था। बालानन्दाचार्य ने जयपुर में अखाड़ों का विकास किया था। *बालानन्दाचार्य चूंकि जयपुर में ही रहते थे, इसलिए उन्होंने इस स्थान को अखाड़ों के विकास हेतु चुना।* ***बालानन्दाचार्य के पूर्व भी सभी अखाड़े वर्तमान थे। बालानन्दाचार्य के वर्षों पहले से इन***

अखाड़ों का अस्तित्व था, परन्तु कितने समय पूर्व से इन अखाड़ों का अस्तित्व था, यह मैं नहीं बता सकता। *कुल 18 अखाड़ों का विकास बालानन्दाचार्य ने देश–काल को देखते हुए किया था। इन अखाड़ों की शाखाएं देश के हर कोने में थीं। ये शाखाएं भारत के हर कोने में थीं। हर कोने से तात्पर्य बंगाल में तथा अन्य प्रदेशों में इसकी शाखाएं थीं। उत्तर प्रदेश में भी इसकी शाखाएं थीं। उत्तर प्रदेश नाम आज़ादी के बाद आया है। इसके पूर्व भी अखाड़ों की शाखाएं इस स्थान पर थी। अवध प्रदेश में भी अखाड़े की शाखाएं थीं। अवध में पंचरामानन्दीय निर्मोही अखाड़ा, पंच रामानन्दीय निर्वाणी अखाड़ा, श्री पंचरामानन्दीय खाकी अखाड़ा की शाखाएं चित्रकूट, वृन्दावन तथा गिरिराज में थीं। अयोध्या में भी इनकी शाखाएं थीं और अब भी हैं। अयोध्या में निर्वाणी, निरालम्बी, निर्मोही, खाकी और दिगम्बर अखाड़ों की शाखाएं थीं। अयोध्या में अखाड़ों की जो शाखाएं थीं वे धर्मरक्षा में तथा उसके प्रचार व प्रसार में संलग्न रहती थीं।* ***अयोध्या में ये अखाड़े वर्षों पहले से थे, परन्तु कितने वर्षों पूर्व से वहाँ पर थे, यह मैं नहीं बता सकता।*** *अयोध्या में सभी 18 अखाड़ों की शाखाएं थीं। रामानन्दाचार्य ने धर्म की रक्षा की घोषणा की थी। स्वयं कहा कि उनके पूर्व के आचार्यों तथा बाद के आचार्यो ने भी ऐसा किया। रामानन्दाचार्य 14वीं शताब्दी के बाद तक रहे। यह काशी में रहते थे तथा अन्य प्रदेशों का भी भ्रमण करते थे। रामानन्दाचार्य संगठित अखाड़ों को देश–धर्म की रक्षा के लिए प्रेरणा देते थे।'' (पेज 46–47)*

"Ramanandacharya Ji was born in 13th century. Balanandacharya evolved Akharas in Jaipur. *Since Balanandacharya lived in Jaipur, therefore, he chose this place for growth of Akharas.* ***Even before Balanandacharya all Akharas were in existence. From years before Balanandacharya, these Akharas were in existence, but I cannot say as to since how many years they existed.*** *Development of 18 Akharas in all was done by Balanandacharya keeping in view the time and place. Branches of these Akharas were in each corner of the country. These branches were in each corner of India.*

Each corner means, in Bengal and in other States their branches existed. Its branches were in U.P. Too. Name of Uttar Pradesh has come into existence after freedom. Earlier to it, branches of Akharas were at this place. In Avadh Province too, its branches were present. In Awadh, branches of Panch Ramjanandi Nirmohi Akhara, Panch Ramanandi Nirvani Akhara and Sri Panch Ramanandi Khaki Akhara were in Chitrakoot, Vrindavan and Giriraj. Its branches were in Ayodhya too and are still existing. In Ayodhya there were branches of Nirvani, Niralambi, Nirmohi, Khaki and Digambar Akharas. The branches of Akharas which were in Ayodhya, had been indulged in saving the religion and its publicity and expansion. ***These Akharas existed in Ayodhya years before but for how many years they existed there, I cannot tell.*** *In Ayodhya there were branches of all the 18 Akharas. Ramanandacharya had proclaimed for protection of religion. Of his own said that his predecessor Acharyas (teachers) and subsequent Acharyas also did so. Ramanandacharya remained till the post 14th century. He used to live in Kashi and wander other provinces too. Ramanandacharya used to inspire the Akharas for saving the nation and religion. (E.T.C.)*

''सूची सं0 10 में रामानन्द से शुरू होने वाली वंशावली में सभी नाम उनके हैं, जो निर्मोही अखाड़ा के पूर्व आचार्य यानी महन्त थे। इसका मतलब यह है कि रामानन्द से ही निर्मोही अखाड़े के महन्तों का प्रचलन शुरू हुआ, पहले से नहीं, अर्थात रामानन्द यानी रामानन्दाचार्य निर्मोही अखाड़े के पहले महन्त, मध्य आचार्य हुए। *मेरे शपथ–पत्र के प्रस्तर–49 में यह लिखा है कि रामानन्द जी का प्रादुर्भाव 13वीं शताब्दी के अन्त में हुआ, इससे मेरा आशय है कि उससे पहले कोई प्राचार्य नहीं था। स्वयं*

कहा कि उस समय से पहले केवल परम्परा थी।

मेरे शपथ पत्र के प्रस्तर–49 में लिखे हुए सभी नाम निर्मोही अखाड़े के आचार्यों यानी महन्तों के हैं। प्रस्तर–49 में नरहरि दास व तुलसीदास, जो माधवानन्द की वंशावली में हैं मात्र निर्मोही अखाडा के साधु थे, महन्त नहीं थे। प्रस्तर–48 में 11 वें नम्बर के महन्त तुलसीदासजी, वह तुलसीदास जी नहीं थे, जिनका ज़िक्र प्रस्तर–49 में नरहरिदास के शिष्य के रूप में आया है। प्रस्तर–49 में मैंने यह कहा है कि अनुभवानन्द एवं उनके उप शिष्य बालानन्द ने चतुर्सम्प्रदाय के निर्माण हेतु, तीन अनि तथा सात अखाड़ों का निर्माण किया था। इन सात अखाड़ों में निर्मोही अखाड़ा एक है। ***सातों अखाड़ों तथा अनि का निर्माण यानी प्रादुर्भाव रामानन्दाचार्य के पूर्व में हुआ था।*** *आगे स्पष्ट किया कि विशेष परिस्थितियों में संरचना सैनिक पद्धति पर की गई। सूची–12 में दर्शित रामानन्द सम्प्रदाय की गुरू–परम्परा निर्मोही अखाड़े से ही संबंधित है और ये सभी लोग निर्मोही अखाड़ा के आचार्य/महन्त समझे जायेंगे। सूची–12 के प्रथम पृष्ठ में प्रस्तावना टाइटिल के अन्तर्गत जिस श्रीमठ का जिक्र है, वह वाराणसी में स्थित था और चरण पादुका भी वाराणसी में ही स्थित है।'' (पेज 108–109)*

''In list 10, all the names shown in the pedigree beginning from Ramanand, are of those who were prior Acharya or Mahant of Nirmohi Akhara. It means custom of Mahants of Nirmohi Akharas commenced from the time of Ramanand, not before, i.e., first Mahant was Ramanand or Ramanandacharya of Nirmohi Akhara, and became Madhya Acharya. In para 490 of my affidavit, this is written that appearance of Ramanand Ji was in the end of 13th century, by it, I mean that prior to that there was no any Pracharya. Of his own said that prior to that only custom was there.

All the names written in para 49 of my affidavit are of Acharya or Mahants of Nirmohi Akhara. In para 49 Narhari Das and Tulsi Das who were in the pedigree of

Madhavanand, were only the saints of Nirmohi Akhara and not Mahant. The name of Tulsidas Ji mentioned at serial no. 11 in para 48, is not of that Tulsidas Ji whose reference has come in para 49, as the disciple of Naharidas. In para 49 I have said that Anubhavanand and his Deputy disciple Balanand had founded three Annis and seven Akharas in order to create quadruple sects (Chatuh-Sampradaya). Out of these seven Akharas, one is Nirmohi Akhara. ***Creation or birth of the seven Akharas and Ani took place before Ramanandacharya.*** *Further clarified that in special circumstances, creation was done on army system. Guru-Parampara (Teacher tradition) of Ramanand Sect indicated in list 12, does relate to Nirmohi Akhara and all these people shall be deemed Acharya/Mahant of Nirmohi Akhara. There is a reference of Sri Math, made under preamble title, at first page of list 12, which situated at Varanasi and Charan Paduka (wooden sleeper) is also situated in Varanasi." (E.T.C.)*

*"**यहां पूजा अर्चन की परम्परा रामचन्द्र जी से शुरू होती है और रामानन्दाचार्य इस परम्परा के मध्य में है** और उनसे लेकर मेरे गुरू जी तक जो परम्परा, पद्धति व रिवाज है, उसके अनुसार हम वहां पर दर्शन, पूजन व अर्चन करते चले आये हैं।"(पेज–178) (emphasis added)*

*"**Here tradition of worship commenced from Ramchandra Ji and Ramanandacharya is in the middle of this tradition** and beginning from him upto my Guru (teacher) we have been performing Darshan, worship, Archna etc. according to prevalent customs, system and tradition." (E.T.C.)*

767. Besides, on page 101 of his cross examination, DW 3/20 has made some statement to show that some of the Vairagies of

Nirmohi Akhara were at Ayodhya when the disputed building was sought to be constructed at the disputed site :

"आज जो मूर्तियॉ विवादित स्थल पर देखने को मिलती हैं, वे वही मूर्तियॉ हैं, जो बाबा श्यामानन्द जी के द्वारा उत्तराखण्ड लेकर चली जाने वाली मूर्तियों में से हैं। बाबा श्यामानन्द जी वह मूर्तियॉ बाबर के आक्रमण के समय उत्तराखंड 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।

प्रश्न– बाबा श्यामानन्द द्वारा कथित रूप से उपरोक्त मूर्तियों उत्तराखंड ले जाने के कितने समय बाद उनके शिष्य गोविन्द दास जी द्वारा वह मूर्तिया दोबारा अयोध्या ले आई गयीं और पुनः स्थापित की गयीं?

उत्तर– ***जब युद्ध शान्त हो गया, तभी वे मूर्तियॉ लाकर पुनः स्थापित की गयीं।***

इस पुस्तक के अनुसार ये मूर्तियॉ उसी समय में पुर्नस्थापित की गयीं। मेरा ऐसा मानना है कि ***गोविन्ददास जी द्वारा मूर्तियॉ बाबर काल के अंतिम समय में उसी जगह पर पुनर्स्थापित की गयीं, जहॉ पर पहले रखीं थीं।*** *मूर्तियों की पुनर्स्थपना के समय विवादित ढांचे का पूरी तरीके से निर्माण नहीं हो पाया था। उसका पूरी तरह से पुनर्निर्माण कभी नहीं हो पाया।" (पेज–101) (emphasis added)*

"Today the idols which are seen at disputed site, they are the same, which had been carried away to Uttarakhand by Baba Shyamanand Ji. At the time of invasion of Babar, Baba Shyamanand Ji had gone alongwith those idols to Uttarakhand. Govind Das Ji was bodyguard and disciple of Baba Shyamanand. Govind Das Ji after taking back the said idols, again installed them at the same place.

Question.. After how long time since the alleged carrying away of the idols by Baba Shyamanand Ji to Uttarakhand, they were again taken back to Ayodhya by his disciple Govind Das Ji and were again installed.

Ans. ***When the battle ended, those idols were brought***

and re-installed.

As per this book, these idols were reinstalled in that very period. I so think that the ***idols were re-installed in the last period of Babar itself at that very place by Govind Das Ji, where they were earlier placed.*** *At the time of re-installation of idols, disputed structure could not be constructed completely. It was never reconstructed completely." (E.T.C.)*

768. **D.W. 2/1-3 Mahant Ramvilas Das Vedanti (aged about 51 years as on 16th February 2005)** in his cross examination on pages 15/16, 18 and 22 has said :

"रामानन्दाचार्य वैष्णव सम्प्रदाय के प्रवर्तक आदि जगद्गुरू रामानन्दाचार्य जी हैं। रामानन्दाचार्य का प्रादुर्भाव प्रयाग की भूमि में हुआ था, परन्तु प्रादुर्भाव काल में नहीं बता सकता हूँ। आज से लगभग 700 वर्ष पूर्व आदि जगद्गुरू रामानन्दाचार्य जी का प्रादुर्भाव हुआ था। रामानन्द सम्प्रदाय की गुरू परम्परा आदि गुरू रामानन्दाचार्य के पूर्व भी थी। रामानन्दीय सम्प्रदाय के आद्याचार्य आदि गुरू रामानन्दाचार्य जी हैं। ***यह कहना सही हो सकता है कि सर्वेश्वर भगवान राम रामानन्दीय सम्प्रदाय के आद्याचार्य रहे हों।*** *आद्याचार्य के बाद गुरू परम्परा में सीता जी, हनुमान जी, वशिष्ठ जी, पाराशर जी आदि हैं।" (पेज 15–16)*

"Jagadguru Ramanandacharya Ji is the founder of Ramanandacharya Vaishnav Sect. Ramanandacharya took birth on the land of Prayag, but the time of birth I cannot say. About 700 years ago from today, Ramanandacharya Ji was born. Guru-tradition of Ramanand Sect existed even prior to Ramanandacharya. The initial Acharya of Ramanandi Sect is Adi Guru Ramanandacharya Ji. It may be true to say that ***Sarveshwar Bhagwan Ram might be the initial teacher of Ramanandi Sect.*** *After Adyacharya in Teacher-Tradition, are Sita Ji, Hanuman Ji, Vashisth Ji, Parasar Ji etc." (E.T.C.)*

''गीता में यह वर्णित है कि भगवान में दास्य भाव रखने वाला भक्त होता है। ***रामानन्दीय सम्प्रदाय के जितने भी अनुयायी हैं, वह भगवान सीता राम को अपना ईष्ट मानते हैं तथा उनके प्रति दास्य भाव रखते हैं।*** *गीता में सखाभाव का भी उल्लेख है। दास्य भाव से उपासना करने वाले रामानन्दीय सम्प्रदाय के वैरागियों की बाहुल्यता अयोध्या व वाराणसी में है। रामानन्दीय सम्प्रदाय में रसिक सम्प्रदाय के लोग भी होते हैं यह लोग वाराणसी, अयोध्या, जनकपुर आदि स्थानों पर पाये जाते हैं। स्वयं कहा कि प्रायः सभी तीर्थो में सभी प्रकार के उपासक पाये जाते हैं। संत वह व्यक्ति होता है, जो निर्मल हृदय का हो। निस्वार्थ भाव से परोपकार करना यह मानव धर्म है तथा यह संत का लक्षण है।'' (पेज 18)*

"*In Gita it is mentioned that one who is possessed with the passion of servant towards the God, is called Bhakta.* ***All the followers of Ramanandi Sect, they regard Bhagwan Sita Ram as their ideal God and possess the filling of servant towards them.*** *In Gita, there is reference of friendly-passion also. Number of Vairagies of Ramanandi Sect worshipping with the passion of servant is in abundance in Ayodhya and Varanasi. In Ramanandi Sect, there are people of Rasik Sect and these people are found in Varanasi, Ayhodhya, Janakpur etc. places. Of his own said, often in all Tirthas (religious places) all sorts of worshippers are found. A saint is a person who is of clear heart. To help others selflessly is human duty/religion and this is the sign of a saint." (E.T.C.)*

''रामानन्दाचार्य जी ने पंचगंगाघाट वाराणसी में श्रीमठ स्थापित किया था। उनके द्वादश प्रसिद्ध शिष्य हुए। इन शिष्यों में कबीर दास, अनन्तानन्द, सुसुरानन्द, सुखानन्द, नरहरियानन्द, योगानन्द, भावानन्द, सेनजी, धना जी, गालवानन्द, रैदास, पीपा दास थे। रामानन्दीय वैरागी सम्प्रदाय में आने के लिए जाति का प्रतिबन्ध नहीं था। हनुमानगढ़ी में रहने के कारण यह जानकारी हुई कि सुरसुरानन्द जी के शिष्यों गालवानन्द तथा अनुभवानन्द ने

म्लेच्छों तथा यवनों से उन मन्दिरों की रक्षा के लिए उन अखाड़ों की स्थापना किया था। मुझे इस सम्बन्ध में विशेष जानकारी नहीं है कि उन अखाड़ों में शस्त्र तथा शास्त्र दोनों की शिक्षा दी जाती थी या नहीं।''(पेज 22) (emphasis added)

"Ramanandacharya Ji had founded Sri Math at Panchganga Ghat, Varanasi. His 12 disciples became renowned. Kabir Das, Anantanand, Sursuranand, Sukhanand, Narhariyanand, Yoganand, Bhavanand, Sen Ji Dhana Ji, Galvanand, Raidas and Peepa Das were amongst these disciples. There was no caste restriction for joining Ramanandi Vairagi. Due to residing in Hanuman Garhi, this knowledge was derived that Galvanand and Anubhavanand, disciples of Sursuranand had founded those Akharas for saving the temples from barbarians and Muslims.I have no knowledge whether in those Akharas, training of arms and scriptures both was being given or not." (E.T.C.)

769. **Swami Avimukteshwaranand Saraswati D.W. 20/2** on page 18 of the Cross examination has said :

*''**मैंने रामानुजाचार्य का नाम सुना है। उन्होंने रामनुज सम्प्रदाय का गठन किया था। मैंने रामानन्दाचार्य का नाम सुना है उन्होंने रामानंदीय सम्प्रदाय की स्थापना की थी।** रामानंदाचार्य को आनन्द भाष्यकार भी कहा जाता है क्योंकि उन्होंने आनंद भाष्य की रचना की थी। उनके सम्प्रदाय के ईष्ट देवता भगवान श्रीराम हैं। उनके सम्प्रदाय के मानने वाले साधु रामानंदीय वैरागी साधु कहलाते हैं। **उनके ईष्ट देव भी भगवान श्री राम हैं।** रामानंद के बारह शिष्य बहुत प्रसिद्ध हुए हैं, इन बारह शिष्यों में एक शिष्य कबीर दास भी थे। रामानंदीय बैरागी सम्प्रदाय के अनुसार सर्वअवतारी, सर्वेश्वर भगवान राम हैं। रामानंदीय सम्प्रदाय के अनुयायी उत्तर भारत में अधिक मात्रा में हैं। जगद्गुरू रामानंदाचार्य ने हजारों मठों की स्थापना की है या नहीं, इसकी जानकारी मुझे नहीं है परन्तु काशी में पंचगंगा घाट पर श्री मठ की स्थापना*

की थी। रामानंद के 12 शिष्यों में से प्रत्येक का नाम मुझे याद नहीं है परन्तु कबीरदास, रैदास तथा पीपाजी का नाम मुझे इस समय स्मरण है। दशनामी साधुओं में दो प्रकार का औपचारिक वर्गीकरण अर्थात् शास्त्रधारी तथा शस्त्रधारी वास्तव में नहीं है। इन सन्यासियों के कुछ अखाड़ों में अस्त्र–शस्त्र शिक्षा अवश्य दी जाती है। रामानंद जी की सातवीं शताब्दी अभी कुछ दिन पूर्व मनायी गयी थी। रामानंदीय के शिष्यों ने अखाड़ों की स्थापना की हो, जिनमें शस्त्र तथा शास्त्र दोनों की जानकारी दी जाती हो इसकी जानकारी मुझे नहीं है। मुझे अनी अखाड़ों के संबंध में जानकारी नहीं है परन्तु नाम सुने हैं, निर्वाणी निर्मोही तथा दिगम्बर अखाड़ों के नाम मैंने सुने हैं।'' (emphasis added)

''I have heard the name of Ramanujacharya. He had organized Ramanuj Sect. I have heard the name of Ramanandacharya, he had founded Ramanandi Sect. Ramanand is also called Anand Commentator because he had authored commentary on Anand. The ideal god of his sect is Lord Ram. The saints following his Sect, are called Ramanandi Bairagi Saints. The ideal God of theirs also is Lord Rama. Ramanand's 12 disciples have become most renowned, Kabir Das ji was also one of those 12 disciples. According to Ramanandi Vairagi Sect, all-incarnation is Sarveshwar Bhagwan Ram. Followers of Ramanandi Sect is in abundance in North India. Whether Jagadguru Ramanandacharya had established thousands of Maths or not, I have no knowledge of that, but in Kashi at Panch Ganga Ghat, he established Sri Math. I do not recollect the name of each of 12 disciples of Ramanand, but recollect the names of Kabir Das, Raidas and Peepa Ji at present. In Dashnami Sadhus, there is no formal classification of two kinds, i.e., scripture holder and arms holder. In some of the Akharas of these saints, training of arms and weapons is certainly given. Seventh century of Ramanand was

celebrated some days ago. I have no knowledge whether the disciples of Ramanand had established such Akharas wherein training of arms and scriptures both was imparted. I have no knowledge about Ani Akhara, but have heard the names, I have heard the names of Nirvani, Nirmohi and Digambar Akharas." (E.T.C.)

770. **Jagadguru Ramanandacharya Swami Rambhadra-charya (aged about 54 years as on 15th July 2003) O.P.W. 16,** in his cross examination at pages 10/11, 13, 14, 16, 17, 18, 64 and 65 has deposed as under :

*"**मैं रामानन्दी सम्प्रदाय का जगद्गुरू रामानन्दाचार्य भी हूं। श्री आद्य रामानन्दाचार्य का प्रादुर्भाव 700 वर्ष पहले हुआ।** उन्होंने आनन्द भाष्य लिखा 10 उपनिषदों पर, श्रीमद् भगवत गीता पर एवं ब्रह्मसूत्र पर। उपर्युक्त तीनों ग्रन्थों को प्रस्थानत्रेय कहते हैं और इन तीनों पर लिखा गया भाष्य आनन्द भाष्य कहा जाता है और इसी कारण से इन तीनों भाष्यों के रचयिता को आनन्द भाष्यकार के नाम से जाना जाता है। दर्शन और सिद्धान्त में कोई अंतर नहीं है, **विशिष्टाद्वैत ही हमारा दर्शन है।** स्वामी श्री आद्यरामानन्दाचार्य जी के मुख्य 12 शिष्य थे। उनके तृतीय शिष्य का नाम सुरसुरानन्दाचार्य है और चौथे शिष्य नरहर्यानन्दाचार्य है। भावानन्दाचार्य इनके शिष्य थे और भावानन्दाचार्य के शिष्य अनुभवानन्दाचार्य हैं। अनुभवानन्दाचार्य के शिष्य विरजानन्दाचार्य है और विरजानन्दाचार्य के शिष्य **बालानन्दाचार्य हैं जिन्होंने अखाड़ों की स्थापना की।***

***श्री रामानन्दीय सम्प्रदाय का उद्देश्य है, वैदिक संस्कृति का प्रचार एवं भारतीय शास्त्रों का सैद्धान्तिक विवेचन।**" (पेज 10–11)*

*"**I am also Jagadguru Ramanandacharya of Ramanandi Sect. Sri Adya Ramanandacharya was born about 700 years ago.** He wrote Anand Bhashya (commentary), on 10 Upnishads, Srimad Bhagwat Gita and Brahm Sutra. The aforesaid three books are called*

"Prasthantreya" and the commentary written on these three is called Anand Bhashya, and it is for this reason that the author of all these three commentaries, is called Anand Commentator. In philosophy and principle there is no difference. ***Vishishtadwait is our philosophy****. Swami Sri Adyaramanandacharya had 12 chief disciples. His third disciple's name is Sursuranandacharya and fourth is Narharyanandacharya. Bhavanandacharya was his disciple and Bhavanandacharya's disciple is Anubhavanandacharya. Virjanadacharya is the disciple of Anubhavanandacharya and* ***Balanandacharya is the disciple of Virjanandacharya who established the Akharas****.*

The aim of Ramanandi Sect is to expand the vedic culture as well as theoretical analysis of Indian scriptures." (E.T.C.)

"यह ठीक है कि स्वामी रामानन्दाचार्य जी के इष्टदेव भगवान श्री राम हैं और उनके सभी सम्प्रदाय के अनुगामियों के भी इष्ट श्री राम ही हैं। भगवान श्री राम की मूर्ति की उपासना होती है और उनके जन्म स्थल की भी उपासना होती है। भगवान राम महा विष्णु हैं। मेरे रामानन्दाचार्य का मानना है कि भगवान राम सब के अवतारी हैं। इसलिए रामतापनीयोपनिषद में उनको महाविष्णु कहा गया। स्वामी रामानन्दाचार्य के अनुगामी श्री रामनन्दीय श्री वैष्णव कहलाते हैं। रामायण भगवान श्री राम की जीवन की समग्र कथा है।" (पेज 13)

"It is true that the ideal God of Swami Ramanandacharya is Lord Sri Ram and the ideal God of all the followers of his sect is also Sri Ram. The deity of Sri Ram is worshipped and his birth place is also worshipped. Lord Ram is Maha Vishnu. My Ramanandacharya considered that Lord Ram is incarnation of all. Therefore, in Ramtapniyopnishad he has been called Maha Vishnu.

The followers of Swami Ramanandacharya are called Ramanandi Sri Vaishnav. Ramayan is a complete story of Lord Rama's life." (E.T.C.)

"ऐसा कहना गलत होगा कि स्वामी रामानन्दाचार्य जी ने कई मठों की स्थापना की बल्कि उनके द्वारा एक मठ वाराणसी में स्थापित किया गया है जिसका नाम श्रीमठ है। यह ठीक है कि उनके शिष्यों ने कई धार्मिक मठों की स्थापना की और करते चले आ रहे हैं। इन मठों की जहां–जहां स्थापना हुई वहां भगवान राम विराजमान हैं। हमारे विशिष्टाद्वैत दर्शन में साकार मूर्ति पूजा के साथ–साथ भगवान राम के प्राकट्य स्थल की भी पूजा होती है। जिसे हम लोग धाम कहते हैं। यह ठीक है कि स्वामी रामानन्दाचार्य के पहले आदि शंकराचार्य का प्रादुर्भाव हो चुका था। यह कहना ठीक है कि शंकराचार्य का दर्शन निराकार दर्शन था। यह कहना गलत है कि शंकराचार्य छद्म बौद्ध थे अर्थात् छिपे हुए बौद्ध के रूप में माने जाते थे। शंकराचार्य छद्म बौद्ध थे, ऐसा कुछ लोगों का मत है, पर सब का नहीं है। यह कहना पूर्ण गलत है कि रामानन्दाचार्य ने साकार ब्रह्म की कल्पना की। यह ठीक है कि स्वामी रामानन्दाचार्य के दर्शन में साकार ब्रह्म की उपासना की व्यवस्था है। वेद ने भगवान के अवतार होने के चार विग्रह माने हैं नाम, रूप, लीला व धाम। इन चारों की साकार सिद्धान्त के अनुसार श्री रामानन्दीय श्री वैष्णव पूजा करते हैं। कुछ रूप नित्य प्रतिष्ठित होते हैं उनके प्रतिष्ठा की आवश्यकता नहीं होती जैसे धाम। धाम का अर्थ जन्म स्थान है जैसे मथुरा धाम, अयोध्या धाम, जगन्नाथपुरी धाम आदि–आदि।" (पेज 14)

"It would be wrong to say that Swami Ramanandacharya established several Maths, instead only one Math in Varanasi has been established by him, name of which is Sri Math. It is true that his disciples established and has been establishing several religious Maths. In these Maths, wherever established Lord Ram is enthroned. In our Vishisthadwait philosophy alongwith visible idol worship, the incarnation place of Lord Rama is also worshipped, to which we say "Dham". It is true that before

Ramanandacharya, Adi Sankaracharya was born. It is true to say that the philosophy of Sankaracharya was formless (Nirakar) philosophy. It is wrong to say that Sankaracharya was disguised Buddhists or was considered as disguised Buddhist. Sankaracharya was a disguised Buddhist, it is the view of only some people and not of all. It is wholly wrong to say that Ramanandacharya thought of Sakar Brahma (visible God). It is true that in the philosophy of Ramanandacharya there is arrangement of worship of Sakar Bramha. As per Vedas, for incarnation of God, there should be four characteristics, i.e., form, miraculous activities (Leela) and home (Dham). As per visible theory the followers of Ramanand performs Vaishnav Puja. Some forms are eternally installed and need not be installed, e.g., Dham. Dham means of birthplace, such as Mathura Dham, Ayodhya Dham, Jagannathpuri Dham etc." (E.T.C.)

"यह कहना सही है कि प्रत्येक मठ में एक मंदिर होता है जिसमें भगवान राम की प्रतिमा स्थापित होती है। एक रामानन्दीय मठ में एक से ज्यादा मंदिर हो सकते हैं। यह मठाधीश की इच्छा पर निर्भर है।

अनुभवानन्दाचार्य जी का काल अब से 500 वर्ष के अन्तर्गत माना जा सकता है। मुझे इस कथन पर कोई आपत्ति नहीं है कि "अनुभवानन्दाचार्य का जन्म विक्रम सम्वत् 1503 स्थान वाराणसी कान्यकुब्ज परिवार में हुआ था", परन्तु मैं इसकी प्रामाणिकता के संबंध में अभी विश्वस्त नहीं हूं। *श्री अनन्तानन्दाचार्य और भावानन्दाचार्य व सुरसुरानन्दाचार्य और नरहर्यानन्दाचार्य, रामानन्दाचार्य, के शिष्य थे परन्तु उन्हें अनुभवानन्दाचार्य का गुरू भाई कहना सत्य नहीं होगा। यह कहना सही है कि अनुभवानन्दाचार्य जी ने अपने काल में सैनिक पद्धति का प्रतिपादन किया था जिसके अनुसार उन्होंने अपने अनुयायियों को बरछा, तीर, भाला आदि चलाने की शिक्षा का प्राविधान किया था। यह कहना सही है कि यह सैनिक*

पद्धति अखाड़ों में लागू हुई यह कहना सही है कि ऐसे सैनिकों का धर्म, धर्म की रक्षा करना, स्वसम्प्रदाय की रक्षा, मंदिर मठों की रक्षा व सुरक्षित रखने के लिए युद्ध करना था।'' (पेज 16–17)

''It is true to say that every Math contains a temple wherein the idol of Lord Ram is installed. In one Ramanandi Math there may be temples more than one. It depends upon the wishes of Mahant.

The period of Anubhavanandacharya can be considered within 500 years hence. I have no objection to this statement that "the birth of Anubhavanandacharya took place in Vikram Samvat 1503 in a Kanyakubja family at Varanasi", but I am not sure about its authenticity. *Sri Anantacharya and Bhavanandacharya and Sursuranandacharya and Narhariyanandacharya were disciples of Ramanandacharya but it would be true to say that Anubhavanandacharya was his Guru-Bhai (brother by virtue of being disciple of same Guru or teacher.). It is true to say that during his period, Anubhavananadacharya Ji enunciated army system, according to which, he had made provision for training of wielding Barchha, arrows and spears to his followers. It is true to say that army system was made applicable in Akharas. This is true to say that duty of such soldiers was to fight for saving and protecting religion, their own sect, temples and Maths." (E.T.C.)*

''अनी''– का अर्थ सेना से है। उपरोक्त तीनों अखाड़े ''अनी'' है। यह कहना सही है कि जो परम्परायें रामानन्दीय सम्प्रदाय के एक अखाड़े के अनी पर लागू होंगी, शेष दोनों अखाड़े के अनी पर लागू रहेगीं। ***यह कहना सही है कि सभी अखाड़ों की व्यवस्था पंचायती है। यह भी सत्य है कि अखाड़ों के पंचायत को बहुमत के अनुसार कार्य करना होता है। यह कहना सही है कि सभी***

अखाड़े के महन्त पंचों द्वारा चुने जाते हैं। *यह कहना सत्य है कि किसी भी अखाड़े के महन्त का मुख्य कार्य धर्मोपदेश है। यह सही है कि मठ अखाड़े के बाकी कार्य जिसमें प्रबन्ध, मंदिर की पूजा आदि का कार्य महन्त नहीं बल्कि पंचगण देखते हैं, पंचगण के उसी प्रबन्ध में पुजारी, गोलकी, पंच, सरपंच आदि होते हैं। यह कहना सही है कि अखाड़े के किसी साधू का नागापना किसी भी कुंभ में होता है। दिगम्बर अखाड़ा सभी अखाड़ों का राजा कहलाता है। अपनी–अपनी परम्परा के अनुसार प्रत्येक कुंभ में पहले स्नान के समय प्रथम पंक्ति में तीनों अखाड़ें निर्णय के अनुसार होते हैं।'' (पेज 17– 18)*

"Ani" means "Army". The aforesaid three Akharas are Anni. This is true to say that the traditions of Ramanandi Sect which are applicable to Ani of one Akhara, shall also be applicable to Annis of remaining two Akharas. ***This is true to say that management of all Akharas is under Panchayati system. This is also true that Panchayat has to act according to majority. It is true to say that Mahant of All Akharas are elected by Panches.*** *This is true to say that the chief duty of Mahants of all Akharas is preaching religion. This is true to say that remaining work of Math of Akhara, which includes management of temple, worship etc., is looked after by Panches and not by Mahant. Amongst the management of Panches, there are priest, Golki, Panch, Sarpanch etc. It is true to say that demonstration of the nature of a Naga saint of any Akhara takes place in any Kumbh. Digambar Akhara is head of all the Akharas. According to their own traditions, in every Kumbh, timing and sequence of bath as to who will first take bath, is decided by the three Akharas in first row." (E.T.C.)*

"मेरा नाम रामभद्राचार्य और मेरे पद का नाम जगद्गुरू रामानन्दाचार्य है। इस समय भारतवर्ष में केवल चार जगद्गुरू

रामानन्दाचार्य हैं। जगद्गुरू रामानन्दाचार्य का चयन काशी विद्वत् परिषद् और रामानन्दीय अनी अखाड़े और चार सम्प्रदाय करते हैं। अक्टुबर सन् 1988 तक रामानन्दाचार्य का केवल एक पद था, उसके पश्चात चार पद हो गये। चार पदों का सृजन अनी अखाड़ों ने किया। जून सन् 1988 में ही काशी विद्वत परिषद ने मेरा अभिषेक कर दिया था और अक्टूबर सन् 1988 के बाद प्रयाग कुंभ में सर्वसम्मति से मेरा समर्थन कर दिया गया। काशी विद्वत् परिषद् की सहमति से अनी अखाड़े ने चार पदों का सृजन किया। मेरे अतिरिक्त तीन और जगद्गुरू रामानन्दाचार्य हैं, जिनके नाम हर्याचार्य, राजीवलोचनाचार्य और रामेश्वरानन्दाचार्य हैं। ***जगद्गुरू रामानन्दाचार्य का अस्तित्व 700 वर्ष पूर्व से होता आया था। रामोपासक वैष्णव सम्प्रदाय को आद्य रामानन्दाचार्य ने चलाया था।*** *वैष्णव सम्प्रदाय में श्रीराम के अतिरिक्त कृष्ण के उपासक एवं नारायण के उपासक भी हैं। इनके पांच सम्प्रदाय और हैं। भगवान श्रीराम महाविष्णु हैं और कृष्ण–नारायण, सब उनके रूप हैं। ईश्वर के सभी रूप राममय हैं।*

मेरे शपथ पत्र के प्रस्तर 6 में लिखा साहित्य जो मुझे पढ़कर सुनाया जाता था, उनमें तुलसी साहित्य के निम्नलिखित नाम हैं– श्रीरामचरितमानस, कवितावली, हनुमानबाहुक, हनुमानचालीसा, रामगीतावली, कृष्णगीतावली, जानकी मंगल, पार्वती मंगल, वैराग्य संदीपिनी, लघु बरवै रामायण, वृहद् बरवै रामायण, रामाज्ञा प्रश्न, दोहावली, तुलसी दोहा शतक, विनय पत्रिका।'' (पेज 64–65) (emphasis added)

''My name is Ram Bhadracharya and the name of office I hold is Jagadguru Ramanandacharya. Presently, in India there are only four Jagadguru Ramanandacharya. Selection of Jagadguru Ramanandacharya is made by Kashi Vidwat Parishad and Ramanandi Ani Akharas and four Sects. Up till October 1988 there was only one post of Ramanandacharya, but thereafter the number became four. Creation of four posts was done by Ani Akharas. In June 1988 Kashi Vidwat Parishad had coronated me and and that was approved by majority in Prayag Kumbh after 1988. With the consent of Kashi Vidwat Parishad, Ani

Akharas created four posts. Besides me, there are three other Jagadguru Ramanandacharya, namely, Haryacharya, Rajeev Lochanacharya and Rameshwaranandacharya. Existence of Jagadguru Ramanandacharya had been since 700 years before. Ram-worshipper Vaishnav Sect had been initiated by Adya Ramanandacharya. In Vaishnav Sect, besides worshippers of Sri Ram there are worshippers of Krishna and Narayana also. They have five more Sects. Lord Sri Ram is Mahavishnu and Krishna, Narayan all are his forms. All forms of the GOD are vested in Ram.

Literature referred in para 6 of my affidavit, which was read over to me, amongst them, the names of books in Tulsi literature are—Sri Ram Charitmanas, Kavitawali, Hanuman Bahuk, Hanuman Chalisa, Ram Gitawali, Krishna Gitawali, Janki Mangal, Parvati Mangal, Vairagya Sandeepani, Laghu Barvai Ramayan, Vrihad Barwai Ramayan, Ramagya Prashna, Dohawali, Tulsi Doha Shatak, Vinay Patrika." (E.T.C.)

771. Besides, DW 3/3, in para 15, said that Nirmohi Akhara is a religious trust . DW 3/5 , Raghunath Prasad Pandey in para 9 has said that Nirmohi Akhara is a 'Math', a Panchayat math and a religious trust and its working is as per Panchayat system. The decision of Panch is above all. The Mahant of the Akhara works on advise of Panchas and the majority view. The Mahant has no right to sell the property of the Akhara and is elected unless there is a recommendation of the Panchas. The system of military education is applicable in the Akhara. The customs and practices of Nirmohi Akhara have been laid down by Swami Ramanand, the promoter of the sect and the Lord Ramis the Isht

of Ramanand Vairagi, a saint of the sect. In para 12, he said that about the Nirmohi Akhara, his mother had special knowledge. Again, in para 14 of the affidavit, he said that his information about Nirmohi Akhara was enriched due to his visit for Darshan of the temple at Hanumangarhi Naka and Baba Baldev Das.

772. DW 3/6, Sitaram Yadav in paras 15 and 17 stated about the constitution of Nirmohi Akhara, its function and Mahant as under :

> *''15 –निर्मोही अखाड़ा एक पंचायती मठ है और स्वयं में एक धार्मिक संस्था तथा धार्मिक न्यास है जिसके अन्तर्गत कई मन्दिर हैं जैसे रामघाट मोहल्ले में विजय राघव मन्दिर तथा रामकोट मोहल्ले में राम जन्म भूमि मन्दिर है। विवादित परिसर का मालिक व काबिज निर्मोही अखाड़ा रहा है। अखाड़े की व्यवस्था पंचों के निर्णय से होती है जो सर्वोपरि है, महन्त अखाड़े के पंचों के बहुमत राय व प्रस्ताव से कार्य करता है महन्त को अखाड़े की जायदाद को बेचने का हक नहीं है तथा न ही देने का हक है यह रिवाज मैंने अयोध्या में हनुमानगढ़ी के साधुओं से सुना है जो हनुमानगढ़ी निर्वाणी अखाड़ा के अन्तर्गत है। सभी अखाड़ों के रीति रिवाज एक ही तरह के हैं जो रामानन्दीय वैरागी हैं।''*
>
> *"15. Nirmohi Akhara is a Panchayati Math and is itself a religious body as well as a religious trust, which handles many temples, such as the Vijay Raghav temple in Ramghat locality and the Ramjanmbhumi temple in Ramkot locality. The Nirmohi Akhara has been the owner and occupant of the disputed premises. Akharas are managed by the decision of Panchas, who are all in all. Mahant works on the basis of the majority view and proposal of Panchas of the Akhara. The Mahant has got no right to sell the property of the Akhara, nor does he have any right to gift it. I have heard about this practice from the sages of Hanumangarhi in Ayodhya who belong to the Hanumangarhi Nirvani Akhara. All Akharas follow*

practices of similar nature, as in case of Ramanandian recluses." (E.T.C.)

17– मेरे होश के समय निर्मोही अखाड़ा के महन्त रघुनाथ दास, गोलकी राम लखन दास व पुजारी बल्देव दास व उनके शिष्य मं0 भाष्कर दास तथा दीगर पंच राजाराम चन्द्राचार्य, रामदास, राम केवल दास आदि को देखा था। मं0 भाष्कर दास हाजिर अदालत, निर्मोही अखाड़ा के सरपंच है और नाका हनुमानगढ़ी फेजाबाद के महन्त है।''

"17. At time of attaining maturity, I had seen Raghunath Das of Nirmohi Akhara as Mahant, Ram Lakhan Das as Golaki, Baldev Das and his disciple M. Bhaskar Das as priest and Rajaram Chandracharya, Ramdas, Ram Keval Das etc. as other Panchas. M. Bhaskar Das, present in court, is the Sarpanch of Nirmohi Akhara and is the Mahant of Naka Hanumangarhi, Faizabad." (E.T.C.)

773. DW 3/7, Mahant Ramji Das in para 28 said that Nirmohi Akhara is a Math modelled on Panchayat system and is also a religious institution and trust. On becoming disciple, he gradually acquainted with rites and customs of the said Akhara and the Nirvani Akhara, which includes Hanumangarhi. He claims to be an asetic of Ramanandiya Sri Vishnav Vairagi sect.

774. Pandit Shyam Sundar Mishra DW 3/8 in paras 20 and 21 has said about the constitution of Nirmohi Akhara as under :

''20 –निर्मोही अखाड़ा एक पंचायती मठ व धार्मिक संस्था है जिसमें कई मन्दिर हैं और यह मन्दिर श्री राम जन्म भूमि भी निर्मोही अखाड़े का है।"

"20 Nirmohi Akhara is a Panchayati Math and a religious body, which has many temples, and even this Sri Ramjanmbhumi temple also belongs to Nirmohi Akhara" (E.T.C.)

"21 – निर्वाणी अखाड़ा भी ऐसे ही पंचायती मठ है जिसमें हनुमानगढ़ी है दिगम्बर अखाड़ा भी ऐसे ही पंचायती मठ है सभी अखाड़े के रीति रिवाज एक हैं यानी पंचायती व्यवस्था है।''

"21. Nirvani Akhara is also a similar Panchayati Math, which includes Hanumangarhi. Digamber Akhara is a similar Panchayati Math. The customs and practices of all the Akharas are the same i.e. Panchayati system" (E.T.C.)

775. Ram Asrey Yadav DW 3/9, in para 17 of the affidavit has said that Nirmohi Akhara is a Panchayati Math and religious trust. This institution exists for the last 5½ -6 hundred years. This he has learnt from the saints of Hanumangarhi and the printed custom practices which was the registered agreement and published in the year 1962, which has been seen and read by him. The same custom-practices are applicable over the recluses of Nirmohi Akhara.

776. Bhanu Pratap Singh DW 3/11, in paras 10 and 11 of the affidavit has said :

''10. .....निर्मोही अखाड़ा भी रामानन्दीय सम्प्रदाय का मन्दिर हैं।'

"10. . . . Nirmohi Akhara is also a temple of Ramanand sect."(E.T.C.)

"11. रामानन्दीय सम्प्रदाय के प्रवर्तक रामानन्द जी थे।''

"11. Ramanand was the exponent of Ramanand sect."(E.T.C.)

777. Ram Akshaibar Pandey DW 3/12, in para 11 has said that Nirmohi Akhara manages its properties as per Panchayat system. Panch Akhara is the owner and Mahant is only for name sake. Mahant has no right to sell the property of Akhara.

778. Narendra Bahadur Singh DW 3/15, in paras 10, 11 and 12 of the affidavit has said about the constitution and status of Nirmohi Akhara as under:

''10 –निर्मोही अखाड़ा के बारे में बचपन में मेरे पिता ने बताया था कि अयोध्या का बैरागी रामानन्दी साधुओ का प्रसिद्ध मठ है मैंने थोड़ा बड़ा होते व यहां के साधुओं से बातचीत करके व दीगर संतों से निर्मोही अखाड़ा के बारे में जानकारी हुयी कि यह निर्मोही अखाड़ा की पंचायती व्यवस्था है और

अखाड़े के अन्तर्गत कई मन्दिर हैं श्री राम जन्म भूमि मन्दिर भी निर्मोही अखाड़ा के अन्तर्गत प्रसिद्ध मन्दिर है। निर्मोही अखाड़ा की एक बैठक व मन्दिर विजय राघव रामघाट मुहल्ले में है।"

"10. In my childhood, my father had told me about Nirmohi Akhara that it is a famous Math of Bairagi Ramanandian sages of Ayodhya. On becoming slightly major, by talking to sages and other saints of this place I came to know as regards the Nirmohi Akhara that this Akhara has Panchayati system and it has many temples. Sri Ramjanmbhumi temple is also a famous temple under the Nirmohi Akhara. Belonging to the Nirmohi Akhara, a 'Baithak' (sitting place) and a temple named Vijay Raghav are located in the Ramghat locality." (E.T.C.)

"11 – अखाड़ों की स्थापना 600 वर्ष पूर्व हुयी ऐसा मुझे हनुमानगढ़ी के संतों ने बताया। कि जैसे हनुमान गढ़ी मन्दिर निर्वाणी अखाड़े अन्तर्गत है वैसे श्रीराम जन्म भूमि मन्दिर निर्मोही अखाड़े के अन्तर्गत रहा है।"

"11. Akharas were founded 600 years back. Saints of Hanumangarhi told me that as the Hanumangarhi temple is under the Nirvani Akhara; so has Sri Ramjanmbhumi temple been under the Nirmohi Akhara." (E.T.C.)

"12 – अयोध्या में यही दो प्रमुख अखाड़े हैं। और भी अखाड़े हैं जैसे– दिगम्बर खाकी आदि लेकिन प्रमुख अखाड़ा निर्मोही व निर्वाणी रहा है।"

"12. Only these two are main Akharas in Ayodhya. There are some more Akharas, such as Digamber Khaki, etc. but Nirmohi and Nirvani have been main Akharas." (E.T.C.)

779. Acharya Mahant Banshidhar Das alias Uriya Baba DW 3/18, in paras 14 and 15 of his statement by way of an affidavit has said :

"14 –रामानन्दीय सम्प्रदाय में अखाड़ों की व्यवस्था के बारे में जानता हूँ निर्वाणी अखाड़ा के अन्तर्गत हनुमान गढ़ी है वैसे ही निर्मोही अखाड़ा के अन्तर्गत श्री राम जन्म भूमि मन्दिर सदैव से रहा है और निर्मोही अखाड़ा का

आधिपत्य मैं 1930 से कुर्की तक देखा हूँ उसके बाद से मुकदमा ही चल रहा है जो मैंने दूसरों से जाना है।"

"14. As regards the management of Akharas in the Ramanandian sect I know that Hanumangarhi is under the Nirvani Akhara and so has Sri Ramjanmbhumi temple always been under the Nirmohi Akhara, and I have seen the possession of the Nirmohi Akhara between 1930 and the time of attachment. After that, litigation itself is going on, about which I have come to know from others." (E.T.C.)

"15 – निर्मोही अखाड़ा पंचायती रामनन्दीय वैरागियों का मठ है जैसे निर्वाणी अखाड़ा है सभी के रीति रिवाज एक हैं। अखाड़ा मठ होने के कारण स्वयं में धार्मिक न्यास है जिसके अन्तर्गत कई मन्दिर होते हैं।"

"15. Like the Nirvani Akhara, the Nirmohi Akhara is a Panchayati Math of Ramanandian recluses. The customs and practices of all of them is the same. Being a Math, the Akhara is itself a religious trust under which there are many temples." (E.T.C.)

780. Now we proceed to apply the aforesaid pleadings, evidence and exposition of law to the issue in question.

781. From the pleadings we find that plaintiffs have categorically said that Nirmohi Akhara is a Panchayati Math of Ramanandi Sect of Vairagis and as such is a religious denomination following its own religious customs prevalent in Vairagi sects and Sadhus. These averments have not at all been denied in the written statement of the defendants no. 6 to 8 and 10. Further that it is a religious establishment of public character and plaintiff no. 2 is the present head as its Mahant and Sarvarahkar has also not been disputed. The averments that there exists an ancient Math or Akhara of Ramanandi Vairagi called Nirmohi with its seat at Ramghat known as Nirmohi Akhara has also not been disputed in the written statement.

What has been disputed by respondent no. 10 is that the whole temple of Janambhumi/Janma Asthan is much older and has the preceding deity of Bhagwan Sri Ram, therefore, the averment with respect to owning of temple of Ram Janma Asthan is concerned is actually disputed. The averment that Nirmohi Akhara being a Panchayati Math acts on a democratic pattern and the management and right to manage vests absolutely with Panch are also not disputed.

782. DW 3/1 in his affidavit filed as statement-in-chief in para 2 has also said that Nirmohi Akhara is a Panchayati Math and is managed through Panch and Mahant. The supreme power vests in Panchayat and Mahant is also liable to act as per the directions of Panchayat. Further in para 7 he says that Mahant and Panches are elected by the Nirmohi Akhara and office is not way of succession though property is entered in the Government records in the name of Mahant but the ownership vests in Nirmohi Akhara. He has also deposed about the formal registration of a deed containing the customs and traditions of Nirmohi Akhara in 1949 and his averments as as under:

> *"2. निर्मोही अखाड़ा के अन्तर्गत कई मंदिर हैं। जिसमें से रामकोट स्थित प्रसिद्ध रामजन्म भूमि मंदिर है। निर्मोही अखाडा एक पंचायती मठ है जिसकी व्यवस्था मंचों द्वारा होती है। मंच बैठक में प्रस्ताव पास होता है। उसे अखाडे के सभी साधुओं को मानना पड़ता है और महन्त को भी मानना पड़ता है महन्त स्वतंत्र नहीं है महन्त मंचों के आधीन ही निर्मोही अखाड़ा के मन्दिर व सम्पत्ति की व्यवस्था करते हैं।"*
>
> *"2. There are many temples under the Nirmohi Akhara which include famous Ramjanmbhumi temple situated at Ramkot. The Nirmohi Akhara is a Panchayati Math, management of which is handled by Panchas. Resolutions are adopted in the meetings of Panchas. All the sages of the Akhara has to abide by them and Mahant, too, has to*

abide by them. Mahant is not independent. Mahantas look after the management of the Nirmohi Akhara and its property only under the Panchas." (E.T.C.)

"7. निर्मोही अखाडे के महन्त व सर्वराकर कार पंचों के चुनाव द्वारा नियुक्ति किया जाता है। वरासत नहीं चलती यानि, गुरू के मरणोपरान्त चेला महन्त नहीं होता है। निर्मोही अखाडे के मंदिर व अखाडे के अचल सम्पत्ति पर सरकारी कागजात पर महन्त अखाडे का नाम दर्ज होता है। अखाडे के मंदिर में जो ठाकुर जी विराजमान होते हैं वे किसी जायजाद के मालिक नहीं है, बल्कि सभी जायजाद मलकियत अखाड़ा रहती है जो स्वयं में धार्मिक न्यास है जिन सभी मंदिर व जायजाद की व्यवस्था अखाडा बहैसियत सर्वराकर पंचायती तौर पर कमाराविरा पचीन अखाडा करते हैं।"

"7. Mahantas and Sarvrakars of the Nirmohi Akhara are appointed through election by Panchas. These offices do not pass on by succession, that is to say, 'Chela' (disciple) does not become a Mahant after the death of his 'Guru' (spiritual teacher). The name of Mahanta of the Nirmohi Akhara is recorded in Government papers relating to the Akhara temple and its immovable property. Thakur Ji (presiding deity) seated in the Akhara temple is not the owner of any property. Rather, title to all the property is vested in the Akhara, which is itself a religious trust. Kamaravira Pachin Akhara looks after the management of all the temples and their property through its Sarvarakar as per the panchayati system." (E.T.C.)

"13. अखाडे में महन्त जो चुने जाते हैं वे अपने चुनाव के बाद अखाडे के पद ग्रहण करने बाद रिवाजन पंचों के हक में इकरारनामा करते हैं और रजिस्ट्री करा देते हैं। अखाडे के किसी भी महन्त को अखाडे की किसी भी सम्पत्ति के बारे में कोई विक्रयपत्र या अन्तरण का कोई भी कागज रखने का अधिकार नहीं होता है। जितने भी अखाडों का नाम ऊपर बयान में बताया है। उनके रीति रिवाज व परम्परा एक ही है। निर्वाणी अखाडा जिसके अन्तर्गत प्रसिद्ध हनुमानगढ़ी मंदिर है उन्होंने अपने कुछ रीति

रिवाज दफ्तर सब रजिस्ट्री फैजाबाद में पंजीकृत करा कर पुस्तक के रूप में छपवाकर प्रसारित किया। जिसकी एक पुस्तक की छाया प्रति मैंने दाखिल किया।''

"13. After being chosen and on assumption of office, Mahantas enter an agreement in favour of Panchas and gets registry executed. None of the Mahantas of the Akhara has the power to retain any sale-deed or any paper of transfer in respect of any property of the Akhara. The Akharas, names of which I have enumerated above, have the same customs and practices. The Nirvani Akhara, under which there is a famous temple called Hanumangarhi, got some of its customs and practices registered with the office of Sub Registrar, Faizabad, got them printed in the form of book and then circulated the same. I filed photocopy of one of the said books." (E.T.C.)

''14. निर्मोही अखाडा ने भी अखाडे की रीति रिवाज लिपिबद्ध करके 10 मार्च 1949 को दफ्तर सब रजिस्ट्री फैजाबाद को पंजीकृत कराया जिसकी सत्य प्रतिलिपी मैंने दाखिल की है। मार्च 1949 के दस्तावेज में श्रीराम जन्मभूमि मंदिर का पूरा विवरण दिया गया है।''

"14. The Nirmohi Akhara also got its customs and practices scripted and got the same registered at the office of Sub Registrar, Faizabad on 10 Mach, 1949, true copy of which I have filed. The March, 1949 document contains full account of Sri Ramjanmbhumi temple" (E.T.C.)

783. Neither any material has been placed by the other side to contradict the above statement in particular the fact that Nirmohi Akhara is a Panchayati Math nor that it has managed through a Panchayat of elected members of Nirmohi Akhara.

784. Besides above, DW 3/2, Raja Ram Pandey in para 16 of his affidavit has said that Nirmohi Akhara is a trust in itself. Neither he is an ascetic and/or a Sadhu having any occasion to

study about the history of Nirmohi Akhara or its constitution nor otherwise has any reason to get this knowledge from any reliable source nor is an expert in the subject. A witness of fact unless possess information on his own cannot make a statement based on an information he has received particularly when the person conveying information is alive but has not been produced. In our view, it is neither reliable nor otherwise admissible.

785. Similarly DW 3/3, Satya Narain Tripathi in para 15 has stated that Nirmohi Akhara is a religious trust and the present Sarpanch Mahant is Sri Bhaskar Das Ji while present Mahant is Sri Jagannath Das Ji.

786. DW 3/5, Raghunath Prasad Pandey in para 9 of his affidavit dated 18.11.2003 has said that Nirmohi Akhara is a Math, i.e., Panchayati Math and a religious trust. The entire arrangement is Panchayati and the decision of Panch is final. The Mahant of Akharas works on advise of Panch and majority view. The Mahant has no right to sell the property of Akhara and is elected unless there is a recommendation of Panch. He further says that he has come to know that system of military education is applicable in Akhara. The customs and practices of this Akhara has been laid down by Swami Ramanand, the promoter of the sect. Ram is the Isht of Ramanand Bairagi the saint of this sect. This statement also based on the information, therefore, is inadmissible.

787. DW 3/6, Sitaram Yadav in paras 15 and 16; DW 3/7, Mahant Ramji Das in para 28; DW 3/8, Pt. Shyam Sunder Mishra in paras 20 and 21; DW 3/9, Ram Asrey Yadav in para 17; DW 3/11, Bhanu Pratap Singh in para 23; DW 3/12, Ram Akshaibar Pandey in para 11; and, DW 3/15, Narendra Bahadur

Singh in paras 10, 11 and 12 of the affidavit have made similar averments.

788. The above statements have been made on the basis of the information they have received and the information pertains to the history of Nirmohi Akhara having not been shown to be possessed by the aforesaid witnesses though apparently inadmissible but since it corroborates with the similar statements made by other witnesses, i.e., DWs 3/4, Mahant Shiv Saran Das; 3/14, Jagadguru Ramanandacharya Swami Haryacharya; and 3/20, Mahant Raja Ramchandracharya and they being integrally connected with Nirmohi Akhara may have occasion to possess the said information and moreover since it has not been contradicted by the defendants in any manner, we find that so far as the status of Nirmohi Akhara as a "Math" and that too a "Panchayati" Math cannot be doubted.

789. Evidently Nirmohi Akhara satisfy the test of 'Math' as is known in legal parlance that it connotes a monastic institution presided over by a superior and established for the use and benefit of ascetics belong to a particular order who generally are disciples and co-disciples of the superiors. The statement of the witnesses shows that initially a Math namely, Ramanandi Vairagi Sampradaya was established by Swami Ramanandacharya. His disciples continue to manage the said Math. With the passage of time separate bodies were created namely, Anni i.e. Bridgeds. The three Anni were, Nirmohi, Nirwani and Digamber. Therefrom, seven Akharas were established namely, Digamber, Nirwani, Nirmohi, Santoshi, Khaki, Mahanirwani and Niralambi. They maintain their own customs and tenets and worship "Lord Rama" as "God". The presiding element is not the deity but temple of Lord Rama, and

is found in Math of respondent no. 1.

790. In the replication the plaintiffs have tried to improve upon their case in the plaint by pleading that the Nirmohi Akhara originated more than 500 years ago i.e. with respect to the time factor when the plaintiff no. 1 (Suit-3) came into existence and to prove the aforesaid averment further facts have been given in the replication including the details of various Maths, Akharas etc. and their Mahants etc.

791. The sect Nirmohi Akhara is claimed to have been established by Balanandacharya though their appears to be some confusion about the real point of time when this Akhara came in existence. The plaint refers to the days of Yore when there existed the ancient Math or Akhara of Ramanandi Vairagi called "Nirmohi". In the replication it has been clarified that the Nirmohi Akhara originated more than 500 years ago. It is said that about 500 years ago Swami Brijanandji and Balanandji who belong to Ramanandi sect of Vairagies established three Anni comprising of seven Akharas for protection and improvement of Chatuha Ramanandi Sampradaya. **H.R. Nevill's Fyzabad A Gazetteer (1905), (supra)**, mentioned in respect to Digambaris that the same was founded by one Balramdas who came to Ayodhya over 200 years ago but nothing has been said about "Nirmohi Akhara" except that it claims spiritual decent fron one Govind Das of Jaipur. “P. Carnegy's **Historical Sketch”** on page 20 mentions the period of Nirmohi Akhara about 200 years ago and in the schedule (A) it mentions about 250 years.

792. DW 3/1 in para 3 of the statement-in-chief said that Balanandji established Akharas of Ramanandi Vairagi Sampradaya about 500 years ago but in para 42 and 43 he said that the commencement of Ramanandi Sampradaya relates to

14th Century and Sri Anubhavanand and his sub-disciple, Balanand established three Anni and seven Akharas for protection and awareness of Chatuh Sampradaya which are working on military pattern and continuing for about 600 years. In his cross-examination he has admitted that Nirmohi Akhara was not established by Sri Govind Das Ji but by Sri Balanandacharya and reiterated that Sri Govind Das Ji must have existed about 600 years back. He, however, admits that Balanand came much after Anubhavanand and varified the pedigree that after Anubhavanand came Bramhanand, Brijanand and then Balanand but further in his cross-examination at one stage he said that Balanand was before about 200 years to Sri Tulsidas Ji. At one stage of cross-examination he said that Sri Balanand Ji established Akharas encouraged by Sri Anubhavanand who was alive at the time of the said establishment. However, he verified the factum of life span of various Mahants of Akharas mentioned in the book "Smritigranth" published by plaintiff no. 1 itself.

793. Similarly, DW 3/4, Shiv Saran Das also said that Nirmohi Akhara is continuing not for 300 or 400 years but much earlier thereto. Interestingly DW 3/4 on the one hand in para 33 of his statement said that Balanand Ji established Akharas about 500 years ago but in cross-examination he said that these Akharas were not established in 15th Century at Jaipur but they are since time immemorial and their reference is find mention in Valmiki Ramayan. Then at other place he again reiterated that the three Anni were established by Swamiji at the same point of time at Jaipur about 500 years ago. He also gave life span of Anubhavanand about 500 years ago having born in Varanasi in Vikram Samvat 1503 (1446 AD). The period of 500 years of

establishment of Nirmohi Akhara by Balanand has been reiterated by DW 3/20 in para 47 of his statement but at a subsequent stage i.e. in para 49 he gave the period of establishment of Akhara about 600 years ago. Other witnesses also have not made any improvement except of stating that Akhara was established about 500 years ago. From the above facts which are commonly said in respect to establishment of Akhara, the following common facts emerges.

794. Sri Ramanandacharya was the first in the chain of Ramandiya Sampradaya of Bairagis and he himself was born in 1299 AD, i.e., at the end of thirteenth century. Meaning thereby his Sampradaya must have come into existence alongwith his followers in 14th Century and not earlier thereto. According to "Smritigranth", the book published by plaintiff no. 1, Sri Anubhavanandcharya (twenty fourth in lineal generation) disciple of Sri Ramanandacharya was born in 1446 AD and died in 1554 AD. Sri Balanandacharya was born in 1653 AD i.e. almost 100 years after the death of Sri Anubhavanandcharya, therefore, the statement that Sri Anubhavanandacharya was alive when Sri Balanandacharya established the Akharas is apparently incorrect. The three Anni and seven Akharas were established by Sri Balanandacharya, therefore, it must be some times after 1653 AD when Balanandacharya himself was born. The establishment of Akhara took place in Jaipur and thereafter it came to Ayodhya. Therefore, it must have been later than 17th Century but cannot be in any case earlier thereto.

795. From the year of birth of founder of the Ramanandi Samprayaday upto the stage of Balanandacharya, a chart has been prepared by Sri Verma and supplied to the Court during the course of argument which is as under :

"रामानन्दाचार्य जी 22 आचार्य पीठ

(सम्वत–1356 अर्भिभाव 1299 ए0डी0)

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अनन्तानन्दाचार्य सुखानन्दाचार्य सुरसुरानन्दाचार्य भावानन्दाचार्य पीपाचार्य कबीर

1385 सम्वत– सम्वत1376 1417 सम्वत 1446 सम्वत

1328 सन 1319 सन 1360 ए0डी0 1389ए0डी0

(मृत्यु–126 वर्ष में)

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/ /

अनुभवानन्दजी हनुमदाचार्य

(1503 सम्वत–1446 सन) 1456 सम्वत–1399 सन

(108 वर्ष–उम्र) जन्म–बनारस

/

विरजानन्दा

/

बालानन्द जी (1710सम्वत–1653 सन)

(मृत्यु–142 वर्ष)

(जन्म–मेरठ)"

The above chart also supports the view which we have taken.

796. Sri Verma has tried to explain that the military organization of Ramanandi Sampraday was set up during the period of Sri Bhawanandacharya and after his death in 1482 A.D., it was given the form of Anni, i.e. Akhara by Sri Balanandacharya. We, however, do not find the said explanation supported by any pleading, and written or oral evidence. His own book, i.e., Sri Ramanandi Sampradaya Ka Itihas" referred in para 59 of the affidavit of D.W. 3/14 , a photocopy of which has been made available, gives details of Swami Balanand Ji and Sri Govindanand Ji, as under :

"श्री स्वामी बालानन्द

श्री स्वामी बालानन्दजी देश और धर्म–रक्षक श्री नन्द के एक महान प्रतापी शिष्य थे। श्री नन्दजी के काल में तो श्री बालानन्दजी ने सैनिक गुण और शासन करने की पूर्ण योग्यता ग्रहण की थी और इन्होंने श्री

व्रजानन्दजी को वृद्धावस्था में पूर्ण विश्राम दे दिया था। जयपुर के महाराजा सवाई जयसिंहजी श्री बालानन्दजी के पूर्ण अनुयायी थे और भरतपुर के महाराजा सूरजमलजी ने बालानन्दजी के सहयोग से ही आगरे के किले पर एक अधिपत्य कर लिया था। श्री बालानन्दजी ने गुरु भ्राता मानदासजी के सहयोग से राम स्थान श्री अयोध्याजी का पुनरुद्धार किया था। ***बालानन्दजी ने विक्रम संवत 1791 में गॉवडी पुर गॉव (शेखावाटी) में प्रथम साधु संगठन किया,*** *उस समय गलता गद़दी के श्री हरि आचार्यजी तर्क पीठ के श्री वृन्दावनदासजी और दादू द्व ारे ने मंगलदासजी के सहयोग से निम्बार्क छावनी की स्थापना हुई ओर स्थान का नाम नीम का थाना। इसी समय श्री बालानन्दजी ने तीनों अनियों की स्थापना की। 52 द्वारे बनाये गये और अखाडों का संगठन किया। स्वामी बालानन्दजी ज्योंही स्वाधीनता प्राप्ति के लिए देश में प्रयत्न शुरु किया। उसी समय उनके साथी बाजीराव, सवाई जयसिंह और दुर्गादासजी का निधन हो गया। सवाई जयसिंहजी ने अपनी मृत्यु पूर्व जयपुर राज्य का शासन–भार श्री बालानन्दजी के हाथ में दिया था और उसके पश्चात श्री बालानन्दजी को विवश होकर अपना कार्य क्षेत्र जयपुर राज्य तक ही सीमित रखना पडा। श्री स्वामी बालानन्दजी अपने गुरु व्रजानन्दजी के साथ कार्तिक सुदी दौज संवत 1800 वि0 को जयपुर (राजस्थान में स्थायी रुप से आकर रहे। वृन्दावन के लोकनाथ गोस्वामी के सेव्य ठाकुर राधा विनोद के जयपुरस्थ मन्दिर में आपका निवास स्थान बना। यह स्थान आज भी जयपुर नगर के सबसे उच्च स्थानों में है। स्वर्गीय सवाई जयसिंहजी के दो पुत्र थे– (1), ईसरी सिंह, (2) माधोसिंहजी। ये दोनों ही बालानन्दजी के शिष्य और कृपा–पात्र थे। इसीलिए बालानन्दजी ने उस समय किसी का भी पक्ष लेना उचित नहीं समझा और वे अपने वृद्ध गुरु व्रजानन्दजी की सेवा में संलग्न रहे। श्री व्रजानन्दजी के तिरोधान के पश्चात* ***श्री स्वामी बालानन्दजी मार्गशीर्ष शुक्ल 13 संवत 1809 वि0 को श्री गिरिजानन्दजी की गद़दी में विराजे।*** *उसके पश्चात उन्होंने जयपुर राज्य की रक्षार्थ अनेकों युद्ध लडे। स्वामी बालानन्दजी ने दिल्ली के सुप्रसिद्ध वजीर कमरुद़दीनखॉ और नजकखॉ जैसे महान विद्वानों को जयपुर में परास्त किया। मुहम्मदशाह बादशाह के समय श्री बालानन्दजी के एक शिष्य तुलसीदास को महावन नामक एक परगना देने का एक प्राचीन पट़टे में उल्लेख है। मुगल काल के अन्तिम समय में जब बालाजी बाजीराव*

ने केन्द्र पर आधिपत्य कर लिया था तो उस समय वह जयपुर पर चढाई करके आया था। श्री बालानन्दजी से उसकी भेंट होने पर वह नतमस्तक होकर उनके चरणों पर गिर पडा। इसका उल्लेख सरजदुनाथ सरकार ने अपने फाल ऑफ मुगल्स में किया है। ***संवत 1849 वि0*** *में इस महिमामय विभूति का निधन हो गया और मुगल साम्राज्य का भी उसी समय पतन हो गया।*

श्री गोविन्दानन्दजी

श्री बालानन्दजी के शूरवीर शिष्य थे। श्री बालानन्दजी ने उनको सैनिक शिक्षा में निपुण बना दिया था। उनके अन्तिम समय में स्वतन्त्रता प्राप्ति के लिए बापूजी सिन्धिया के साथ नरसिंहगढ (उमटवाडे) में स्वतन्त्र सेना का संगठन कर रहे थे। श्री बालानन्दजी के परलोक गमन के बाद वह जयपुर आये ***और 1791 में वे गद्दी पर बैठे।*** *श्री गोविन्दानन्दजी भी जयपुर के सेना–नायक बनकर रहे और जयपुर की ओर से कितने ही युद्ध लडे। सन 1803 या 1804 में जब अंग्रेजों ने राजस्थान के भरतपुर के किले पर आक्रमण किया तो उस समय श्री गोविन्दानन्दजी के शिष्य तत्कालीन भरतपुर नरेश ने उनके सहयोग से अंग्रेजी सेना को परास्त कर दिया था और उसके पश्चात ही अंग्रेजों की धाक भरतपुर से उठ गई थी और विलायत में उनका बडा उपहास हुआ था। श्री गोविन्दानन्दजी ने अपने चमत्कार से ऐसी परिस्थिति पैदा कर दी थी कि ब्रजवासियों को चक्रधारी श्रीकृष्णचन्द्र स्वयं भरतपुर के किले की रक्षा करते हुए दिखलाई देते थे। तीन पीढियों से लगातार देश की सुरक्षा का प्रयत्न करने वाले अन्तिम महान सन्त का वि0सं0 1862 में स्वर्गवास हो गया व देश में ऐसा कोई पराक्रमशाली वीर नहीं रहा जो अंग्रेजों का जम कर मुकाबला करता।"*

797. The details mentioned above show that Sri Balanandacharya established three Anni in 1734 AD at Shekhavati (Rajasthan), confined himself to Jaipur area and lived permanently at Jaipur. He died in 1795 AD. There appears to be some mistake in date for the reason that in respect to Sri Govindanand Ji, it is mentioned that after the death of Sri Balanand Ji, he became Mahant in 1791 and Sri Govindanand Ji died in 1892 A.D. As we have already noticed that the credit to

establish Nirmohi Akhara at Ayodhya lie with Sri Govind Das Ji, therefore of necessity, this period would not go earlier to 1734 A.D.

798. In "Rajasthan Ki Bhakti Parampara Evam Sanskriti" (supra) the pedigree of the disciples of Ramanandacharya is given which shows that even after Balanandacharya the next Mahant Sri Govind Ji continued to stay at Rajasthan and, therefore, the establishment of Akhara at Ayodhya from Jaipur, in our view, cannot relate with beyond 1734 AD but it must be sometimes between 1734 AD to 1800 AD.

799. We accordingly, in view of the above discussion, **decide the issue no. 17 (Suit-3) in favour of the plaintiffs** by holding that Nirmohi Akhara, plaintiff no. 1 is a Panchayati Math of Ramanandi Sect of Vairagi and as such is a religious denomination following its religious faith and pursuit according to its own custom. We however further hold that its continuance in Ayodhya find sometimes after 1734 AD and not earlier thereto.

(C) Relating to Suit-1885 and its effect on present suits, i.e., res judicata and estoppel etc. :

800. Under this category fall Issues No. 5(a), 5(b), 5(c) and 5(d) (Suit-1); 7(a), 7(b), 7(c), 7(d) and 8 (Suit-4); and 23 and 29 (Suit-5).

801. Let us examine first as to what is the real objection raised by the parties on the question of res judicata and estoppel in their pleadings.

802. In the written statement dated 24.02.1989 of defendant no. 10 (Suit-1) para 12 under the heading “additional pleas”, averments with respect to Suit 1885 are made which reads as under:

"12. That in 1885 Mahant Raghubar Das (Mahant of Janam Asthan of Ayodhya) had filed a suit against the Secretary of State for India in Council, and Mohd. Asghar, Mutawalli of the said mosque, in the Court of Sub-Judge, Faizabad, in which a site plan had also been annexed alongwith the Plaint and in the said site plan the mosque in question was specifically mentioned in the western side of the Chabutra in respect whereof the said suit was filed for permission to erect temple over the said Chabutra. In respect of the said Chabutra the said Mahant Raghubar Das had stated that the temple of Janam Bhoomi was desired to be constructed over there but the said Mahant could not succeed even in that suit which was ultimately dismissed on 24th December, 1885 by the Sub-Judge, Faizabad, and the Appeal filed against the said judgment and decree dated 24th December, 1885 was also dismissed by the District Judge, Faizabad, and the Second Appeal filed against the same had also been dismissed by the Judicial Commissioner of Avadh."

803. Thereafter in para 13 the defendant no. 10 (Suit-1) has averred that the Suit 1885 was filed on behalf of Mahants of Hindus of Ayodhya and Faizabad. It reads as under:

"13. That the aforesaid suit was filed by Mahant Raghubar Das on behalf of other Mahants and Hindus of the Ayodhya and Faizabad etc."

804. In para 31 bar of res judicata and in para 32 estoppel has been pleaded as under:

"31. That the judgment and decree passed by Sub-Judge, Faizabad, in Original Suit No. 61/280 of 1885 (Mahant Raghubar Das Versus Secretary of State and another)

dated 24.12.1885 and confirmed by the District Judge, Faizabad, in Civil Appeal No. 27 of 1885 as well as by the Judicial Commissioner of Avadh in Second Appeal operates as res judicata and so the instant suit is barred by the principles of res judicata."

"32. That the plaintiff is even estopped from claiming the mosque in question as the Janam Bhoomi of Sri Ram Chandraji as the palintiff's predecessor and specially Mahant Raghubar Das had confined his claim to the Chabutra of 17'x21' outside the said mosque as being Janam Asthan of Sri Ram Chandraji and also because there already exists Ram Janamasthan Mandir in the northern side of the property in question at a short distance from the pathway passing from the side of the Babri Masjid."

805. Similarly, in Suit-3 defendants no. 6 to 8 in their written statement dated 28.03.1960 have given the reference of Suit-1885 in paras 17, 18, 19 and 20 which read as under:

''17. यह कि सन् 1885 ई0 मुसम्मी रघुवर दास महन्थ जनम स्थान अयोध्या ने खिलाफ सिक्रेटरी आफ स्टेट फार इंडिया इन कौंसिल व मुसम्मी मुहम्मद असगर मुतवली व खतीब मसजिद बाबरी मजकूर एक दावा इजलास जनाब सब जज साहब बहादुर फैजाबाद न में व इजहार मिलकियत खुद दायर किया।''

''18. यह कि मुकदमा मजकूर के सिलसिले में मुद्दई ने एक नक्शा नजरी में भी दाखिल किया। जिसमें मसजिद बहुनत साफ व सरीह तौर पर दिखलाया था इस पर कोई एतराज नहीं किया था। दादरसी सिर्फ एक जुजबे आराजी मांसूमा चबूतरा की मांगी थी अब मुद्दैयान मुकदमा हाजा का यह कहना कि कुल इमारत मुतदाबिया जनम भूमि का मंदिर है बिलकुल गलत और बेबुनियाद है। और मुकदमा हाजा के लिये बद्यान्ते व बेइमानी से गढ़ा गया है।''

''19. यह कि अदालत सब जज बहादुर फैजाबाद से बतारीख 24 दिसंबर

सन् 85 ई दावा मुद्दई बाबत चबूतरा भी खारिज कर दिया और फैसला मजकूर अदालत अपील से भी बहाल रहा। और सब जज के फैसले में जो रिमार्क मुतालिक खारजुल मियाद मिलकियत मुद्दई निस्बत चबूतरा मुतदाबिया मुकदमें मजकूर मुद्दई के हक में था उसको मनसूख व मुस्तरद कर दिया और मुकदमा व अपील कुल्लीयतन खारिज कर दिया।''

''20. यह कि मुकदमा मजकूर निहायत सनसनीखेज था और इसमें तमाम महन्थान अयोध्या व मुआजिज अहले हिनूद अयोध्या व फैजाबाद मुद्दई मुकदमा की हिमायत व पैरबी में थे। तमाम अहले हिनूद को इल्म मुकदमा मजकूर का था और है।''

806. The plaintiff, Nirmohi Akhara (Suit-3) in its replication dated 13.05.1963 replied paras 18, 19 and 20 of the written statement as under:

"18. The contents of para 18 of the written statement are totally wrong and are denied. If any sketch map be found to have been filed by the said Raghubar Das in the said suit it would be totally false, fictitious and collusive and is not binding on the plaintiffs. The building in suit is nothing else but the temple of Janma Bhumi.

19. The contents of para 19 of the written statement are denied.

21. That contents of para 19 of the written statement are pure concoctions and are denied."

807. The defendant no. 10 (Suit-3) in its additional written statement dated 24.08.1995 has only replied the amended paragraphs of the plaint dated 16/18.12.1961 but there is nothing about res judicata or estoppel.

808. In Suit-4 the reference of Suit 1885 and its details have been given in paragraphs no. 6, 6A, 6B, 6C, 6D, 6E and 6F of the plaint. The paragraphs no. 6A to 6F were incorporated by way of amendment pursuant to the Court's order dated 22.12.1962. The same read as under:

"6. That in 1885, one Mahant Raghubar Dass alleging himself to be the Mahant of Janam Asthan instituted a suit (Original Suit No. 61/280 of 1885) against the Secretary of State for India in Council and Mohammad Asghar, Mutawalli of the Babri Mosque, for permission to build a temple on the Chabutra 17' x 21' mentioned in para 5 above, in the court of the learned Civil Judge, Faizabad which was dismissed and the appeal from the said decree was also dismissed by the learned District Judge, Faizabad (Civil Appeal No. 27 of 1885). In the sketch map filed alongwith the plaint in Suit No. 61/280 of 1885 the entire building, with the exception of the Chabutra 17' x 21' was admitted to be mosque and was shown as such.

6A. That the cause of action for the suit in Suit No. 61/280 of 1885 in the Court of the Civil Judge, Faizabad, arose on the refusal of the Dy. Commissioner of Faizabad on the representation of some Muslims to grant permission to Mahant Raghubar Dass, Mahant of Janam Asthan for the construction of a temple on the ground that a temple could not be permitted to be built on land adjoining the mosque (meaning thereby the Babri Masjid).

6B. "In that suit Regular Suit No. 61/280 of 1885 of the Court of Civil Judge, Faizabad Mahant Raghubar Dass was suing on behalf of Himself, on behalf of Janam Asthan, and on behalf of the whole body of persons interested in Janam Asthan and Mohd. Asghar, Mutawalli of the Babri Masjid was made a defendant."

6C. Mohammad Asghar Defendant Mutawalli of Babri Masjid contested the suit inter-alia on the ground that the land on which the temple is sought to be built is not the

property of the plaintiff or of the Asthan, that the said land lies within the Ahata of Babari Masjid and is the property of the Masjid.

6D. That in the suit mentioned above the matter directly and substantially in issue was:-

(i) the existence of the Babari Masjid.

(ii) the right of the Hindus to construct a temple on land adjoining the Masjid.

The existence of the mosque was admitted by the plaintiff in that suit and the Suit of the plaintiff was dismissed on the further ground of public policy.

6E. If the building was not a masjid but a temple as alleged in the present suit the matter might and ought to have been pleaded by Mahant Raghubar Dass in the former suit (suit No. 61/280 of 1885 mentioned above) and shall be deemed to have been a matter directly and substantially in issue in that Suit and the plea that the building is not a Masjid but a temple cannot be raised in the present suit. For the reasons mentioned above the decision in the former suit operates as res judicata in the present Suit.

6F. That on the admission contained in the plaint of Regular Suit No. 61/280 of 1885 mentioned in the preceding paragraphs it must be taken an established fact that the building now claimed by the Hindus as the temple of Janam Asthan was and is a mosque and not a temple."

809. The defendants no. 1 and 2 (Suit-4) in written statement dated 12.03.1962 have replied para 6 of the plaint in para 6 of the written statement as under:

"6. That the defendants No. 1 and 2 has no knowledge of

the facts mentioned in para 6 of the plaint, hence the para 6 is denied."

810. Another written statement dated 25.01.1963 of defendants no. 1 and 2 also contained reply of paras 6A to 6F of the plaint in para 6 of the written statement which reads as under:

"6. That the defendant no. 1 has no knowledge of the facts mentioned in para 6 of the plaint, hence the para 6 is denied. The additional paras added by the amendment as A to P.F. are wrong and denied see further pleas."

811. The defendants no. 3 and 4 (Suit-4) i.e. Nirmohi Akhara and its Mahant Raghunath Das in their written statement dated 22.08.1962 have replied para 6 of the plaint in para 6 of the written statement as under:

"6. The contents of para 6 of the plaint are denied. The answering defendants are not aware of any suit having been filed by any person known as Mahant Raghubar Dass styling himself to be the Mahant of Janam Asthan. Janam Asthan is situate in the north of temple of Janam Bhumi across the road passing between Janam Bhumi and Janam Asthan. Any sketch map filed by the said Raghubar Dass along with the alleged plaint would be false and fictitious and is not binding on the answering defendant."

812. After the amendment of plaint and insertion of para 6A to 6F the defendants no. 3 and 4 (Suit-4) in their additional written statement dated 25.01.1963 have replied the said paragraphs as under:

"37. The contents of paragraphs 6A to 6D of the plaint are denied. Even if it were proved that any person known as Mahant Raghubar Dass made any admissions or statements or averments in the said suit the answering

defendants are not bound by the same and their title and interest in the temple of Janam Bhoom can in no way be affected."

"38. The contents of paragraph 6E are denied. The building in dispute in the present suit is certainly a temple and not a mosque. The decision if any in the above noted suit of 1885 cannot and does not operate as Resjudicata in the present suit, nor is the said decision any piece of evidence in the present suit."

"39. The contents of para 6-F of the plaint are denied. The building in question in the present suit is a temple of Janam Bhoom and not a mosque as alleged by the plaintiff."

"40. That the contents of paragraphs 6A to 6E do not form part of pleading but contain argument and references to evidence."

"41. That the answering defendants do not derive any title from the said Mahant Raghubar Dass of suit no. 61/280 of 1885 and are not bound by any actions or conduct of the said Reghubar Dass in the said suit."

813. The defendant no. 3 (Suit-4) in its additional written statement dated 21.08.1995 has said not only something about Suit 1885 but also with respect to some other suits i.e. Regular Suits No. 256 of 1922 and 95 of 1941 in its para 3 which reads as under:

"3. That contents of amended plaint para 21 A is denied except the factum of demolition. The real fact regarding Sri Ram Chabutara temple, Chhatti Pujan, etc. as narrated above has been concealed and purposely not adverted in this paragraph against the following existing facts and established fact chronologically as follows:

(1) The sub Judge, Faizabad while holding that 'Charan' (feet) is embosed on the Chabutara which is being worshipped. On a Chabutara over that Chabutara of Idol of Thakurji is installed. The Chabutara is in possession of the defendant no. 3, Nirmohi. The District Judge, vide his judgment while holding that it is most unfortunate that a Masjid should have been built on a land specially held sacred by the Hindues, Judge's judgment.

(2) In Regular Suit No. 256 of 1922 between Mahanth Narottam Das and Mahant Ram Swaroop Das (representing Nirmohi Akhara) with regard to realising dues from the hawkers in the area belonging to the parties following statement was made by the counsel on behalf of Mahant Narottam Das, which reads as under:-

> *"The land marked red in the map was all along parti land till the defendant made the constructions in dispute. The land belongs to the Nazul and the plaintiff as Mahant of the Janam asthan and his predecessor have all along been in possession and has basis of his title on possession. No lease from Nazul has been taken. They have been holding the land under the Iqrarnama from the Shahi times. There has been no settlement decree"*
>
> *Defendant's pleader says:-*
>
> *"I admit para 1 of the W.S. The land never belonged to Nazul department."*

(3) In a suit No. 95 of 1941 between Mahanth Nirmohi

Akhara namely Ram Charan Das and Raghunath Das a commission report was prepared. In the said report at item No. 2 Description of Temple Ram Janam Bhumi belonging to Nirmohi Akhara was specifically mentioned. At item No. 3 of the said report name of Sita Koop belonging to Nirmohi Akhara (Annexure-A).”

814. Defendant no. 9 (Suit-4) in his written statement dated 28.07.1962 expressed its lack of knowledge about Suit 1885.

815. Defendant no. 11 (Suit-4) in his written statement dated 15.02.1990 also has similarly denied paragraphs 6A to 6F of the plaint in paragraphs no. 6A to 6F which read as under:

“6A. The contents of para 6A of the plaint are not correct and as such are denied.

6B. That the contents of para 6B of the plaint are matter of record in the knowledge of the plaintiff as such not admitted.

6C. The contents of para 6C of the plaint are not correct and as such are denied.

6D. The contents of para 6D of the plaint are incorrect and as such are not admitted.

6E. The contents of para 6E of the plaint are incorrect and as such not admitted.

6F. The contents of para 6F of the plaint are not correct and as such are denied.”

816. The written statement dated 20.07.1968 has been filed on behalf of Baba Abhiram Das and in para 6 he has replied para 6 of the plaint as under:

“6. That the answering defendant has no knowledge of the facts mentioned in para 6 of the plaint hence the

contents of para 6 are denied. The additional paras added by the amendment as A to F are wrong and denied. See further pleas."

817. In the written statement dated 04.12.1989 defendant no. 13 (Suit-4), Dharam Das has replied paras 6 and 6A to 6F of the plaint in paras 6 to 6F as under:

"6. That in paragraph 6 of the plaint, the fact of the filing of the suit by Mahant Raghubar Das against the Secretary of State for India is not denied, but the rest of the contents of that paragraph are denied. That suit was for permission to erect a permanent temple in place of the then existing structure at the Rama Chabutra. Mohammad Asghar was added later as a Defendant on his own request. It is denied that the alleged 'mosque' at Janmasthan was a 'mosque' or that Mohammad Asghar was its Mutawalli. The result of that suit is wholly irrelevant in the present suit and does not bind the answering Defendant or the Hindus in general or the worshippers of Bhagwan Sri Rama Lala Virajman at Sri Ram Janma Bhumi in particular."

6-A. That the contents of paragraph 6-A of the plaint are denied.

6-B. That the contents of paragraph 6-B of the plaint are denied.

6-C. That the contents of paragraph 6-C of the plaint are denied.

6-D. That the contents of paragraph 6-D of the plaint are denied.

6-E. That the contents of paragraph 6-E of the plaint are denied.

6-F. That the contents of paragraph 6-F of the plaint are denied. It is rather established by the judgments in that suit that Asthan Sri Rama Janma Bhumi, called the Janmasthan, was a sacred place of Hindu worship of Bhagwan Sri Rama, as the incarnation of Lord Vishnu, symbolised by the existence of the objects of worship like the Sita-Rasoi, the Charans, and the Idol of Bhagwan Sri Rama Lala Virajman on the Chabutra, within the precincts of the building at Janmasthan, which was alleged to be a Masjid; and that there was no access to it except through that place of Hindu worship by which it was land-locked. Such a building could not be a Masjid according to the tenets of Islam."

818. In the written statement dated 18/19.07.1969 of defendant no. 18 (Suit-4) the reply is contained in para 6 of the written statement as under:

"6. Denied. Any statement filed by the said Raghubar Dass along with the alleged plaint would be false and fictitious and is not binding on the answering defendant."

819. The defendant no. 20 (Suit-4), Madan Mohan Gupta has replied para 6 and 6A to 6F of the plaint in para 6 and 7 of his written statement dated 05.11.1989 as under:

"6. That the contents of paragraph 6 of the plaint are denied. The answering defendants are not aware of any such alleged suit. Any sketch map filed by said Raghubir Das along with the alleged plaint would be fictitious and would not be binding on the answering defendants.

7. That the contents of paragraph 6-A, 6-B, 6-C, 6-E, 6-F of the plaint are denied. The building in dispute is a temple and not a mosque. Any alleged decision cannot and

does not operate as res-judicata in the present suit. Neither the answering defendant nor the Hindu Public in general derive any title from the said Mahant Raghubar Das or his representatives and are not bound by their any action or conduct, nor decision in the said suit No. 61/280 of 1985."

820. In Suit-5, the Sunni Central Waqf Board, defendant no. 4 in its written statement dated 26/29.08.1989 has given details of Suit-1885 in para 20 as under:

"20. That the contents of para 20 of the Plaint are also incorrect and hence denied as stated and in reply thereto it is submitted that there is no deity by the name of Asthan Ram Janam Bhoomi and as a matter of fact there is no said Asthan also within the premises of Babri Masjid.

It is also relevant to mention here that in 1885 Mahant Raghubar Das, Mahant of Janam Asthan of Ayodhya, had filed a suit against the Secretary of State for India in Council and Mohd. Asghar, Mutwalli of the said mosque in the Court of Sub-Judge, Faizabad, in which a site plan had also been annexed alongwith the plaint and in the said site plan the mosque in question was specifically mentioned in the western side of the Chabutra in respect whereof the said suit was filed for permission to erect temple over the said Chabutra. In respect of the said Chabutra the said Mahant Raghubar Das had stated that the temple of Janam Bhoomi was desired to be constructed over there, but the said Mahant could not succeed even in that suit which was ultimately dismissed on 24th December, 1885 by the Sub-Judge, Faizabad, and the appeal filed against the said judgment and decree dated 24th December, 1885 was also dismissed by the District Judge, Faizabad,

and the Second Appeal filed against the same had also been dismissed by the Judicial Commissioner of Avadh. The aforesaid suit was filed by Mahant Raghubar Das on behalf of other Mahants and Hindus of Ayodhya and Faizabad etc. As such the plaintiffs cannot claim any portion of the Babri Masjid to have been defied or having become a juridical personality by the name of Asthan Ram Janam Boomi and specially so when neither there has been any installation of deity and nor any personification of the same in accordance with tenets of Hindu religion or Law. (It is further submitted that the plaintiffs are even estopped from claiming the mosque in question as the Janam Boomi of Sri Ram Chandraji) as the plaintiffs' predecessors and specially Mahant Raghubar Das had confined his claim to the Chabutra (platform) of 17' x 21' ft. outside the said mosque as being Janam Asthan of Ram Chandraji and also because there already exists another temple known as Janam Asthan temple situate at a distance of less than 100 yards only from Babri Masjid and on its northern side."

821. The defendant no. 5 (Suit-5) Mohd. Hashim in his written statement dated 14/21.08.1989 has raised the plea of estoppel and acquiescence based on Suit-1885 and also Suit No. 57 of 1978 in para 59 of the written statement which reads as under:

"59. That Ram Janam Sthan Mandir exists in Ayodhya which is quite distinct and separate from the premises in question. Mahant Raghubar Das of Ram Janam Sthan Mandir filed regular suit No. 61/280 of 1885 for a portion of premises in dispute measuring 17 x 21 feet which was dismissed from the Court of Subordinate Judge, Faizabad

and appeal against the said decree filed by Mahant Raghubar Das was also dismissed from the court of District Judge as well as the Judicial Commissioner, Avadh parallel to Hon'ble High Court. In the said suit the existence of Mosque in question has been very much unequivocally admitted and that admission is binding on the present plaintiffs as well as by estoppel and acquiescence and the said suit was decided with the clear findings that even if any wrong was done in 1528 A.D., that cannot be undone now. The answering defendant factually disputing the statement that any wrong was done by or at the behest of King Emperor Babar is advised to state that said findings operate as resjudicata and the instant suit is barred U/S 11 C.P.C. Besides above regular suit No. 57 of 1978 filed on behalf of and in the name alleged Deity itself for the very property has been dismissed from the Court of Munsif, Faizabad and till this date no step has been taken to set aside that order as such the present suit is liable to be dismissed."

822. The written statement of defendant no. 5 has been adopted by the defendant no. 6 vide its reply dated 21.22.08.1989 (Paper No. 40-A1).

823. The pleadings aforesaid caused framing of the issues relating to res judicata, estoppel etc. All the aforesaid issues except issue no.29 (Suit-5) emanates from the Suit No.61/280 of 1885 filed by Mahant Raghubar Das *(hereinafter referred to as "Suit 1885")* which was dismissed by all the Courts upto the level of Judicial Commissioner. Before embarking upon all these issues on merits, it would thus be appropriate to have an idea of what were the pleadings and what has been decided in

Suit 1885.

824. A copy of the plaint dated 19.1.1885 in Suit 1885 is Ex.A-22 (Suit-1). It was filed in the Court of Munsif, Faizabad. The plaintiff described himself as "Mahant Raghubar Das, Mahant Janam Asthan at Ayodhya". The sole defendant was described as "Secretary of Council of India". It was an injunction suit i.e. suit for permission for construction of temple. The plaintiff prayed for an injunction to the defendant so as not to restrain him from construction of a temple over a platform (Chabutara), Janam Asthan at Ayodhya, measuring north-17 ft., east-21 ft., south-17 ft. and west 21 ft. He said that market value of the property is not ascertainable, therefore, the court fees under Item 17(6) of 1870 Act of Court Fees has been paid and the position of the site is clear from the appended map.

825. The plaint had five paragraphs. In brief, it stated that Janam Asthan at Ayodhya in Faizabad city is a Holy place of great reverence and religious importance. The plaintiff is the Mahant of this place of worship. The Chabutara Janam Asthan east-west 21 ft. and north-south 17 ft. has Charan Paduka embedded and a small temple which is worshipped. The Chabutara is in possession of the plaintiff. Due to lack of any building thereon it caused serious difficulty in every season to plaintiff and the worshippers. Construction of a temple on the said Chabutara would not cause any prejudice to anyone but give relief to the plaintiff, worshippers and travellers. In March or April 1883 due to objection by Muslims, the Deputy Commissioner, Faizabad obstructed construction of temple whereupon the plaintiff submitted an application to the local Government but received no reply. Thereafter a notice dated 18.8.1884 under Section 424 C.P.C. sent to the Secretary, Local

Government but thereon also, no reply was received which had given a cause of action to file the suit. In para 5 of the plaint it was mentioned that a responsible citizen is entitled to construct a building as he likes on a place which he own and is in his possession. The Government and Court is also under a duty to protect the public and help them in peaceful enjoyment of their rights, therefore, an appropriate relief be given by retraining the defendant from obstructing the aforesaid construction and not to create any obstruction, objection etc. and also pay cost of the suit.

826. All the paragraphs of the plaint were verified on personal knowledge and belief by Raghubar Das, Mahant Janam Asthan, Ayodhya, the plaintiff. A map was appended with the plaint showing a three-domed structure termed as "Masjid" within a railing boundary having one entrance gate on the eastern wall and one barbed window. This is in fact, the “inner courtyard” portion. Outside thereof, on the south-east side, a “Chabutara” is shown of the size of 17 X 21 ft. and on the north-west side of the outer courtyard a place known as “Sita Chulha” had been shown. On the outer boundary wall, on the northern side and eastern side one gate each is shown.

827. The suit of 1885 was initially filed impleading only Secretary, Council of India as defendant. Thereafter, one Mohd. Asghar filed an impleadment application which was allowed and he was impleaded as defendant no.2. He claimed himself the Mutwalli of Babri Mosque. He filed a written statement dated 22.12.1885 (Ex.A-23, Suit-1). This written statement also has five paragraphs. He averred in the written statement that the Emperor Babar created Royal Waqf by constructing Masjid and on the upper side of the mosque compound, and above the door,

the word 'Allah' was got inscribed. He also declared some grant for its maintenance. This would mean that the premises would not remain in the ownership of anyone else, once a Waqf is created since the land vests in Almighty. No permission was ever granted by the Emperor or his successor or representative to anyone for use of the land in the compound of the mosque on which Chabutara existed. No such permission was given to the plaintiff. He cannot be the owner of the said land. No evidence, document or Emperor's permission has been shown in support of the claim of the ownership on the said Chabutara. In the absence of the claim based on ownership no one has any right in law or otherwise to construct a temple on such land. If somebody visits a mosque compound and pay respect, that would not result in conferring ownership upon him. There was no Chabutara from the date of construction of mosque till 1856. It was constructed in 1857 though for its removal, complaint was filed. No right of ownership would be available to the plaintiff on the aforesaid land merely for the reason that there is a Chabutara, and, whenever attempt was made to trespass the mosque area, complaint used to be made to the Government. One Faqir raised a hut which was removed on complaint. The justice required that in the absence of any material with respect to the ownership of the land in question for 368 years and even from 1857, the plaintiff has no right to construct the temple. The plaintiff is mistaking himself as the owner of Chabutara. He has no right to construct temple thereon. Without the right of ownership no such construction can be made.

828. The trial court also obtained a Commissioner's report dated 6.12.1885 prepared by Sri Gopal Sahai, Amin, showing a spot map of the entire premises. A copy of the Commissioner's

report dated 6.12.1885 is Ex.A-24 (Suit-1) and the spot map submitted by the said Commissioner is Ex.A-25 (Suit-1).

829. The suit was tried and decided by Sri Hari Kishan, Sub-Judge, Faizabad vide judgment dated 24.12.1885. A copy of the judgment is Ex.A-26 (Suit-1). A perusal thereof shows that on behalf of the Secretary of the State of Indian Council, a written statement was also filed contending that there is no cause of action for filing the suit since the plaintiff has not been evicted from Chabutara and even otherwise, the suit is barred by limitation. The plaintiff has no right to seek any relief.

830. The Court framed six issues as under:

1. Whether stamp fee is sufficient ?
2. Whether the suit is within limitation ?
3. Whether there exists no cause of action ?
4. Whether the relief as sought is legal or contrary to law ?
5. What is the area of Chabutara, i.e., its measurement ?
6. Who own and possess the said Chabutara ?

831. The plaintiff in support of his case filed a copy of Oudh Gazetteer, page 7 issued by the Government containing transliteration of "Ayodhya Mahatmya" published by the Journal Asiatic Society.

832. On behalf of defendants, a number of documents were filed which need not be mentioned in detail hereat. The trial court held that stamp paid was sufficient, suit is not barred by time, there was a cause of action for filing the suit, the size of Chabutara shown in the map was correct and there is no dispute. However, the two important issues, namely, issues no. 4 and 6 were dealt with by it differently. So far as issue no.6 is concerned, the trial court held that the Chabutara is in possession of the plaintiff which is not disputed by the

defendant no.2 Mohd. Asghar. To prevent any dispute between Hindu and Muslims, the area was divided by railing wall, separating the domed structure from the outer courtyard where Chabutara existed, which is well accepted to the parties. He said that the Government gazetteer verified the fact that there was a serious riot in 1855 between Hindus and Muslims as a result whereof the wall was erected, dividing the constructed building from Chabutara so that Muslims may offer prayer inside and Hindus outside. This means that the outer side alongwith the Chabutara is in possession of the plaintiff and Hindu people. Since the area to visit Masjid and temple is the same but the place where the Hindus offer worship, is in their possession, therefore, there cannot be any dispute about their ownership also.

833. On issue no.4 the trial court held that the relief sought is not contrary to law since the person who is owner and in possession of a place can make construction on his premises which is in his possession. But since in the vicinity there is a wall of a mosque whereon the word 'Allah' is inscribed and at such a place if the temple is constructed, it may cause serious dispute between Hindu and Muslims and any permission for construction of temple at such a place is likely to create a law and order problem, therefore, no such permission can be granted. The suit was accordingly dismissed.

834. A Civil Appeal No. 27 of 1885 was filed by Mahant Raghubar Das in the Court of District Judge, Faizabad and a cross objection was filed by Mohd. Asghar, defendant no. 2 against the finding of the trial court in respect to issue no. 6 in so far as it held the plaintiff, owner of the land in question, i.e., Chabutara. This appeal was decided by Sri F.E.A. Chamier,

District Judge, Faizabad vide judgement dated 18/26.03.1886 (Ex. A-27, Suit-1). He dismissed plaintiff's appeal. So far as the cross objection of Mohd. Asghar are concerned, the finding of the trial court to the extent it had held plaintiff as owner of the land in dispute, was declared redundant and consequently directed to be expunged from the judgement of the trial court. Accordingly the following part of the judgement of Trial Court was expunged:

> *"Bahar Ke Darje Ki Araji Mai Chabutara Makbooza Mudai Wa Hindu Logon Ki Hai.- Go Us Mukam Par Jahan Ahle Hunud Paristish Karte Hai Kadim Kabza Unka Hai Jisase Milkiyat Unke Me Koi Kalam Nahin Ho Sakta Hai."*

835. From the judgement of the learned judge deciding the first appeal it appears that he visited the spot on 17.03.1886 and in the light of what he noticed on spot inspection, he recorded certain facts in the judgement, namely the Masjid built by Emperor Babar stands on the border of town Ayodhya west and south and is clear of habitations. He expressed his anguish that it is most unfortunate that a Masjid should have been built on a land especially held sacred by Hindus but as that event occurred 358 years ago he found it too late in the day to reverse the process and said that the parties should maintain status quo. In this light he observed that any interference would cause more harm and damage than benefit. He categorically observed that the only question to be decided in the case is **that the position of the parties will be maintained**. Giving his reason for dismissing the suit he said as under:

> *"The reason why this suit is dismissed is that there is no injuria nothing which could give a right of action to the plaintiff."*

836. Mahant Raghubar Das took the matter in second appeal (No. 27 of 1886) to the Court of Judicial Commissioner of Oudh. The said appeal was dismissed by Sri W. Young, Judicial Commissioner of Oudh vide judgement dated 01.11.1886 observing:

> *"There is nothing whatsoever on the record to show that the plaintiff is in any (illegible) the proprietor of the land in question."*

837. The second appeal's judgement of the Judicial Commissioner also says that considering the situation that a mosque was existing in the nearby area for last 350 years which is said to have been constructed by Emperor Babar, who preferred to chose **this holy spot according to Hindu legends as the site of his mosque,** it is a wise step not to allow the parties to disturb the status quo and further that the plaintiff failed to show that he is proprietor of the land in question. The appeal deserved to be dismissed and no warrant for interference with the judgement of the court below.

838. Sri Z. Jilani, learned counsel for the plaintiffs (Suit-4) vehemently contended that the judgement of the trial court which has been confirmed up to the level of Judicial Commissioner shows very categorically that the entire area of the “inner courtyard” was mosque used by Muslims for offering Namaz and this finding having not been upset would operate as res judicata against the plaintiffs of rest of the suits. He submitted that the suit 1885 was filed by Raghubar Das designating himself as Mahant Janam Asthan at Ayodhya and, therefore, Suit-5 having been filed by impleading Janam Asthan as one of the plaintiff treating it to be a juridical personality is barred by principle of res judicata and Section 11 C.P.C. He

further contended that Mahat Raghubar Das filed the above suit for the benefit of the interest of the entire Hindu community and in effect it was in a representative capacity, therefore, a new suit raising similar questions would be barred by resjudicata.

839. Sri M.A. Siddiqui, Advocate, submitted that from 1885 and onwards in every litigation the building in the "inner courtyard" was termed and known as "mosque". The parties, therefore, are estopped from contending that no mosque ever existed on the disputed site. Relying on Section 11 and in particular Explanation IV and VI C.P.C., the pleadings and judgements of Suit 1885, he argued that Suit-1 and 5 are barred by res judicata or in any case on the principle of estoppal. He contended that res judicata is not confined to what has been said in Section 11 C.P.C. but also has its scope outside thereof. Some aspects in Section 11 C.P.C. are recognised as common principle of res judicata. He placed reliance on **Talluri Venkata Seshayya and others Vs. Thadikonda Kotiswara Rao and others, AIR 1937 P.C. page 1** and contended that whatever the findings and decision has come in 1885 that is binding and in particular in respect to the following facts:

1. Unqualified statement that inner courtyard is Masjid.
2. Whatever Mahant Raghubar Das said was on behalf of entire Hindu community.
3. Existence of the building of the mosque in the vicinity was the cause for prohibition of construction of temple, therefore, the very fact that any temple was in existence is not correct.
4. The entire building was a mosque, is a finding which has attained finality in the litigation of 1885.

840. He also placed reliance on **K. Ethirajan Vs. Lakshmi**

and others, AIR 2003 SC 4295 (paras 10, 17 and 18). He submit that res judicata is a growing subject and is a well recognised principle to avoid vexing a person twice on a matter already decided. Reliance is placed also on **State of Karnataka and another Vs. All India Manufacturers Organization and others, 2006(4) SCC 683** (paras 32, 34, 35, 36, 38, 39, 48, 49 and 50); **Lal Chand Vs. Radha Kishan, AIR 1977 SC 789** (para 19)-**1977(2) SCC 88**; and, **Sulochana Amma Vs. Narayanan Nair, AIR 1994 SC 152** (paras 5, 7 and 8).

841. He next contended that, pleaded or not, if parties knew the case, the Court considered and decided, it would operate as res judicata. Reliance is placed on **Midnapur Zamindary Co. Ltd. Vs. Kumar Naresh Narayan Roy and others, AIR 1924 P.C. 144** (para 149); **Krishna Chendra Gajapati Narayana Deo Vs. Challa Ramanna and others, AIR 1932 P.C. 50; Dhan Singh Vs. Jt. Director of Consolidation, U.P. Lucknow and others, AIR 1973 All. 283** and **State of Punjab and others Vs. M/s. Surinder Kumar and Co. and others, AIR 1997 SC 809** (para 5).

842. Then he contended that a point which might or ought to be taken if not taken, would operate as res judicata in all subsequent litigation/ subsequent proceedings. Even if a judgement is erroneous, yet, is binding and in support thereof Sri Siddiqui cited **P. K. Vijayan Vs. Kamalakshi Amma and others, AIR 1994 SC 2145** (paras 10, 11, 13 and 14)**; Gorie Gouri Naidu (Minor) and another Vs. Thandrothu Bodemma and others, AIR 1997 SC 808** (para 4)**; Premier Cable Co. Ltd. Vs. Government of India and others, AIR 2002 SC 2418** (para 2) and **Abdul Rahman Vs. Prasony Bai and another, AIR 2003 SC 718** (paras 24, 25, 26 and 31).

843. Coming to the plea of estoppal and abandonment, he said that 2.77 acres of land, except of inner courtyard was acquired by the State of U.P. vide notification dated 7.10.1991 and 10.10.1991 and the map thereof has been filed as Annexure A to the counter affidavit of the State of U.P. in the writ petition no. 3540 of 1991 (MB) filed against the aforesaid acquisition. The plaintiffs (Suit-5) did not challenge the same. This amounts to acquiescence of their right in respect to the land which was acquired by the State in 1991. Even if subsequently the said notification was quashed by this Court, in the writ petition filed by some Muslims as well as the Nirmohi Akhara, that would not result in any benefit to the plaintiffs (Suit-5). The pre acquisition rights of plaintiffs (Suit-5) would not revive in any manner. In support, he placed reliance on **M.T.W. Tenzing Namgyal and others Vs. Motilal Lakhotia and others 2003 (5) SCC 1** (para 21).

844. Sri Siddiqui further pleaded that the land in question including some other was acquired by the Government of India vide Act No. 33 of 1993 and Section 4 Sub-section 3 thereof provided that all the suits pending in the Lucknow Bench of the High Court in respect to the said land would stand abated. The plaintiffs (Suit-5) did not challenge the said enactment and instead on 4.2.1993 an application no. 4(o) of 1993 was filed by the plaintiff no. 3 on behalf of all the plaintiffs (Suit-5) requesting that in view of Section 4(3) of Act No. 33 of 1993, the suit, having abated, be dismissed as such. The conduct of the plaintiff, therefore, shows that they abandoned their rights to the land in dispute and, therefore, considering their conduct, it cannot be said that they have any right at all alive in respect to the land in question. Such conduct is relevant even in a suit for

declaration or a title suit. In support of the aforesaid submission, he placed reliance on **Jai Narain Parasrampuria and others Vs. Pushpa Devi Saraf and others 2006 (7) SCC 756**.

845. Next contention is that after acquisition, nothing remains to be claimed by the plaintiffs (Suit-5). Since they did not challenge the said acquisition, they are estopped and the suit is liable to be dismissed for this reason alone. No relief can be granted to the plaintiffs (Suit-5) in view of the aforesaid facts and circumstances and their conduct. He also said that as soon as the plaintiffs (Suit-5) filed application on 4.2.1993, the suit stood abated at that stage itself, and, therefore, in law, Suit-5 cannot be said to be pending before this Court. Hence, there is no question of granting any relief to plaintiffs (Suit-5). In support, he placed reliance on **M/s Hulas Rai Baij Nath Vs. Firm K.B. Bass and co. AIR 1968 SC 111**, a division Bench judgment of this Court in **Smt. Raisa Sultana Begam and others Vs. Abdul Qadir and others AIR 1966 Alld. 318** and certain single Judge's judgments in **Ram Chandra Mission Vs. Umesh Chandra Saxena and others 1997 ACJ 896** (para 6); **Upendra Kumar and others Vs. District Judge, Azamgarh and others 1997 ACJ 823** (para 6, 7, 8 and 11); **State Bank of India Vs. Firm Jamuna Prasad Jaiswal and sons and another AIR 2003 (Alld.) 337**; **Lakshmana Pillai and another Vs. Appalwar Alwar Ayyangar and another AIR 1923 Madras 246.**

846. He further said that though the Act of 1993 was challenged by some of the Muslim parties including some plaintiffs (Suit-4) and Nirmohi Akhara, and in that matter, i.e. in the case of **M. Ismail (supra)** the Apex Court struck down Section 4 Sub-section 3 of 1993 Act whereby the suits were

made to abate, but, that declaration ipso facto would not reverse the consequences of the said provision, which had already taken place in respect to Suit-5, which stood already abated on 7.1.1993, the date on which the aforesaid Act came into force. In any case, on 4.2.1993, when the plaintiffs (Suit-5) filed application stating that the suit has abated, it had resulted in abatement automatically. In order to show the effect of acquisition as pleaded above, he placed reliance on **M.T.W. Tenzing Namgyal (supra)** (para21). He further said that once the suit has abated or stood abandoned, the plaintiffs (Suit-5) cannot challenge as they are estopped from doing so. In support thereof reliance is placed on **Deewan Singh and others Vs. Rajendra Pd. Ardevi and others AIR 2007 SC 767** (para 43, 52), **Jai Narain (supra)**; **Anuj Garg and others Vs. Hotel Association of India and others 2008 (3) SCC 1** (para 53, 54) and **Barkat Ali and another Vs. Badrinarain 2008 (4) SCC 615** (para 11 and 15).

847. He also said that even if acquisition of land is quashed on the challenge made by some of the parties, the effect would not benefit the persons who did not challenge the same and for them, the acquisition would stand. On enquiry as to whether the aforesaid arguments are covered by any of the issues, he referred to **Issue No. 18 (Suit-5)**, para-42 of the W.S. of the defendant no. 3 (Suit-5), para 47 of W.S. of defendant no. 4 (Suit-5) and para 62 of W.S. of defendant no. 5 (Suit-5). Thereafter, he also referred to para 12 of the Addl. W.S. of defendant no. 5 (Suit-5) and contended that the argument advanced by him are covered by the pleading in the aforesaid paragraphs.

848. Advancing submissions in respect of issue no. 7(d), 8

(Suit-4) and 23 (Suit-5), he said that issue 7 (d) is whether title of the Muslims to the property in dispute or any portion thereof was admitted by plaintiff of Suit No. 61/280 of 1885 filed by Mahant Raghubar Das and if so, its effect? Referring to the plaint of the aforesaid suit, he said that the disputed structure was mentioned therein as mosque and, therefore, it is a kind of admission of the plaintiff about the title of the Muslims over the property in dispute. Referring to Section 58 of the Evidence Act, he said that a fact admitted need not be proved.

849. Per contra, opposing the objection based on res judicata resulting from Suit 1885, Sri R.L.Verma, Advocate pointed out that though no such issue has been framed in respect to Suit-3 but is in rest of the three suits, still he would submit that none of the suit is barred either by res judicata or estoppel due to the decision in Suit 1885. In this regard, he first referred to para-6, 6-A, 6-B to 6-F, 7, 11-A and 23 of the plaint of Suit-4. Then he referred to para 5 and 6 of the written statement filed on behalf of defendants no. 3 and 4 (Suit-4), paragraphs 31, 32, 38 and 40 of the additional written statement dated 25.1.1963 and the additional written statement dated 28/29.11.1963. He also referred to the replication at page 59 of the paper book. He also placed before us para 6, 6-A, 6-B to 6F and 33 of the written statement of Abhiram Das.

850. Tracing the history of procedural law, he submitted that after the British annexation of the country, Code of Civil Procedure was enacted for the first time in 1859, i.e. Act No. 8 of 1859. However, it operated only in Presidency Towns and Small Causes Courts. Thereafter, some amendments were made in C.P.C., 1859; vide, Act No. 4 of 1860, 3 of 1861. Earlier CPC was replaced by Act No. 10 of 1877 and then Act No. 14 of

1882.

851. Sri Verma contended that to attract the bar of Section 11 CPC, 1908, the following aspects have to be considered :

(a) pleadings of earlier suit;

(b) parties

(c) cause of action;

(d) relief; and

(e) judgment.

852. He would submit that if the judgment does not operate as res judicata, it cannot be utilized as a piece of evidence in respect to some observations and finding therein as the same are barred by Sections 41, 42 and 43 of the Evidence Act. Placing before us copy of the plaint of Suit 1885, Ex. A-22 (Suit-1) he argued that Mahant Raghubar Das filed the suit in his own capacity and not as a Mahant of Math Nirmohi Akhara. In the alternative he would submit that Sri Raghubar Das litigated disclosing his status as Mahant, Janamsthan Ayodhya. The said suit was in relation to a limited property right, i.e., Chabutara measuring 17 ft. x 21 ft. and the dispute pertains to the right of construction of a temple thereon. The cause of action for the suit was also limited against the State and that's why only Secretary, Council of India, was impleaded as defendant. Placing pleadings and judgment of Suit 1885 before us, he submits that act of Mahant Raghubar Das was neither in the representative capacity of all Hindus nor in the capacity of Mahant of Nirmohi Akhara which is a juristic personality and, therefore, there is no question of attracting the bar of res judicata. He also pointed out that neither the parties were same nor Nirmohi Akhara claimed any right in the said suit through Mahant Raghubar Das nor the dispute of inner courtyard was involved, hence, objection with

respect to res judicata taken by Muslim parties is totally misconceived. In support, he placed reliance on Apex Court's decision in **State of Maharashtra Vs. M/s. National Construction Company, Bombay AIR 1996 SC 2367** (para 6, 9 and 17) and two single Judge judgments of this Court in **Munesh Kumar Agnihotri and others Vs. Lalli Prasad Gupta AIR 1989 (Alld.) 202** and **Ram Naresh Vs. State of U.P. 2003 (21) LCD 1120**. In respect to his submission of Sections 40, 41 and 42 of the Evidence Act, he placed reliance in **Abdul Quadir Vs. Tahira 1997 (15) LCD 379**. He further submit that mere mention of the word "Masjid" in the annexure to the plaint, i.e., the map, does not mean any admission of an undisputed fact between the parties of a subject matter attracting the principle of estoppel; and, placed reliance on **B.L. Sridhar Vs. K.M. Munireddy 2003 (21) LCD 88 (SC)=AIR 2003 SC 578**. So far as Suits- 1 and 5 are concerned, he submits that neither the parties were same nor Mahant Raghubar Das filed the Suit in representative capacity and, therefore, res judicata or estoppel has no application to the said suits.

853. Coming to the issues in question, we find that **Issue No. 5 (a) (Suit-1)** is in respect to whether the property in dispute before us was involved in original suit of 1885 or not and reads as under:

> *"Was the property in suit involved in Original Suit No. 61/280 of 1885 in the court of Sub Judge,Faizabad, Raghubar Das Mahant Vs. Secretary of State for India and others?"*

854. Apparently, it may not be said that the disputed property in Suit-1885 has no connection with the disputed property before us. However, we are also clearly of the view that entire

disputed property before us was not up for consideration in Suit-1885 and, in fact, that was a suit for a very small part of the land out of the total land which is disputed before us and by itself to identify both being same, similar or identical would not be correct. From a perusal of the plaint in Suit-1885 (Ex. A-22, Suit-1) (Vol. 7, Page 245 of the Bound Registers of documents) it is evident that the plaintiff claimed permission to raise construction over a Chabutara at Janamsthan, Ayodhya measuring north 17 feet, east 21 feet, south 17 feet and west 21 feet. In para 2 and 3 of the plaint, the plaintiff, Mahant Raghubar Das, pleaded -

''दफा 2–यह कि चबुतरा जन्म–स्थान पूरब पच्छिम 21 फिट उत्तर दक्खिन 17 फिट है। उस पर चरणपादका गड़ी हुई है और छोटा सा मन्दिर रखा हुआ है जिसकी परस्तिश होती है।

दफा 3– यह चबुतरा मज़कूर बकब्जा मुद्दई है।.....''

855. The plaintiff (Suit-1885) prayed for grant of relief as under :

''डिक्री बनाने मन्दिर ऊपर चबुतरा जन्म स्थान वाकैया अयोध्या उत्तर 17 फिट पूरब 21 फिट दक्खिन 17 फिट पच्छिम 21 फिट के फरमाये जायें।''

856. In the map appended to the plaint (Suit-1885) though the disputed building and the area of inner and outer courtyard was also shown but from the pleadings in the plaint, it is evident that the dispute therein pertain to the Chabutara measuring 17X21 situated at south-east and in the outer courtyard.

857. Mohammad Asgar, who claimed himself to be Mutwalli, Masjid Babari, in his written statement (Suit-1885) also said that the dispute pertain only to the chabutara situated in the outer courtyard south-east. This is evident from the his pleadings in para 1, 3 and 4 of the written statement (Suit-1885) and the relevant extract thereof is as under :

''यह जमीन जिस पर चबूतरा है मूरिसान मुद्दई को न दी हो ... मुद्दई ने

निस्बत इस टुकड़ा ज़मीन के मिलकियत उस पर हासिल नहीं की ... ता 1856 ई0 इस मुकाम पर चबूतरा नहीं था। 1857 ई0 में बना ... ज़ाहिर है कि बिना इस चबूतरे की 1857 ई0 से हुई है। ... यह ख्याल मुद्दई कि चबूतरा हमारा है, और जब कि चबूतरा हमारा है तो उस पर मन्दिर बनाने का भी अख़तियार हमको है महज़ बनफ्सानियत मज़हबी गलत फहमी मुद्दई की है क्योंकि उस चबूतरे पर बैठना या चढ़ावा चढ़ाने का भी अख़तियार मालिकाना बिला किसी तारूज़ के नही है।

858. From the above judgments, it is evident that they considered the dispute with respect to the construction sought to be made on the aforesaid Chabutara and it was not in respect to the entire disputed site or building as is before us. The right of ownership or possessory right in respect to any part of land in dispute as is before us was not involved in Suit-1885. The relief for permission to make construction of a temple on the Chabutara in the outer courtyard measuring 21X17 feet was sought. Moreover, in para 12 of the written statement dated 24.2.1989 of defendant no. 10 (Suit-1), he has also admitted that the suit was filed for permission to erect temple over the aforesaid chabutara, as is evident from the following :

"The said suit was filed for permission to erect temple over the said Chabutara. In respect of the said Chabutara, the said Mahant Raghubar Das had stated that the temple of Janamsthan was desired to be constructed over there."

859. In Suit-1, the plaintiff is seeking injunction against defendants in regard to his right to worship of the idols placed under the central dome in the inner courtyard. There is no claim either about ownership or possession.

860. Therefore, we are of the view that the property engaging attention of this Court in Suit-1 was not involved in original suit no. 61/280 of 1885, Mahant Raghubar Das Vs. Secretary for State of India and others and I**ssue No. 5 (a) (Suit-1) is**

answered in negative.

861. **Issue No. 5 (b) (Suit-1)** is whether Suit-1885 was decided against the 'plaintiff'. It reads as under:

"Was it decided against the plaintiff?"

862. The issue, in fact, is a bit confusing vague and unclear. The word 'plaintiff' is not clearly defined. It does not indicate whether it needs to be answered with respect to the plaintiff (Suit-1) or plaintiff (Suit-1885). Evidently, Suit-1885 was filed by Mahant Raghubar Das while plaintiff (Suit-1) before us is Gopal Singh Visharad (substituted by his son Rajendra Singh Visharad). Nothing has been brought before us to show that Gopal Singh Visharad was connected or related with Raghubar Das and/or that Raghubar Das filed Suit-1885 representing Gopal Singh Visharad also. Sri Jilani and Sri Siddiqui, the learned counsel submitted that since Suit-1885 was filed for the benefit of Hindus in general, who used to visit the disputed site, as alleged, for worship and, therefore, Raghubar Das should be deemed to be representing Gopal Singh Visharad also as both are Hindu. The submission, in our view, is wholly misconceived and has to be rejected outrightly. The mere fact that two persons have a common religion or faith, it does not mean that the two are related in any manner or in a litigation one can be said to be representing another merely for the reason that the dispute in the suit filed by former has some relation with the common religious matter of the both. In fact, the learned counsel for the Muslim parties could not tell as to how and why Suit-1885 can be said to have been decided against Sri Gopal Singh Visharad, plaintiff (Suit-1) who is before us.

863. Treating as if Issue- 5 (b) (Suit-1) required answer by referring to plaintiff of Suit-1885, we find that it is true that the

aforesaid suit was dismissed upto the level of Judicial Commissioner and no relief, as sought, was granted therein to the plaintiff Mahant Raghubar Das. In that context it can be said that the suit was decided against him. However, to hold that any issue relating to ownership or possession with respect to the disputed area in Suit-1885 i.e. Chabutara measuring 21'X17' situated at south east in the outer courtyard was decided against Mahant Raghubar Das would not be correct since there is no such finding recorded by the ultimate Court of appeal, i.e. the Judicial Commissioner except that plaintiff Raghubar Das could not place anything before the Court to substantiate his claim of ownership over the said Chabutara.

864. The record shows that the issue no. 6 was framed in the following matter :

"To whom does the land belong?"

865. The Trial Court decided the aforesaid issue by holding that the said Chabutara is in possession of the plaintiff, as is being worshiped by Hindus and this is also admitted by the defendants, hence, the possession shows ownership and in this respect there cannot be any dispute. This part of the findings of the Trial Court was directed to be struck out of the judgment being redundant by the District Judge (the First Appellate Court) vide judgment dated 18/26.3.1886. The District Judge observed that "considering the situation of the disputed site, any innovation would cause more harm and derangement of order than benefit. All that can be done is to maintain status quo by the parties". While directing for striking of the above part of the observation with respect to the ownership of the Chabutara, the appellate Court observed as under :

"The words are redundant and are to be struck out of

the judgment. The only question decided in this case is that the position of the parties will be maintained."

866. However, justifying the order of the Trial Court in dismissing the suit by declining to grant any relief, the District Judge held :

"The reason why this suit is dismissed is that there is no "injuria", nothing which would give a right of action to the plaintiff."

867. The Judicial Commissioner, Oudh (Hon'ble W. Young) in his judgment dated 2.9.1886 held as under :

"The matter is simply that the Hindus of Ajudhia want to erect a new temple of marble ... over the supposed holy spot in Ajudhia said to be the birthplace of Sri Ram Chandar. Now this spot is situate within the precincts of the grounds surrounding a mosque constructed some 350 years ago owing to the bigotry and tyranny of the Emperor Baber-who purposely chose this holy spot according to Hindu legend- as the site of his mosque.

The Hindus seem to have got very limited rights of access to certain spots within the precincts adjoining the mosque and they have for a series of years been persistently trying to increase there rights and to erect building over two spots in the enclosure.

(1) Sita ki Rasoi

(b) Ram Chandar ki Janam Bhumi.

The executive authorities have persistently repressed these encroachments and absolutely forbid any alteration of the 'status quo'.

I think this a very wise and proper procedure on their part and I am further of opinion that Civil Courts have

properly dismissed the plaintiff's claim.

The pleas on appeal to this ... are wholly unsupported by facts in the case or by any document that appears to me ... some of the reasoning of the Lower Appellant Court as to the limitations of the Civil Court jurisdiction. However I approve of their final conclusion to which it has come – and I see no reason to interfere with its order modifying the wording of part of the judgment of the Court of First Instance. There is nothing whatever on the record to show that plaintiff is in any sense the proprietor of the land in question.

This appeal is dismissed with costs of of all Courts."

868. Therefore, the order of Judicial Commissioner clearly shows that it had specifically approved the final conclusion of the Court below and has also declined to interfere with the part of the order of the first Appellate Court modifying Trial Court's order since there was nothing to show that the plaintiff Mahant Raghubar Das was the proprietor of the land in question. The land in question comprised of only Chabutara measuring 17X21 feet situated at south-east. However, Issue 6, which was worded as to whom the land in dispute belong was not answered by the two appellate Courts giving any finding in favour of anyone. Therefore, while answering the **issue 5(b) (Suit-1),** we can say only this much that the suit was decided against the plaintiff Mahant Raghubar Das inasmuch he was not granted any relief by the respective Courts and not beyond that and it is answered accordingly.

869. Next is **Issue No. 5 (c) (Suit-**1):

"*Was the suit within the knowledge of Hindus in general and were all Hindus interest in the same?"*

870. We find that in para 13 of the written statement dated 24.2.1989, defendant no. 10 (Suit-1) though has averred that Suit-1885 was filed by Mahant Raghubar Das on behalf of other Mahants and Hindus of Ayodhya and Faizabad etc. but no material or evidence has been placed on record whatsoever to support it. Neither the copy of the plaint Ex. A-22 (Suit-1), written statement filed by Mohammad Asgar, the alleged Mutwalli, Ex. A-23 (Suit-1), the Trial Court's judgment dated 24.12.1885, Ex. A-26 (Suit-1) as well as the judgment of the appellate court dated 18/26.3.1886, i.e. Ex. 27 (Suit-1), contain anything nor there is any mention whatsoever which may justify an inference that the aforesaid suit was filed by Mahant Raghubar Das representing all Mahants of Ayodhya and Hindus of Ayodhya and Faizabad etc. In the absence of any material or evidence, documentary or otherwise, to support the above factual statement, we have no hesitation to answer the above issue in negative, i.e. against the defendants. Moreover, it is also not the case of the defendants (Suit-1) that Suit-1885 was filed by Mahant Raghubar Das by obtaining permission of the Court to file the said suit in representative capacity and, therefore also it cannot be said that in the aforesaid suit, plaintiff Mahant Raghubar Das represented all the Mahants of Ayodhya as well as Hindus. The assertions about alleged knowledge of Hindus in general and their interest in the subject matter are very vague, uncertain and unreliable in law. If some dispute pertains to a place and that too a religious one, a large number of persons following the same faith and belief may have interest to know about the matter and they may also have the knowledge of the dispute but that is neither here nor there and would have no legal implication in the matter. Neither any provision impelling

us to take a different view has been placed nor we are persuaded to find something in favour of the defendants and even otherwise nor any binding precedent is placed before us throwing light on the issue in question in support of the defendants and, therefore also we find no reason to answer the aforesaid issue in positive in any manner. In any case, since no evidence, whatsoever, showing that the Hindus in general had knowledge of the Suit-1885 or that all Hindus were interested in the same, has been placed on record, though both these aspects are factual and ought to be proved by cogent material evidence, **we decide the aforesaid issue, i.e., Issue No. 5 (c) (Suit-1) in negative, i.e. against the defendants**.

871. **Issue No. 7 (a) (Suit-4)** is also similar to Issue No. 5 (c) (Suit-1) and reads as under:

> "*Whether Mahant Raghubar Dass, plaintiff of Suit No. 61/280 of 1885 had sued on behalf of Janma Sthan and whole body of persons interested in Janma-Sthan?"*

872. Sri Siddiqui besides his oral submissions has said in his written submissions with respect to issue no. 7(a) (Suit-4) as under:

> *"In the plaint of the said suit Raghubar Das has described himself as Mahant Janam Asthan and raised the grievance of the whole the body of persons having faith in the said Chabutara wooden temple visiting the same. No personal or individual interest has been at all averred and plaint averments make it vividly clear as such."*

873. We have already said that Mahant Raghubar Das filed the above suit asserting his capacity as Mahant Janam Asthan but there is not even a whisper in the entire plaint of Suit-1885 that he is filing the above suit for and on behalf of the Hindus in

general and in representative capacity for their benefit, hence the submission made by Sri Siddiqui, is find difficult to accept. By doing something if some more benefit or convenience would have become available to the visitors or worshippers, it cannot be said that the suit itself was filed in representative capacity or for the whole body of the persons, i.e., those who have faith in Ram Chabutara in respect whereto Suit-1885 was filed.

874. Here also nothing has been placed on record to show that Mahant Raghubar Das filed Suit-1885 representing Janamsthan as a juristic personality or as whole body of persons interested in Janamsthan. For the reasons which we have already discussed above qua Issues No. 5 (c) (Suit-1) which are entirely applicable to this issue also, **we answer Issue No. 7 (a) (Suit-4) in negative and hold that there is nothing to show that Mahant Raghubar Das filed Suit-1885 on behalf of Janamsthan and whole body of persons interested in Janamsthan.**

875. At this very stage, we also deal with **Issue No. 7 (d) (suit-4)** which says that in Suit-1885 whether title of Muslims to the property in dispute or any portion thereof was admitted by the plaintiff of the said suit and if so its effect. It reads as under:

> *"Whether in the aforesaid suit, title of the Muslims to the property in dispute or any portion thereof was admitted by plaintiff of the that suit? If so, its effect?"*

876. Pleading of Suit-1885 have already been discussed above in extentio. We do not find any such admission therein nor such indication is discernible from the three judgments of the three Courts, namely, the Court of Sub Judge, Faizabad; the District Judge, Faizabad and Judicial Commissioner, Lucknow (Oudh). The learned Counsels for the defendants (Suit-1), namely, Sri

Jilani and Sri Siddiqui also could not place anything wherefrom it can be said that Mahant Raghubar Das at any point of time admitted the title of Muslims to the property in dispute or any portion thereof in Suit-1885. In the circumstances, we hold that the aforesaid issue to this extent has to be answered in negative that there is no admission by Mahant Raghubar Das, plaintiff of Suit-1885 about the title of Muslims to the property in dispute or any portion thereof. In absence of any such admission, the question of considering effect thereof does not arise. **Issue No. 7 (d) (Suit-4) is answered accordingly.**

877. Now we come to **Issues No. 5 (d) (Suit-1), 7 (c) (Suit-4), 8 (suit-4) and 23 (Suit-5),** which specifically relate to the legal effect of the pleadings pertaining to Suit-1885 as discussed above, i.e. res judicata and estoppel. They read as under:

> *"Does the decision in same bar the present suit by principles of res judicata and in any other way?"*
>
> *"Whether in view of the judgment in the said suit, the members of the Hindu community, including the contesting defendants, are estopped from denying the title of the Muslim community, including the plaintiffs of the present suit, to the property in dispute? If so, its effect?"*
>
> *"Does the judgment of case No. 6/281 of 1981, Mahant Raghubar Dass Vs. Secretary of State and others operate as res judicata against the defendants in suit?"*
>
> *"Whether the judgment in suit no. 61/280 of 1885 filed by Mahant Raghubar Das in the Court of Special Judge, Faizabad is binding upon the plaintiffs by application of the principles of estoppel and res judicata as alleged by the defendants 4 and 5?"*

878. Proceeding to consider the rival submissions on merits,

we shall first like to mention in brief what res judicata is, its genesis and evolution.

879. The legislative history involving the principle of res judicata brings us to the first codified civil procedure i.e. Act 8 of 1859, which was applicable to only the Mofussil Courts (i.e. the Courts of Civil Judicature not established by Royal Charter). Prior thereto, the procedure of Mofussil Courts was regulated by Special Acts and Regulations, which after enactment of Act 8 of 1859 were repealed by Act 10 of 1861. Act 23 of 1861 further amended 1859 Act. Section 42 of Act 23 of 1861 gives short title as 'Code of Civil Procedure' to parent Act 8 of 1859. In 1862, the Supreme Court and the Courts of Sadar Diwani Adalat in Presidency Towns were abolished by the High Courts Act, 1861 and powers of those Courts were vested in the Chartered High Courts. The Letters Patent of 1862 establishing the High Courts extended the procedure of Act 8 of 1859 to these Courts. The Charter of 1865 which empowered the High Courts to make Rules and Orders regulating proceedings in civil cases, required them to be guided, as far as possible, by the provisions of Code of 1859 and subsequent amending Acts. Act 8 of 1859 was amended from time to time vide Act 4 of 1860, 43 of 1860, 23 of 1861, 9 of 1863, 20 of 1867, 7 of 1870, 14 of 1870, 9 of 1871, 32 of 1871 and 7 of 1872. The Act 8 of 1859, which we can term as the “first codified civil procedure”, was repealed and substituted by Act 10 of 1877, which may be termed as “second codified civil procedure”. There were only two amendments in this Act, vide Act 18 of 1878 and 12 of 1879. Within five years of the enactment of the second Code, this was also repealed and superseded by Act 14 of 1882, which can be treated as “third Code of Civil Procedure”. It was also amended

by Acts 15 of 1882, 14 of 1885, 4 of 1886, 10 of 1886, 7 of 1887, 8 of 1887, 6 of 1888, 10 of 1888, 13 of 1889, 8 of 1890, 6 of 1892, 5 of 1894, 7 of 1895 and 13 of 1895. It was then superseded and substituted by the present Code, i.e., Act No. 5 of 1908, which came into force on 1st January, 1909.

880. The learned counsel for the plaintiff (Suit-3), while trying to take this Court through the history of legislation, intended to argue though faintly that the question as to whether the suits in question sought to be barred by res judicata would be governed by the provision pertaining to res judicata as it stood in 1885 when the Suit-1885 was filed and decided and not by the subsequent enactments since the language of the provision pertaining to res judicata has gone under crucial amendments from time to time.

881. In our view, the argument at the threshold is thoroughly fallacious and deserves to be mentioned for rejection only. It is not in dispute that all the four Codes were enacted with the preamble mentioning as an Act to consolidate and to amend the laws relating to procedure of the Courts of Civil Judicature meaning thereby the legislature all through intended to construe exhaustive enactments dealing with the matters pertaining to procedure of Courts in civil matters. To consolidate means to collect the statutory law relating to a particular subject and to bring it down to take in order that it may form a useful code applicable to the circumstances existing at the time when the consolidation is enacted as observed by the Privy Council in **A.G. of Bengal Vs. Prem Lal Mullick (1895) ILR 22 Cal. 788 (PC)**. Same view was expressed by our full Bench also in **Shantha Nand Gir Chela Vs. Basudevanand AIR 1930 Alld. 225**. The purport of such codification means that if the language

of the statute is plain, simple and unambiguous, there may not be any occasion for the Court to have recourse to the earlier law but if it is capable of more than one meaning, it is permissible to refer to the previous state of law so as to construe the provision correctly. A consolidating Act raises the presumption that it does not intend to alter the earlier law in its entirety unless the changes and alteration are such so as to show that the earlier law has been made redundant in its entirety.

882. However, for the purpose of the present case, it may not be necessary either to take an extreme view in the matter for the reason that principle of res judicata, as it stands today, we find has its origin and existence long back besides any boundation of system of jurisprudence whether Hindu law, Muslim law, English law etc. We do not find any substantial change in the principle and the very basis of the concept which if applicable would have to be followed by a Court of law unless it can be shown that the principle of res judicata, as is known, is not at all attracted in a given case. We find that the availability of the principle of res judicata existing in different systems of law has been very painstakingly traced by the Hon'ble Judges of Lahore High Court in a Full Bench decision in **Mussammat Lachhmi Vs. Mussammat Bhulli, 1927 ILR (VIII) 384** and it would be useful to have the benefit of such in depth study by reproducing the same as under :

> "*In the mitakshra (Book II, Chap. I, Section V, verse 5) one of the four kinds of effective answers to a suit is "a plea by former judgment" and in verse 10, Katyayana is quoted as laying down that "one against whom a judgment had formerly been given, if he bring forward the matter again, must be answered by a plea of Purva Nyaya or*

former judgment" (Macnaughten and Colebrooke's translation page 22). The doctrine, however, seems to have been recognized much earlier in Hindu Jurisprudence, judging from the fact that both the Smriti Chandrika (Mysore Edition, pages 97-98) and the Virmitrodaya (Vidya Sagar Edition, page 77) base the defence of Prang Nyaya (=former decision) on the following text of the ancient law-giver Harita, who is believed by some Orientalists to have flourished in the 9th Century B.C. and whose Smriti is now extant only in fragments :-

"The plaintiff should be non-suited if the defendants avers; 'In this very affair, there was litigation between him and myself previously,' and it is found that the plaintiff had lost his case".

There are texts of Parsara (Bengal Asiatic Society Edition, page 56) and of the Mayukha (Kane's Editiona, page 15) to the same effect.

Among Muhammadan law-givers similar effect was given to the plea of "Niza-I-munfasla" or "Amar Mania Taqrir Mukhalif." Under Roman Law, as administered by the Proetors' Courts, a defendant could repel the plaintiff's claim by means of "exceptio rei judicata" or plea of former judgment. The subject received considerable attention at the hands of Roman jurists and as stated in Roby's Roman Private Law (Vol. II, page 338) the general principle recognized was that "one suit and one decision was enough for any single dispute" and that "a matter once brought to trial should not be tried except, of course, by way of appeal".

The spirit of the doctrine is succinctly expressed in

the well known maxim "Nemo debet bis vexari pro eadem causa" (no one shall be twice vexed for the same cause). At times the rule worked harshly on individuals (E.g., when the former decision was obviously erroneous) but its working was justified on the great principle of public policy "Interest rei publicant sit finis litium" (it is for the public good that there be an end of litigation).

In some of these ancient systems, however, the operation of the rule was confined to cases in which the plaintiff put forward his claim to "the same subject matter with regard to which his request had already been determined by a competent Court and had passed into judgment". In other words, it was what is described as the plea of "estoppel by judgment" or "estoppel by record", which was recognized and given effect to. In several European continental countries even now the rule is still subject to these qualifications, e.g., in the Civil Code of France, it is said "The authority of the thing adjudged (chose judge) has place only in regard to that which has constituted the object of a judgment. It is necessary that the thing demanded be the same; that the demand be founded upon the same cause; that it be between the same parties and found by and against them in the same capacity."

In other countries, and notably in England, the doctrine has developed and expanded, and the bar is applied in a subsequent action not only to cases where claim is laid to the same property but also to the same matter (or issue) as was directly and substantially in dispute in the former litigation. In other words, it is the identity of the issue, which has already been "necessarily

tried" between the parties and on which a finding has been given before, and not the identity of the subject matter which attracts the operation of the rule. Put briefly the plea is not limited to "estoppel by judgment" (or record), but is also extended to what is described as "estoppel by verdict". The earliest authoritative exposition of the law on the subject in England is by Chief Justice DeGrey in the Duchess of Kingston Case (1), which has formed the basis of all subsequent judicial pronouncements in England, America and other countries, the jural systems of which are based on or inspired by British Jurisprudence. In that case a number of propositions on the subject were laid down, the first of them being that "the judgment of a Court of concurrent jurisdiction, directly upon the point, is as a plea a bar, or as evidence conclusive, between the same parties upon the same matter, directly in question in another Court."

In British India the rule of res judicata seems to have been first introduced by section 16 of the Bengal Regulation III of 1793, which prohibited the Zilla and City Courts "from entertaining any cause, which form the production of a former decree of the record of the Court, shall appear to have been heard and determined by any judge or any superintendent of a Court having competent jurisdiction". The earliest legislative attempt at codification of the law on the subject was, however, made in 1859, when the first Civil Procedure Code was passed. Section 2 of the Code barred the cognizance by Courts of suits based on the same cause of action, which had been heard and determined before by Courts of competent

jurisdiction. It will be seen that this was only a partial recognition of the English rule in so far as it embodied the principles relating to estoppel by judgment (or record) only and did not extend to estoppel by verdict. In 1877 when the Code was revised, the operation of the rule was extended in section 13 and the bar was no longer confined to the retrial of a dispute relating to the same cause of action but the prohibition equally applied against reagitating an issue, which had been heard and finally decided between the same parties in a former suit by a competent Court. The section has been amended and amplified twice again and has assumed its present form in section 11 of the Code of 1908, the principal amendments which have a bearing on the question before us, being (a) that the expression "former suit" was defined as meaning a suit which has been first decided and not one which was first instituted, and (b) that the competence of a Court is not regulated by the course of appeal of the former suit but by its capacity to try the subsequent suit as an original Court.

But although the Indian Legislature has from 1859 onwards made several attempts to codify the law on the subject and the present section 11 is a largely modified and improved form of the original section 2 of Act VIII of 1859, it must be borne in mind that the section as even now enacted, is not exhaustive of the law on the subject, and the general principles of res judicata apply to matters on which the section is silent and also govern proceedings to which the section does not in terms apply."

883. It is, thus, evident that Res judicata is a principle or doctrine or concept which is well recognized since ancient

times. It is a principle of universal application treated to be a fundamental and basic idea in every developed jural society. The very objective of adjudication of a dispute by an adjudicatory forum, whatever name it is called, is to bring to an end dispute or *lis* between the parties. The seed of justice, thus, aims to have every matter fairly tried once and, thereafter, further litigation should be barred treating to be concluded for all times to come between the parties. So far as the dispute which has already been adjudicated, it is a rule common to all, well defined in a civilized system of jurisprudence that the solemn and deliberate sentence of law upon a disputed fact pronounced, after a proper trial, by its appointed organ should be regarded as final and conclusive determination of the question litigated and should set at rest, forever, the controversy. This rule which treats the final decision of a competent Tribunal as "irrefragable truth" was well known to Hindu and Mohammadan lawyers and jurists since long as the system is recognized in Hindu as well as Muslim laws also.

884. So far as Europe is concerned, it is mainly influenced with the legal system of Roman jurisprudence. This principle is one of the great gains of Roman jurisprudence carried to modern jural system of Europe. In the Anglo saxon jurisprudence, this principle is formerly based on an maxim of Roman jurisprudence *"interest reipublicae ut sit finis litium"* (it concerns the state that there should be an end to law suits) and partly on the maxim *"nemo debut bis vexari pro una at eadem cause* (no man should be vexed twice over for the same cause). The Act 8 of 1859 provided the principle of the res judicata in Section 2 which read as under :

"The civil court shall not take cognizance of any suit

brought on or cause of action which shall have been heard and determined by a court of competent jurisdiction in a former suit between the same parties, or between parties under whom they claim."

885. The principle of res judicata vide Section 2 of C.P.C., 1859 came to be considered before the Privy Council in **Soorjomonee Dayee Vs. Suddanund Mahapatter (1873) 12 BLR 304, 315 (P.C.)**. The Judicial Committee said "We are of the opinion that Section 2 of the Code of 1859 would by no means prevent operation of the general law relating to res judicata founded on the principle *"nemo debet bis vexari pro eadem causa"*.

886. In **Krishna Behary Ray Vs. Bunwari Lal Ray, (1875) 1 Cal. 144 (146),** Privy Council while construing the expression "cause of action" held that it cannot be interpreted in its literal and restricted sense and if a material issue had been tried and determined between the same parties by a competent court, the same cannot be re-agitated again by the parties in a later suit who were also partied in the former suit.

887. When this view was expressed in some other judgment also the legislature introduced the words "matter directly and substantially in issue" in Section 13 in Act No. 10 of 1877 and 14 of 1882. In Act No. 10 of 1877, it was Section 13 of the Code.

888. In **Parthasaradi Ayyangar and others Vs. Chinnakrishna Ayyangar and others Vol. V ILR Madras Series (1882) 304** an interesting question with respect to res judicata and estoppel by verdict and/or estoppel by judgment was considered. An original suit no. 12 of 1850 was instituted by certain persons of Tenkalai sect in the Court of Sadar Amin

against the members of Vadakalai sect. A Vadakalai temple was erected in the village of Mathura Mangalam in the honor of a devotee Embar in which the member of Tenkalai sect were interested in maintaining worship and in defending the privileges of the temple. The other sect, namely, Vadakalai, also erected a Vaishnava temple on a private site in the Sanadi (temple) street in honor of a devotee, Vedhanta Desikar, which was later on thrown open for regular public worship. In 1849 the above mentioned suit was filed praying that the Vadakalais be compelled to remove their idols and be prohibited from celebrating festivals and erecting any temple in the village for the worship of their idols. The Vadakalais, defended the suit contending that the general right of owners of land to erect on their own property, places of public worship and to set up therein such idols as they thought fit. Earlier to that suit, it appears that there was some other suit between the same sects wherein the pundit had delivered an opinion that the public worship of idols of devotees such as the spiritual teachers of the respective sects was not recognized by Hindu law, and that law did not permit persons to assemble together to celebrate to such idols. But where it was customary to do so, such idols might be used in private worship. Relying on the said opinion of the pundit, the Sadar Amin granted the order of injunction prayed for. In the appeal preferred before the Judge, he held that supposing the worship of which the Tenkalais complained was prejudicial to the interests of the institution they supported, the question being one of conscience, no cause of action accrued to the Tenkalais, and that it was competent to the Vadakalais to adopt the worship of what idols they pleased in pagodas erected on their own lands. It reversed the decree in so much it ordered

the removal of the idols and prohibited the Vadakalais from erecting pagodas and celebrating public worship therein. But it found that conduct of procession in honor of Vadakalai idols was an innovation, did not form an essential part of the worship, and might be productive of public disturbance, and, accordingly, passed an order restraining it. Noticing that this part of the order was beyond the relief sought in the plaint, an appeal was preferred before the Sadar Court. The Sadar Court sought for opinion of the pundits of the Court with respect to Hindu law on the subject who opined that it would be contrary to custom to allow a pagoda to be erected by the Vadakalai Vaishnavas even on their own ground if such an erection was against the feelings generally of the people of the village. He referred to a passage in the preamble of the Mitakshara which declared that “no cases prejudicial to the feelings of the inhabitants of a town or village shall be entertained by a King”. The Sadar Court accordingly decreed that the defendants (the Vadakalais) should be prohibited from erecting temple or instituting public worship on the spot of ground objected to by the plaintiffs and which lay within the range of their temple, that is to say, withing the usual range of the processions conducted in connection with the temple worship. In another appeal no. 141 of 1856, Sadar Court declared that the right to pass in procession through the public streets of a town in such a way as the Magistrate might not object to as dangerous to the public safety, was a right inherent in every subject of the state and the Vadakalais' action which continued was in disobedience as was restrained by the earlier decree and injunction prohibiting decree was again passed in 1862. Thereafter, Vadakalais removed their idols and erected a building for the purpose of worship on another site. No

arrangement of celebration of the public worship was made till 1879 except of occasional processions. However, in 1879 again provision was made for continuous conduct of such worship throughout the year. This led to another suit which ultimately reached to the appellate Court. It was held that the decree in earlier suit cannot preclude the Vadakalais from building a temple or conduct public worship at any other spot and plea of estoppel based on the earlier decisions was held to be inapplicable. The Court held that the matter in issue which was raised and decided in the former suit was not a question of fact but a question of law based on the opinion of pundit which was found opposed to the law declared to be the law of India under British administration. The Court held that the law of India under British administration as declared is that the person of whatever sect are at liberty to erect building and conduct public worship on their own land provided they neither invade the rights of property enjoyed by their neighbours nor cause a public nuisance, and that they are also entitled to conduct religious processions through public streets so that they do not interfere with the ordinary use of such streets by the public and subject to such directions as the Magistrate may lawfully give to prevent obstructions of the thoroughfare or breaches of the public peace. The Court held that the principle of res judicata also would not come in way. The Courts are bound to ascertain and apply the law and not to make law. It observed that what was argued was estoppel by verdict and estoppel by judgment. Explaining the “estoppel by verdict”, it was held that it indicates that such estoppels are confined to questions of facts and no authority was cited before the Court to warrant the application of rule to determination of an issue of law. Explaining the

principle of res judicata, the Court observed, *"Although considerations of convenience have established the rule that the final decree of a competent Court is decisive of the rights it declares or refuses notwithstanding it may have proceeded on an erroneous view of the law, and although the same considerations have established the rule that the determination by a competent Court of questions of fact directly and substantially in issue are binding on the parties, these considerations do not suggest the expediency of compelling the Courts to refuse to give effect to what they have ascertained to be the law."* However, the Court also said that all earlier decisions were in respect to a different place and would not bar the subsequent suit which was in respect to another spot.

889. In **Ram Kirpal Vs. Rup Kuari (1883) ILR 6 (Alld.) 269 (P.C.)** it was held that Section 13 of 1877 Act would not apply to execution proceedings but upon general principles of law the decision of a matter once decided in those proceedings was a bar to the same matter being re-agitated at a subsequent stage thereof.

890. Act 5 of 1908 contains the provision of res judicata under Section 11 which substantially is same as it was in Act 14 of 1882, but includes certain explanations clarifying some aspects of the matter considered to be necessary in the light of some judgments of different High Courts. It has undergone some amendments in 1976, but has withstood the test of the time more than a decade. Section 11 of Act 5 of 1908, as it stands today, reads as under :

> ***"11. Res judicata.-*** *No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit*

between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I- The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.- Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI- Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.- The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be

construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in as subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

891. Explanations VII and VIII have been added by Amendment Act of 1976 and admittedly have no application to the dispute in hand.

892. The plea of res judicata is an inhibition against the Court and a finding in favour of a party on the plea of res judicata would oust the jurisdiction of the Court to try the subsequent suit or the suit in which such issue has been raised, which has been heard and finally decided in the former suit (see : **Pandurang Dhondi Chougule Vs. Maruti Hari Jadhav AIR 1966 SC 153**. Since, it restrains the Court to try the subsequent suit or an issue raised subsequently, we have no manner of doubt that for the purpose of present case, it is the provision contained in Section 11 of Act 5 of 1908, which will govern the matter and not the earlier one. The application of principle of res judicata is based on public policy and in the interest of the State as well. However, we would like to clarify here itself that we may not be understood as observing that the principle of res judicata is confined to Section 11 of the Act 5 of 1908. As we have already held, the principle of res judicata was well recognized in the ancient legal systems also and it has

consistently been held as not limited to the specific words of the Code for its application.

893. One of the oldest case which considered the doctrine of res judicata vide Section 11, CPC, 1908 is **Sheoparsan Singh and others Vs. Ramnandan Prasad 43 IA 91(PC)= 20 C.W.N. 738 (P.C.)** wherein their Lordships reminded the dictum in the words of Lord Coke in **Priddle Vs. Napper 6 Coke IA 1777** which said *"Interest reipublicae ut sit finis litium"*, otherwise great oppression might be done under colour and pretence of law. (See also **Commissioner of Central Excise Vs. Shree Baidyanath Ayurved Bhawan Ltd. JT 2009 (6) SC 29**).

894. The statement of law as propounded in **Sheoparsan Singh (supra)** has been approved by the Apex Court in **Iftikhar Ahmed Vs. Syed Meharban Ali 1974 (2) SCC 151**.

895. Then comes **Hook Vs. Administrator General of Bengal 1921 (ILR) 48 (Cal.) 499 (P.C.)** wherein it was said that Section 11 of the Code is not exhaustive of the circumstances in which an issue is res judicata. Even though the Section may not apply, the plea of res judicata still would remain operative apart from the limited provisions of the Code, and would bar a subsequent suit on the same issue unless is shown to be inapplicable by the defendants referring to pleading, parties and cause of action etc. It was reaffirmed by Lord Buckmaster in **T.B. Ramachandra Rao and another Vs. A.N.S. Ramchandra Rao and others, AIR 1922 PC 80** wherein the remarks were "*that the principle which prevents the same case being twice litigated is of general application, and is not limited by the specific words of the Code in this respect."*

896. In **Kalipada De Vs. Dwijapada Das, AIR 1930 PC 22** the Privy Council held *"the question as to what is considered to*

be res judicata is dealt with by Section 11 of CPC 1908. In that section many examples and circumstances in which the rule concerning res judicata applies are given; but it has often been explained by this Board that the terms of Section 11 are not to be regarded as exhaustive".

897. In **Gulam Abbas Vs. State of U.P., AIR 1981 SC 2199** it was held that Section 11 is not exhaustive of the general doctrine of res judicata. Though the rule of res judicata as enacted in Section 11 has some technical aspects the general doctrine is founded on consideration of high public policy to achieve two objectives namely that there must be a finality to litigation and that individuals should not be harassed twice over the same kind of litigation.

898. It is thus clear that principle of res judicata is based on sound policy and not an arbitrary one. Henry Campell Black in his Treatise "for law of judgments" 2nd Edition Vol. I, para 242 has observed that *"Where the court has jurisdiction of the parties and the subject matter in the particular case, its judgment unless reversed or annulled or impeachment by parties or privies, in any collateral action or proceeding whatever the Doctrine of this court, and of all the courts of this country, is formerly established, that if the court in which the proceedings took place had jurisdiction to render the judgment which it did no error in its proceedings which did not affect the jurisdiction will render the proceedings void, nor can such errors be considered when the judgment is brought collaterally into question one. This principle is not merely an arbitrary rule or law but it is a doctrine which is founded upon reason and the soundest principle of public policy."*

899. In **Jenkins Vs. Robertson, (1867) LRIHL 117** Lord

Romily observed *"res judicata by its very words means a matter upon which the court has exercised its judicial mind and has come to the conclusion that one side is right and has pronounced a decision accordingly. In my opinion res judicata signifies that the court has after argument and considerations come to a decision on a contested matter."*

900. In Corpus Juris Vol. 34 it is said that it is a rule of universal law providing every regulated system of jurisprudence and is put upon two grounds embodied in various maxims of common law, the one of public policy and necessity which makes it to the interest of the state that there should be an end of litigation, and, the other, hardship on the individual that he should not be vexed twice for the same cause.

901. The Apex Court in **Smt. Raj Lakshmi Dasi and others Vs. Banamali Sen and others AIR 1953 SC 33** remarked *"When a plea of res judicata is founded on general principles of law, all that is necessary to establish is that the Court that heard and decided the former case was a Court of competent jurisdiction. It does not seem necessary in such cases to further prove that it has jurisdiction to hear the later suit. A plea of res judicata on general principle can be successfully taken in respect of judgments of Courts of exclusive jurisdiction, like revenue Courts, land acquisition Courts, administration Courts, etc. It is obvious that these Courts are not entitled to try a regular suit and they only exercise special jurisdiction conferred on them by the statute.*

902. In **Lal Chand Vs. Radha Krishan (supra)** the Apex Court reiterated *"the principle of res judicata is conceived in the larger public interest which requires that all the litigation must sooner than later come to an end. The principle is also founded*

on equity, justice and good conscious which require that a party which has once succeeded on a issue should not be permitted to be harassed by a multiplicity of proceedings involving the same issue".

903. In **K. Ethirajan (sapra)** which has also been relied by Sri Siddiqui, learned counsel for plaintiff (Suit-4) the Apex Court refering to para 26 of its earlier judgement in **Hope Plantations Ltd. Vs. Taluk Land Board, Peermade, JT 1998 (7) SC 404** held that rule of res judicata prevents the parties to a judicial determination from litigating the same question over again. Where the proceedings have attained finality, parties are bound by the judgement and cannot litigate again on the same cause of action.

904. In **Sulochana Amma (supra)** the scope of Section 11 CPC was considered and it was said that Section 11 does not create any right or interest in the property but merely operates as a bar to try the same issue once over. It aims to prevent multiplicity of the proceedings and accords finality to an issue which directly and substantially has arisen in the former suit between the same parties or their privies, decided and became final so that parties are not vexed twice over; vexatious litigation would be put to an end and the valuable time of the Court is saved. The above judgement also clarify Explanation VIII that the decree of a Court of limited jurisdiction would also operates as res judicata in the subsequent suit though the subsequent suit was not triable by that Court.

905. Recently the Apex Court has reiterated the above view in **Brij Narain Singh Vs. Adya Prasad, JT 2008 (3) SC 1.**

906. The doctrine of res judicata has been extended to public interest litigation also in **State of Karnataka and another Vs.**

All India Manufacturers Organization (supra) and the Court has said:

> *"As a matter of fact, in a public interest litigation, the petitioner is not agitating his individual rights but represents the public at large. Hence the litigation is bona fide, a judgement in previous public interest litigation would be a judgement in rem. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue, which had been raised should have been raised on an earlier occasion by way of public interest litigation."*

907. In **Mathura Prasad Sarjoo Jaiswal and others Vs. Dossibai AIR 1971 SC 2355**, the Court clarified that the doctrine of res judicata is in the domain of procedure and cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to interpretation of the enactment affecting the jurisdiction of the Court finally between them even though no question of fact or mixed question of law and fact and relating to the right in issue between the parties once determined thereby. It also said that a decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties; the "matter in issue" may be an issue of fact, an issue of law or one of mixed law and fact. However, the Apex Court said that the previous decision on a matter in issue alone is res judicata; the reasons for the decision are not res judicata, and said as under :

> *"The previous decision on a matter in issue alone is res judicata; the reasons for the decision are not res judicata."*

908. Another aspect as to when the rule of res judicata would

not be attracted has been dealt with in detail in para 10 of the judgment in **Mathura Prasad Serjoo Jaiswal (supra)** which reads as under :

> *"A mixed question of law and fact determined in the earlier, proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But where the decision is on a question law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in S. 11, Code of Civil Procedure, means the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of the order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land."*

909. In other words, what we discern from the above authorities, is that the res judicata is a fundamental principle in a legal system to set at rest a dispute once settled so as not to trouble the parties again and again on the same matter. It operates on the principle that a question must be once fairly and finally tried by a competent Court and, thereafter, further litigation about it between the same parties must be deemed to have concluded and should not be allowed to be re-agitated. The maxim to be attracted is *"no one shall be vexed twice over the*

same matter". [See **Shree Baidyanath Ayurved Bhawan Ltd. (supra)**].

910. It is not that every matter decided in a former suit can be pleaded as res judicata in a subsequent suit. To attract the plea of res judicata, the conditions precedent, which need to be proved are :

1. The matter directly and substantially in issue in the subsequent suit must be the same matter, which was directly and substantially in issue, either actually or constructively, in the former suit.
2. The former suit must have the same parties or the parties under whom they or any of them claims.
3. The parties must have litigated under the same title in the former suit.
4. The Court, which decided the former suit must have been a Court competent to try the subsequent suit or the suit in which such issue has been subsequently raised.
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the first suit.

911. In **Syed Mohd. Salie Labbai Vs. Mohd. Hanifa AIR 1976 SC 1569**, the Apex Court said that in attracting the plea of res judicata the following conditions must be proved :

1. that the litigating parties must be the same;
2. that the subject-matter of the suit also must be identical;
3. that the matter must be finally decided between the parties; and
4. that the suit must be decided by a court of competent jurisdiction.

912. In certain cases, the applicability of res judicata qua the

aforementioned conditions precedent came to be considered with certain different angles, which may be useful to be referred hereat.

913. One such aspect came to be considered by the Privy Council in **Midnapur Zamindary Co. Ltd. (supra)** which is also a decision cited by Sri Siddiqui. The plaintiff excluded certain question by the statement of his pleader and, therefore, the trial court did not decide the issue. In the first appeal the defendant urged that the Trial Judge was wrong in not deciding this question even though his action was based on the plaintiff's advisor's statement and the defendant asked the first appellate court expressly to decide the question. The court did so. The question was whether it can be argued that the point decided was not raised and, therefore, the court did not consider it to be a necessary issue. On the contrary when the first appellate court decided the issue and the same became final, it would operate as res judicata to the subsequent suit involving the same issue.

914. Another angle of the above aspect came to be considered by the Privy Council in **Prem Narain Vs. Ram Charan and others, AIR 1932 P.C. 51** where though the point was not properly raised in the plaint but both parties without protest chose to join issue upon that point and it was held that the decision on the point would operate as res judicata between the parties.

915. In **Jagdeo Misir Vs. Mahabir Tewari, AIR 1927 All. 803** a Division Bench of this Court held:

> *"We think that those two cases are authorities for the proposition that if a party raised an issue, however improperly, in a case which is accepted by the other side and if the Court itself accepts the issue to be one relevant*

to the enquiry and necessary for the determination of the case, and that issue is argued out by both parties and a judicial decision come to, it is not open subsequently for either of the parties or their successors-in-interest or the person claiming through them, to say that the issue does not constitute res judicata."

916. This has been followed in **Lalji Sahib Vs. Munshi Lal, AIR 1943 All 340** and **Dhan Singh (supra)**.

917. In **Dhan Singh (supra)** this Court also held that res judicata may apply even though the parties against whom it is sought to enforce did not enter appearance and contest question in the previous suit. But in such a case it has to be shown that such a party had notice that the relevant question was in issue and would have to be decided for which the burden lie on the person who pleaded bar of res judicata. For these propositions this Court followed and relied on **Chandu Lal Vs. Khalilur Rahman, AIR 1950 P.C. 17.**

918. The proposition advanced by Sri Siddiqui that even if a judgement in a previous case is erroneous it would be binding on the parties thereto and would operate as res judicata in subsequent case as held in **Gorie Gouri Naidu (supra)** is well settled.

919. In short, we can say that though in order to have the defence of res judicata accepted, it is necessary to show not only that the cause of action was same, but also that the plaintiff had an opportunity of getting the relief in the former proceedings, which he is now seeking. In **Jaswant Singh Vs. Custodian of Evacuee Property 1985 (3) SCC 648** it was pointed out that the test is whether the claim in the subsequent suit or proceeding is in fact founded upon the same cause of action, which was the

foundation of the former suit or the proceeding. The cause of action for a proceeding has no relation, whatsoever, to the defence, which may be set up, nor does it depend upon the character of the relief prayed for by the plaintiff or the applicant. It refers entirely to the grounds set forth in the plaint or the application, as the case may be, as the cause of action or in other words, to the media upon which the plaintiff or the applicant ask the Court to arrive at a conclusion in his favour.

920. Coming to the decision cited by Sri Siddiqui in **Talluri Venkata Seshayya (supra)** we find that there was a case where five temples, subject matter of suit, were built in 19th Century by one Thadikonda Seshayya a native of Vellatur and the grandfather of Kotiswara Rao adoptive father who is said to have earn wealth in Hyderabad and return to his native place. The temples were built for the deities of Siddhi Ganapati Swami, Rajeswara Swami, Bhimeswara Swami, Adi Seshachala Swami and Kameswara Maharani. Sri Thadikonda Seshayya conducted the festivals and other affairs of the deities during his life time. He left a will dated 26.08.1826 shortly before his death directing his widow, Adilakshmamma to make a permanent endowment for the temples to the extent of Rs. 70,000/- out of his self acquired properties. The widow purchased two sets of properties in the villages of Kowtharam and Peddapulivarru for the temples, conducted the affairs of temples out of the land so purchased, and afterwards made a formal gift of the lands to the idols. Another set of properties in the village of Vellatur was endowed to the same temples by the Zamindar of Narasaraopet. Seshayya's two sons, Siddi Ganapati Doss and Nagabhushana Gajanana Doss conducted festivals and other affairs until the death of Ganapati in 1857. The latter's

widow claimed the Dharmakartaship but the Collector decided in favour of Gajanana. In 1859 the Inam Commissioner granted an Inam title deed in respect of the Devadayam Inam situated in the village of Kowtharam. In 1867 Gajanana started borrowing money on the security of Devadayam lands, which culminated in a usufructuary mortgage for Rs. 8000/- dated 15.01.1887 under which the lands of Kowtharam were handed over to the mortgagee. To discharge this mortgage Gajanana and his adopted sons Seshayya granted permanent lease of Kowtharam lands dated 06.12.1888 and on the same date the mortgagee, Gopalkrishnamma executed the counterpart of the lease. Two persons interested in the temples and in the performance of the service and worship thereof who had obtained the leave of the Court under Section 18, Religious Endowments Act, 20 of 1863, on 18.01.1891 filed suit O.S. No. 4 of 1891 in the District Court, Kistna against Gajanana, his adopted son Seshayya and Gopalakrishna claiming that the five suit temples at Vellatur were public temples, therefore, the first two defendants be removed from the office of the Dharmakarta. The main defence taken by the defendants in the said suit was that the temples and lands were private property hence Act, 20 of 1863 did not apply. Gajanana died during the pendency of suit. Vide judgment dated 05.02.1892 the District Judge Kistna dismissed suit holding that the temples were private, lands were a private foundation and Act, 20 of 1863 did not apply. The judgment was confirmed by Madras High Court in appeal vide judgment dated 03.08.1893. One suit was filed by Venkata Seshayya and others on 21.08.1923 as representing the interested public under Order 1 Rule 8 CPC with the requisite permission of the Subordinate Judge of Masaulipatam seeking a declaration that five temples

of the village of Vellatur, Guntur District are public temples and that certain Ina lands situated in Kowthavaram village form the endowment of these temples and, therefore, the plaintiff seeking setting aside of a permanent lease in respect of these lands executed on 06.12.1888 by the then Managers of the temples, the mortgage deed on the security of these lands dated 03.11.1900 and the Court sale effected in execution of the decree obtained on the basis of the said mortgage in O.S. No. 29 of 1911. They further seek restoration of possession of these lands to Kotiswara Rao, defendant no. 1 who is the person hereditary Dharmakartha of the temples. Before the Privy Council it was contended on behalf of the appellants conceding that the appellants must be deemed to be claiming under plaintiffs in 1891 suit within the meaning of Explanation VI, Section 11 CPC as they were both claiming as representing the public interest in the temples of Kowthavaram lands and the issue in the two suits was substantially same but it was submitted that 1891 suit was not a bona fide litigation, there was gross negligence in the conduct of the suit by the plaintiff in 1891 suit, and, therefore, the principle of res judicata would not bar the present suit. Rejecting the submission, it was held that the provision of Section 11 CPC is mandatory and the ordinary litigant who claims under one of the parties to the former suit can only avoid its provisions by taking advantage of Section 44, Evidence Act which defines with precision the grounds of such avoidance as fraud or collusion. The exposition of law stated therein need not be discussed further since it is consistent with what was held subsequently also as has been discussed by us above.

921. During the course of argument, the learned counsel for

the plaintiff (Suit-4) has pleaded and pressed the plea of maintainability of suit on the ground of res judicata and estoppel using both the term it appears to us interchangeably. However, we do not subscribe to the view since it is now well settled that the two are essentially different. It is true that sometimes res judicata has been treated as part of the doctrine of the estoppel, but both have been held to be different in connotation, in application and with reference to the essential indicias thereof.

922. Both these principles are based on public policy and justice. Often they are treated as a branch of law having same traits but both differ in several aspects. Doctrine of res judicata some times is construed as a branch of doctrine of estoppel but as we said earlier both have different connotation. In **Hope Plantations Ltd. (supra)** in para 26 of the judgement the Apex Court said:

> *"It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel through these two doctrines differ in some essential particulars....."*

923. The estoppel is part of the law of evidence and prevents a person from saying one thing at one time and opposite thing at another time while res judicata precludes a man from avowing the same thing in successive litigations. (**Cassomally Vs. Carrimbhoy (1911) 36 Bom. 214**; **Radharani Vs. Binodamoyee AIR 1942 Cal. 92**; **Rajah of Venkatgiri Vs. Provinces of Madras AIR (34) 1947 Madras 5**. We find it useful to refer the distinction elucidated by Hon'ble Mahmood J. in **Sitaram Vs. Amir Begum (1886) ILR 8 Alld. 324** *"Perhaps shortest way to describe difference between the plea of res*

judicata and estoppel is to say that while the former prohibits the Court from entering into an inquiry at all as to a matter already adjudicated upon, the later prohibits a party after the inquiry has already been entered upon from proving any thing which would contradict his own previous declaration or acts to the prejudice of another party who, relying upon those declaration or acts to the prejudice of another party, has altered his position. In other words, res judicata prohibits an inquiry in limine, whilst an estoppel is only a piece of evidence".

924. Res judicata has been held to be a branch or specie of the rule of estoppel called "estoppel by record". In **Guda Vijayalakshmi Vs. Guda Ramchandra Sekhara Sastry, AIR 1981 SC 1143** in para 3 the Apex Court observed:

> *"Res judicata, after all, is a branch or specie of rule of estoppel called estoppel by record and though estoppel is often described as a rule of evidence, whole concept is more correctly viewed as a substantive rule of law."*

925. A judgement operates as estoppel on all points considered and decided therein. It is the decision and not decree that creates bar of res judicata. Res judicata, therefore, is estoppel by judgement or record and not by decree. The judgement operates as estoppel in respect to all the findings which are essential to sustain the judgements. What has taken place, recorded and declared final, cannot be questioned subsequently by anyone which has already an opportunity to adjudicate and this is what we call as estoppel on record. The distinction between the doctrine of res judicata and estoppel would lie with the estoppel results from the acts and conduct of the parties while the res judicata prohibits the Court from entering into an inquiry as to a matter already adjudicated upon.

While in the case of estoppel it prohibits a party after the inquiry has already been entered upon from proving anything which would contradict his own previous declaration or acts to the prejudice of another party who relying upon those declaration or acts has altered his position. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over and again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgement and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are “cause of action estoppel” and “issue estoppel”. It is held that these two terms are of common law origin.

926. The learned counsel for the parties have also addressed this Court as to what does it mean by the words “suit”; “issue”; “directly and substantially in issue” in order to show whether the principle of res judicata would be attracted in the cases in hand or not.

927. To apply the doctrine of res judicata we need to understand the meaning of the word "suit" or "issue", when a matter can be said to be "directly and substantially in issue", can it be said that the parties are same or parties in the earlier suit were the parties under whom the present one are claiming their rights i.e. litigating under the same title.

928. Sri R.L. Verma, learned counsel for the plaintiff in Suit-3 refers to Order 4 Rule 1 and submitted that a suit is instituted by presenting a plaint. He also referred to Order 6 to show that “pleadings” means “plaint” and “written statement” and Order 7 to show what constitute a “plaint”.

929. It is not disputed by the parties that the term “suit” has not been defined in CPC. Section 26 says that every suit shall be instituted by presentation of a plaint or in such other manner as may be prescribed. The term "suit" was considered by the Privy Council in **Hansraj Gupta and others Vs. Dehradun Mussorie Electric Tramway Company Ltd., AIR 1933 PC 63** and it was held that word “suit” ordinarily, apart from some context, must be taken to mean a civil proceeding instituted by presentation of a plaint. To the same effect is the view expressed by the Madras High Court in **Venkata Chandrayya Vs. Venkata Rama Reddy, (1899) 22 Madras 256, Raja Gopa Chettiar Vs. Hindu Religion Endowment Board, Madras, AIR 1934 Madras 103** and by Punjab and Haryana High Court in **Union Territory of Chandigarh Vs. Sardara Singh and others, AIR 1981 (Punjab and Haryana) 354.**

930. However, if a suit is filed by a pauper under Order XXXIII CPC the same would commence from the moment the application to sue in forma pauperis is presented. (see **Matuka Mistry Vs. Kamakhaya Prasad, AIR 1958 (Patna) 264 (FB), Narayana Dutt and another Vs. Smt. Molini Devi, AIR 1964 (Rajasthan) 269, Shripati Quer Vs. Malti Devi, AIR 1967 (Patna) 320**). This illustration is only for the purpose to show "any other manner as may be prescribed", contained in Section 26 CPC.

931. Similarly, the "issue" has also not been defined in CPC. Whartons “Law Lexicon” says that “issue” means "the point in question at the conclusion of the pleading between the contending parties in an action, when one side affirms and the other side denies". Order XIV of the Code of Civil Procedure deals with the settlement of “issues” and determination of suit

on issues of law or on issues agreed upon. Rule 1 deals with the framing of issues as follows:

1. Issues arise when a material proposition of fact or law is affirmed by the one party and deemed by the other.
2. Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.
3. Every material proposition affirmed by one party and denied by the other, shall form the subject of a distinct issue.
4. Issues are of two kinds.
   (a)Issues of fact
   (b)Issues of law

Meaning of "a matter directly and substantially in issue"

932. Then comes as to what constitute "a matter directly and substantially in issue". One of the test recognized is, if the issue was necessary to be decided for adjudicating on the principle issue, and, was decided.

933. A collateral or incidental issue is one i.e. ancillary to a direct and substantive issue; the former is an auxiliary issue and the later the principal issue. The expression collateral or incidental in issue implies that there is another matter which is directly and substantially in issue. (Mulla's C.P.C. 16th Edition, Vol. I, page 179).

934. Difficulty, however, in distinguishing whether a matter was directly in issue or collaterally in issue confronted various Courts in different Countries and certain test were laid down therein. Halsbury's Laws of England (Vol. 16, para 1538, 4th Edn.) says *"difficulty arises in the application of the rule, in*

determining in each case what was the point decided and what was the matter incidentally cognizable, and the opinion of Judges seems to have undergone some fluctuations."

935. In "The Doctrine of Res Judicata" (2nd Edn., 1969, p. 181), "Spencer Bower and Turner", quoted Dixon, J. of the Australian High Court in **Blair Vs. Churran (1939) 62 CLR 464** at page 553; *"The difficulty in the actual application of these conceptions is to distinguish the matters fundamental or cardinal to the prior decision on judgment, or necessarily involved in it as its legal justification or foundation, from matters which, even though actually raised and decided as being in the circumstances of the case the determining considerations, yet are not in point of law the essential foundation of a groundwork of the judgment."*

936. The aforesaid authorities opined in order to understand this essential distinction, one has always to inquire with unrelenting severity- is the determination upon which it is sought to find an estoppel so fundamental to the substantive decision that the latter cannot stand without the former. Nothing less than this will do. It is suggested by Dixon, J. that even where this inquiry is answered satisfactorily, there is still another test to pass: viz. whether the determination is the "immediate foundation" of the decision as opposed to merely "a proposition collateral or subsidiary only, i.e. not more than part of the reasoning supporting the conclusion." It is well settled, say the above authors, "that a mere step in reasoning is insufficient. What is required is no less than the determination of law, or fact or both, fundamental to the substantive decision."

937. Corpus Juris Secundum (Vol. 50, para 725) noticed the above aspects and conceded it is sometimes difficult to determine when particular issue determined is of sufficient

dignity to be covered by the rule of estoppel. It is said that estoppel by judgment does not extend to any matter which was only incidentally cognizable or which came collaterally in question, although it may have arisen in the case and have been judicially passed on.

938. However, this rule did not prevent a judgment from constituting an estoppel with reference to incidental matters necessarily adjudicated in determining ultimate vital point.

939. American Jurispudence (Vol. 46, Judgments, para 422) says; *"Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties."*

940. The words "substantially" means "of importance and value". When a matter is substantially in issue, when it is of importance and value for the decision of main proceeding. When parties go to a trial on a particular issue treating it as material and invites the Court to give a decision thereon, that will be an issue substantially and directly involved and would operate as res judicata. However, a mere expression of opinion on a question not in issue cannot operate as res judicata as held in **Ragho Prasad Gupta Vs. Krishna Poddar AIR 1969 SC 316**.

941. In **Sajjadanashin Sayed Md. B.E. Edr. (D) By LRS. Vs. Musa Dadabhai Ummer and others 2000 (3) SCC 350**, the term "directly and substantially in issue" qua the words "incidental and collateral" came up for consideration. The Edroos family in Gujarat claimed to be descendants of Hazarat Imam Ali, the son-in-law and cousin of Prophet Muhamed. One of the descendants of the said Hazrat came down to India in

1542 A.D. and founded his Gadi at Ahmedabad, Broach and Surat. The members of the Edroos family were Sajjadanashins or Mutavallis of the wakf throughout. The three Rozas at the three places as well as the villages which were granted - not only for the maintenance of these Rozas but also for the benefit of the Waquif's family, - constituted the wakf. The holder was buried in the house and his Dargah is situated in this place. There is also a place for reciting prayers. In an earlier litigation in **Sayed Abdula Edrus Vs. Sayad Zain Sayad Hasan Edrus ILR (1889) 13 Bom. 555**, a Division Bench of the Bombay High Court, traced the history of the wakf and held that the custom of primogeniture did not apply to the office of Sajjadanishin or Mutavalli of this wakf. In a later dispute in **Saiyad Jaffar El Edroos Vs. Saiyad Mahomed El Edroos AIR 1937 Bom. 217** another Division Bench held after construing the royal grants relating to the villages Umrao and Orma that the grants were primarily for the Rozas and Dargas and they clearly constituted "wakf" but that the Sajjadanashin or Mutavalli had, however, a right to the surplus income left over after discharge of the legal obligations regarding the wakf. It was thus held that the Sajjadanishin could provide for the needs of the indigent members of the family and this was a pious obligation which was only a moral obligation and not a legal obligation and hence the indigent members of the Edroos family, as a right, could not claim maintenance out of the surplus income. Thereafter, Regular Suit No. 201 of 1928 was filed by three plaintiffs under Section 92 C.P.C. impleading father of Sayed Mohamed Baquir-El-Edroos in 1928 after obtaining permission on 22.2.1928 from the Collector under Section 92 C.P.C. for filing the suit. The suit was dismissed on 6.10.1931, the first appeal

was dismissed but cross objections were allowed on 21.11.1938 and the second appeal to the High Court was withdrawn. In the aforesaid suit, there were eight points whereof points no. 1 to 7 related to the validity of appointment of the defendant and the nature of the office and the right to the surplus etc. It was held that the appointment of defendant as Sajjadanashin was valid and that the grant of the property was both for the Rozas and for the maintenance, presumably of the Sajjadanashin and his family members. It was also held that the Sajjadanashin had complete power of disposal over the surplus as he was not in the position of an ordinary trustee. It was held that the Sajjadanashin had complete power of disposal over the surplus, hence the plea of plaintiff's complaint about mis-utilization of the income by Sajjadanashin was rejected. Another issue was framed whether the waqf was a private or a public and it was held that it was a private waqf. The District Court held that from 1746 A.D. onwards, the Sajjadanashin were using the revenue of these villages for their own maintenance and that of the members of their family and other dependents. This finding was consistent with the judgment of the Bombay High Court in **Saiyad Jaffar El Edroos (supra)** wherein this was held permissible. The District Court in view of the fact that Sajjadanashin was from the family and not a stranger or outside held it a private waqf. Thereafter another matter came before the Gujrat High Court in relation to Ahmedabad Rozas wherein also a Single Judge of Bombay High Court in **Alimiya Vs. Sayed Mohd. AIR 1968 Guj. 257** rejected a similar plea. This judgment was confirmed by the Division Bench in **Sayed Mohd. Vs. Alimiya (1972) 13 Guj.LR 285**. In the case before the Apex Court in respect to Rozas at all the three places, the

Assistant Commissioner in enquiry no. 142 of 1967 passed an order dated 26.7.1968 accepting the preliminary objection of res judicata but the Joint Charity Commissioner, Gujrat in its order dated 17.12.1973, in appeal, did not accept the said plea which was pressed before him only in respect to the Rozas at Broach and Surat. He set aside the order of Assistant Commissioner and remanded the matter for enquiry. The Assistant Judge in Misc. Civil Application No. 32 of 1974 affirmed the order of Joint Commissioner on 3.9.1976 and it was further affirmed by a Division Bench of Gujrat High Court in First Appeal No. 985 of 1976 on 27.7.1985. Aggrieved by the aforesaid order, the appellant, Sajjadanashin Sayed took the matter to the Apex Court and raised the plea of res judicata in respect to Rozas at Broach and Surat. It is in the light of the above facts, the Apex Court considered the matter. In order to see whether the principle of res judicata is attracted, the Apex Court framed an issue as to what is the meaning of "collaterally and incidentally in issue" as distinguished from "directly and substantially in issue". In para 11, the Apex Court found that the matter collaterally and incidentally in issue are not ordinarily res judicata and this principle has been well accepted but certain exceptions to this principle have also been accepted. The Court also traced out the law on the subject in England, America, Australia and India. Referring to Halsbury's Laws of England (Vol. 16, para 1538, 4th Edn.), the Court observed that the fundamental rule is that a judgment is not conclusive if any matter came collaterally in question or if any matter is incidentally cognizable. The said judgment attained finality since the second appeal filed in the High Court was withdrawn.

942. In the light of the above facts and in this context the

Apex Court in **Sajjadanashin (supra)** in respect to India, affirmed the view of the learned Author Mulla in "C.P.C." as under:

> *"..a matter in respect of which relief is claimed in an earlier suit can be said to be generally a matter "directly and substantially" in issue but it does not mean that if the matter is one in respect of which no relief is sought it is not directly or substantially in issue. It may or may not be. It is possible that it was "directly and substantially" in issue and it may also be possible that it was only collaterally or incidentally in issue, depending upon the facts of the case. The question arises as to what is the test for deciding into which category a case falls? One test is that if the issue was "necessary" to be decided for adjudicating on the principle issue and was decided, it would have to be treated as "directly and substantially" in issue and if it is clear that the judgment was in fact based upon that decision, then it would be res judicata in a later case. One has to examine the plaint, the written statement, the issues and the judgment to find out if the matter was directly and substantially in issue (Ishwer Singh Vs. Sarwan Singh AIR 1965 SC 948 and Syed Mohd. Salie Labbai Vs. Mohd. Hanifa AIR 1976 SC 1569).*

943. It also referred to two judgments of the Privy Council in **Run Bahadur Singh Vs. Lucho Koer ILR (1885) 11 Cal 301** and **Asrar Ahmed Vs. Durgah Committee AIR 1947 PC 1** as well as its earlier decision in **Pragdasji Guru Bhagwandasji Vs. Ishwarlalbhai Narsibhai 1952 SCR 513** and found that inspite of a specific issue and adverse finding in the earlier suit, the finding was not treated as res judicata as it was purely

incidental or auxiliary or collateral to the main issue in each of the three cases and was not necessary for the earlier case nor formed foundation. It also considered **Sulochana Amma (supra)** and a Madras High Court decision in **Vanagiri Sri Selliamman Ayyanar Uthirasomasundar-eswarar Temple Vs. Rajanga Asari Air 1965 Mad. 355** in respect whereto it was pointed out that there was a direct conflict. The Court however found that the said decisions are not contrary to each other but should be understood in the context of the tests referred to above. It held that in **Sulochana Amma (supra)** it is to be assumed that the tests above referred to were satisfied for holding that the finding as to position was substantially rested on title upon which a finding was felt necessary but in the case before the Madras High Court, it must be assumed that the tests were not satisfied. The Apex Court confirmed the observations of the learned author Mulla in "C.P.C. (Supra)" and said that it all depend on the facts of each case and whether the finding as to title was treated as necessary for grant of an injunction in an earlier suit and was also substantive basis for grant of injunction or not.

944. Further, the Court in **Sajjadanashin (supra)** quoted the following from the "Corpus Juris Secundum" (Vol. 50, para 735, p. 229) where a similar aspect in regard to findings on possession and incidental findings on title were dealt with and held, *"Where title to property is the basis of the right of possession, a decision on the question of possession is res judicata on the question of title to the extent that adjudication of title was essential to the judgment; but where the question of the right to possession was the only issue actually or necessary involved, the judgment is not conclusive on the question of*

ownership or title." The Court observed that in the case before it there were certain changes in the statutory law with respect to definition of "public waqf" and in view thereof since now the "private waqf" was also included within the definition of "public waqf" in the Act, due to change in subject it held that the earlier decision would not operate as res judicata.

945. We propose not to deal with this aspect of the matter further at this stage but if necessary would discuss the same with more depth if the occasion needs so.

946. In **Sharadchandra Ganesh Muley Vs. State of Maharashtra and others AIR 1996 SC 61**, Explanation IV Section 11A containing doctrine of 'might and ought' and application of doctrine of constructive res judicata came to be considered. The Court held that where in respect to land acquisition proceedings an earlier writ petition was filed without raising a plea which was available at that time, in the second writ petition such plea could not have been taken as the doctrine of 'might and ought' engrafted in Explanation IV to Section 11 of the C.P.C. would come into play and the incumbent would be precluded from raising the controversy once over. The Court held that the doctrine of constructive res judicata shall put an embargo on his right to raise a plea as barred by limitation under Section 11A.

"Explanation IV"

947. However, the concept of "constructive res judicata" is necessary to be dealt with in view of Explanation-IV Section 11 C.P.C. A Matter, which might and ought to have been made a ground of attack or defence is a, matter which is constructively in issue. The principle underlying Explanation-IV is res judicata not confined to issues which the Courts are actually asked to

decide but cover issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them. (**State of U.P. Vs. Nawab Hussain AIR 1977 SC 1680)**. The proposition of law expounded in the authorities cited by Sri Siddiqui, as referred to above, in para 20 is also unexceptional. However,it would apply only where a plea was available at the time of the suit but not availed of. But there is no question of constructive res judicata where there is no adjudication in the earlier proceedings (**Kewal Singh Vs. Smt. Lajwanti 1980 (1) SCC 290**). The effect of Explanation-IV is where a matter has been constructively in issue, it could not from the very nature of the case be heard and decided but will be deemed to have been heard and decided against the parties omitting to allege it except when an admission by the defendant obviates a decision (**Sri Gopal Vs. Pirthi Singh (1902) ILR 24 Alld. 429 (PC); Government of Province of Bombay Vs. Peston Ji Ardeshir Wadia AIR 1949 PC 143)**.

948. There is an exception to this plea, i.e., where the evidence in support of one ground is such as might be destructive for the other ground, the two grounds need not be set up in the same suit. In **Kanhiya Lal Vs. Ashraf Khan AIR 1924 Alld. 355**, it was observed that a person claiming property on the allegation that it is wakf property and that he is the Manager thereof is not bound to claim the same property in the same suit alternatively in his own rights in the event of its being held that the property was not wakf property. In **Madhavan Vs. Chathu AIR (38) 1951 Madras 285**, a suit to recover possession of properties on a claim that they belong personally to the plaintiff was held not

barred by reason of a decision in a previous suit, in which they were claimed as belonging to a Tarwad of which he was a member. Similarly, where the right claimed in the subsequent suit is different from that in the former suit; it is claimed under a different form that in the former suit; it is claimed under a different title, the subsequent suit would not be barred by res judicata/constructive res judicata.

949. Next is the question about the "same parties" or "between parties under whom they or any of them claim". In order to find a person by res judicata it must be shown that he was in some way party to the earlier suit as the judgment binds only parties and privies. A person claiming under a party is known as privy. The ground of privity is property and not personal relations. If the plaintiff in subsequent suit claims independent right over the suit property the principle of res judicata would not apply. If the predecessor in interest was party to the suit/proceeding involving the same property then the decision binds his successor in interest. From the record it must be evident that the party sought to be bound was in some way a party to the suit. A person merely interested in the litigation cannot be said to be a party to the suit. Such a person is neither to make himself a party nor can be bound by the result of the litigation as held in **Jujjuvarapu Vs. Pappala, AIR 1969 A.P. 76.**

950. Where a person in the subsequent suit claims independent right over the suit property the principle of res judicata would not apply. **(Byathaiah (Kum) and others Vs. Pentaiah (Kum) and others, 2000 (9) SCC 191).**

951. Similarly the party must be litigating under the same title. The test is the **identity of title in two litigations** and not the identity of the actual property involved in two cases as held in

Rajalaxmi Dasi Vs. Banamali Sen (supra); Ram Gobinda Daw Vs. Smt. H. Bhakta Bala Dassi, AIR 1971 SC 664.

952. Same title means same capacity; the test being whether the party litigating is in law the same or a different person. If the same person is a party in different character, the decision in the former suit does not operate as res judicata. Similarly, if the rights claimed are different, the subsequent suit will not be res judicata simply because the property is identical. Title refers not to cause of action but to the interest or capacity of the party suing or being sued.

953. In **Sri Ramjee and others Vs. Bishwanath Pd. Sah and others AIR 1978 Patna 129**, former suit was filed by plaintiff alone and in his own rights while the subsequent suit was filed in the name of the deity and it was held not barred as res judicata.

"Explanation VI"

954. Lastly, but not the least, is the concern with respect to Explanation-VI, i.e., representative suit. It provides that where persons litigate bona fide in respect of a public right or a private right claimed in common for themselves and other persons interested in such right, shall, for the purpose of the Section, be deemed to have claimed under the persons so litigating. The counsels for the plaintiffs (Suit-4) have heavily relied upon this provision. Explanation-VI apparently is not confined to the cases covered by Order 1 Rule 8 C.P.C., but would include any litigation in which, apart from the rule altogether, parties are entitled to represent interested persons other then themselves. It is a kind of exception to the ordinary rule of res judicata which provide for the former litigation between the same parties or their privies. Even persons, who are not parties in the earlier

proceeding, in certain contingencies, may be debarred from bringing a suit subsequently if the conditions contemplated under Explanation-VI Section 11 are satisfied. The conditions to attract Explanation-VI so as to constitute res judicata, which must exist, are :

1. There must be a right claimed by one or more persons in common for themselves and others not expressly named in the suit,
2. The parties not expressly named in the suit must be interested in such right.
3. The litigation must have been conducted bona fide on behalf of all the parties interested.
4. If the suit is one under Order 1 Rule 8, all the conditions of that Section must have been strictly complied with.

955. The essentials of representative suit vis a vis the principle of res judicata with reference to Explanation VI Section 11was considered by Privy Council in **Kumaravelu Chettiar and others Vs. T.P. Ramaswami Ayyar and others, AIR 1933 PC 183.** Prior to the enactment of CPC of 1877 there was no express legislation on the subject of representative suit. In these circumstances, the Courts assumed the task and followed the practice virtually obtained in the Court of Chancery in England. Existence of this practice was demonstrated by referring to a judgment of Madras High Court in **Srikanti Vs. Indupuram (1866) 3 M.H.C.R. 226.** The Court emphasized that convenience, where community of interest existed, required that a few out of a large number of persons should, under proper conditions, be allowed to represent the whole body, so that in the result all might be bound by the

decree, although only some of the persons concerned were parties named in the record. It observed that absence of any statutory provision on the subject, the Courts in India, it would seem, prior to 1877 assumed the task and duty to determine in the particular case whether, without any real injustice to the plaintiffs in the later suit, the decree in the first could properly be regarded as an estoppel against further prosecution by them of the same claim. The first legislation was made vide Section 30 in CPC 1877 which is now found in Order I Rule 8 CPC of 1908. The Privy Council held at page 186:

> *"It is an enabling rule of convenience prescribing the conditions upon which such persons when not made parties to a suit may still be bound by the proceedings therein. For the section to apply the absent persons must be numerous; they must have the same interest in the suit which, so far as it is representative, must be brought or prosecuted with the permission of the Court. On such permission being given it becomes the imperative duty of the Court to direct notice to be given to the absent parties in such of the ways prescribed as the Court in each case may require; while liberty is reserved to any represented person to apply to be made a party to the suit."*

956. The Privy Council also approved a Calcutta High Court decision in **Baiju Lal Vs. Bulak Lal, (1897) 24 Cal 385**, where Ameer Ali, J. explaining the position under Section 30 said:

> *"The effect of S. 30 is that unless such permission is obtained by the person suing or defending the suit, his action has no binding effect on the persons he chooses to represent. If the course prescribed by S. 30 is not followed in the first case, the judgment does not bind those whose*

names are not on the record."

957. In **Waqf Khudawand Taala Banam Masjid Mauza Chaul Shahabudinpur vs. Seth Mohan Lal 1956 ALJ 225** a suit for declaration of the property in dispute as a public mosque was filed. It appears that earlier a suit was filed against some Muslims claiming to be the proprietor and notice under Order 1 Rule 8 C.P.C. was also issued to other residents of that locality. Defence taken by Muslims was that property in dispute was a public mosque. The suit was decreed and the defence was not found proved. Thereafter second suit was filed by Muslim parties of neighbouring village wherein the plea of res judicata was taken. Defending the said objection on behalf of plaintiffs it was contended that in earlier case notice under Order 1 Rule 8 was issued to the residents of Chaul Shahabuddinpur and not of the village to which the plaintiffs belonged which is a neighbouring village. However, the Court upholding the plea of *res judicata* observed that Explanation VI to Section 11 C.P.C. is attracted in the matter and once in respect of a public right the matter has been adjudicated, the decision is binding on all persons interested in that right and they will be deemed to claim under the persons who litigated in the earlier suit in respect of that public right.

958. The question of issue estoppel and constructive res judicata in regard to a judgment in a representative suit came to be considered by the Apex Court in **Shiromani Gurdwara Parbandhak Committee Vs. Mahant Harnam Singh and others, AIR 2003 SC 3349.** The facts, in brief, are necessary to understand the exposition of law laid down therein. Gurdial Singh and Ishwar Singh of Village Jhandawala obtain permission from the Advocate General under Section 92 CPC to

institute a suit against one Harnam Singh for his removal from Mahantship. It was stated in the plaint that there was one Guru Granth Sahib at Village Jhandawala, Tehsil and District Bhatinda which was managed by Mahant Harnam Singh as a Mahatmim and he was in possession of the Dera, and agricultural land belonging to Guru Granth Sahib which was a public religious place and was established by the residents of village; it was a public trust created by the residents of the village for the service of the public to provide food from lunger, to allow the people to fulfill religious beliefs and for worship etc. The two plaintiffs in their capacity as representatives of owners of land situated in the village and the residents thereof claim that they were entitled to file a suit under Section 92 CPC. Harnam Singh, Mahant in his written statement took the defence that there was no such interest in the public as to entitle the aforesaid plaintiffs to institute the suit. The trial court and the High Court recorded a concurrent finding that all Mahants of the institution from Bhai Saida Ram to Mahant Harnam Singh have been Nirmalas. However, the trial court held that such Nirmala Sadhus are not Sikhs and that the institution was not a Sikh institution. High Court disagreed with this conclusion and held that Sadhus Nirmalas are a sect of the Sikhs and consequently the Sikhs had interest in the institution as it was a Sikh Gurdwara and upheld the plaintiffs claim to file a representative suit under Section 92 CPC. In appeal the Apex Court, however, held (i) Nirmala Sadhus are not Sikhs; (ii) the mere fact that at some stage there was a Guru Granth Sahib in the Dera in dispute cannot lead to any conclusion that the institution was meant for or belonged to the followers of the Sikh religion. The Dera was maintained for entirely a distinct sect known as Nirmals Sadhus

who cannot be regarded as Sikhs; (iii) the institution was held to be not belonging to the followers of the Sikh religion; (iv) the plaintiffs in their mere capacity of followers of Sikh religion could not be held to have such interest as to entitle them to institute a suit under Section 92 CPC. This judgement dated 24.02.1967 of the Apex Court is reported as **Mahant Harnam Singh Vs. Gurdial Singh and another, AIR 1967 SC 1415.** In the meantime it appears that under Section 7(1) of Sikh Gurdwaras Act, 1925, 60 persons claiming to be worshippers made a petition for declaring the institution in question, i.e., Guru Granth Sahib situated in Village Jhandawala, District Bhatinda to be a Sikh Gurdwara. The Punjab Government by notification dated 23.01.1961 made such a declaration under Section 7(3) of the aforesaid Act. It may be pointed out that these 60 persons also included the two plaintiffs of earlier litigation, i.e., Gurdial Singh and Ishwar Singh. Mahant Harnam Singh with others filed counter petition under Section 8 of Sikh Gurdwaras Act, 1925 stating that the institution was not a Sikh Gurdwara but was a Dera Bhai Saida Ram. A similar petition under Section 8 was also moved by 58 persons of the Dera making a similar claim. Both these petitions were forwarded by the State Government to the Tribunal for disposal. The Tribunal formulated the following two questions: (1) what is the effect of the judgment of the Apex Court in **Mahant Harnam Singh (supra);** and (2) whether the institution in dispute was a Sikh Gurdwara. The Tribunal decided issue no. 1 as a preliminary issue vide order dated 08.03.1977 and held that the decision in **Mahant Harnam Singh (supra)** would not bar the jurisdiction of the Tribunal to decide claim petition under Section 7 of the Act. The order of the Tribunal attained finality since challenge

before the High Court and Apex Court was unsuccessful. Thereafter, issue no. 2 was taken up and the Tribunal held that the institution was a Sikh Gurdwara, originally established by Sikhs and the object of worship was Guru Granth Sahib because the majority of villagers were Sikhs and Nirmalas are Sikhs. This order of the Tribunal in respect to issue no. 2 was challenged before the High Court. It held that the Tribunal has lost sight of the decision in **Mahant Harnam Singh (supra).** It is this order of the High Court which was taken in appeal before the Apex Court, which held that once in a suit instituted under Section 92 CPC a categorical finding was recorded that (i) Nirmala Sadhus are not Sikhs; (ii) the Dera was maintained for entirely a distinct sect known as Nirmals Sadhus who cannot be regarded as Sikhs; (iii) the mere fact that at some stage there was a Guru Granth Sahib in the Dera cannot lead to any conclusion that the institution was meant for or belonged to the followers of Sikh religion, these findings were rendered in suit filed under Section 92 CPC, therefore, cannot be reagitated and any challenge thereto is precluded on the principle of issue estoppel. The nature of suit under Section 92 CPC was explained by the Apex Court in para 19 of the judgement referring to its earlier decision in **R. Venugopala Naidu and others Vs. Venkatarayulu Naidu Charities and others, AIR 1990 SC 444** holding that a suit under Section 92 CPC is a suit of special nature for the protection of public rights in the public trust and charities. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for vindication of public rights. The beneficiaries of the trust, which may consist of public at large, may choose two or more persons amongst themselves, for the purpose of filing a suit under

Section 92 CPC and the suit-title in that event would show only their names as plaintiffs. In the circumstances, it cannot be said that the parties to the suit are only those persons whose names are mentioned in the suit-title. The named plaintiffs being the representatives of public at large, which is interested in the trust, of such interested persons, would be considered in the eyes of law to be parties to the suit. A suit under Section 92 CPC is thus a representative suit and as such binds not only the parties named in the suit-title but all those who share common interest and are interested in the trust. It is for that reason that Explanation 6 to Section 11 CPC constructively bars by res judicata the entire body of interested persons from reagitating the matter directly and substantially in issue in an earlier suit under Section 92 CPC.

959. It is well settled law that explanation to a section is not a substantive provision by itself. It is entitled to explain the meaning of the words contained in the Section or to clarify certain ambiguities or clear them up. It becomes a part and parcel of the enactment. Its meaning must depend upon its terms. Sometimes, it is for exclusion of some thing and sometimes exclude something from the ambit of the main provision or condition of some words existing therein. Therefore, an explanation should be read harmoniously so as to clear any ambiguity in the main section. A clash of interest in the parties would oust the applicability of Explanation-VI.

960. In **Commissioner of Endowments and others Vs. Vittal Rao and others (2005) 4 SCC 120**, it was held that even though an issue was not formerly framed but if it was material and essential for the decision of the case in the earlier proceeding and the issue has been decided, it shall operate as res judicata in

the subsequent case.

961. In **Vithal Yeshwant Jathar Vs. Shikandarkhan Makhtumkhan Sardesai AIR 1963 SC 385**, it was held :

> *"It is well settled that if the final decision in any matter at issue between the parties is based by a court on its decisions on more than one point- each of which by itself would be sufficient for the ultimate decision- the decision on each of these points operates as res judicata between the parties."*

962. These are the few general principles, which we have considered and elaborated to find answer to the issues relating to res judicata and estoppal raised by learned counsels for the parties.

963. The submission of the counsel for plaintiffs in leading suit i.e. of Sri Jilani and also Sri Siddiqui are that the Suit 1885 was filed by "Mahant Raghubar Das" who was at that time "Mahant" of the "Math Nirmohi Akhara". It is the admitted case of Nirmohi Akhara, plaintiff (Suit-3), that they are in possession of the entire property in dispute including the Chabutara, (measuring 17x21 ft.). Sri Raghubar Das, therefore, when sought permission to construct a temple on the said Chabutara was seeking a relief for the benefit of the Math, Nirmohi Akhara which is claimed by them now to be the property of the Math. Therefore, Raghubar Das in his capacity as Mahant was representative of Nirmohi Akhara and having failed to establish his claim on Chabutara by failing to prove his ownership, the said decision binds Nirmohi Akhara also and they cannot claim any right beyond that. It is further said that in the plaint i.e. the Map appended in the plaint of Suit 1885 the disputed construction in the inner courtyard was shown and marked as

Masjid. It was open to the plaintiff of Suit 1885 to show his ownership on the entire premises which was actually disputed by Sri Mohd. Asghar, defendant no. 2 in Suit 1885 but it chose not to press the said point and, therefore, Nirmohi Akhara is now debarred from raising the same point again over which their Mahant has already failed. It is further contended that the prayer for construction of temple was for the larger benefit of the public at large who used to visit and worship Janam Asthan at Chabutara but having failed to show and prove its proprietorship or any right to construct temple on the disputed site, the same issue cannot be raised again.

964. What we have already noticed, it has not been disputed by Nirmohi Akhara that in 1885 Raghubar Das was Mahant of Nirmohi Akhara. Let us examine the law relating to the rights of Mahant of suing and being sued. The Math i.e. Nirmohi Akhara, as we have said, is a juridical person. The ownership of a property would rest in the Math. However, this juridical entity acquires whole and indicates its legal rights through Mahant of superior as a human agent. The Mahant is the spiritual head of Math as well as administrator of its temporal affairs. He represents the Math in its dealings with the external world. Of necessity the Mahant has the power to do everything that is required in the interest or for the benefit of the endowment i.e. Math. It means that he is the proper person to institute or defend suit on behalf of Math. In **Babaji Rao Vs. Laxman Das (supra)** it was said that when the property is vested in the Math then litigation in respect of it has ordinarily to be conducted by and in the name of Manager not because the property vest in the manager but because it is the established practice that suit would be brought in that form. There must be an exception where it

can be said that uses or customs or express directions of the founders provide vesting of right to possession of Math property elsewhere. In such cases where the suit is filed by a Mahant there are two distinct classes of suit, (1) where he seeks to influence his private and personal rights and (2) where he seeks to vindicate the rights of the endowment i.e. Math. These two classes have been further illustrated in **Gnanasambanda Pandara Vs. Velu Pandaram (1899) LR 27 IA 69** and **Dattagiri Vs. Dattatrya (1904) ILR 27 Bom 236**. The right of the Math cannot ordinarily be prejudiced by the result of a suit of a former class, i.e., to say the one in which the private and personal rights of the Manager (Mahant) alone are in question. Therefore, in such status it would be an important question to be seen whether litigation was a right of the Math or that of Mahant and when it can be said that a suit has been filed by Mahant for the benefit of Math. We can take the help of an earlier precedent of this Court in **Biram Prakash Vs. Narendra Das AIR 1961 All. 266** where the suit was instituted by a person claiming to be the Mahant of a Math and sought to recover possession of the property belong to that Math. The Court held that the suit was not to establish the personal rights of the plaintiff and it was binding on the Math.

965. From a perusal of the plaint of suit 1885, the first thing which is gravely attracted is the description of the plaintiff as following :

"Raghubar Das, Mahant Janamsthan, Ayodhya"

966. Besides, in the entire plaint, the plaintiff has not mentioned even a word about the endowment or Math, i.e., Nirmohi Akhara. From a bare perusal of the plaint, it cannot be discerned at all that the plaintiff thereof has anything to do with

Nirmohi Akhara or that the said plaint has any connection with Nirmohi Akhara. What is evident and appears to be logical to us is that Mahant Raghubar Das sought to treat Janamsthan Ayodhya as an independent endowment and claiming himself to be the Mahant thereof filed the aforesaid suit. The aforesaid suit was not filed in the representative capacity inasmuch though Mahant Raghubar Das gave justification for construction of temple that would be useful for the visitors and worshipers in general but the construction of temple was for his benefit and not for the benefit of endowment of which he claims to be the Mahant, i.e., Janamsthan, Ayodhya. It has not been brought on record by any material that Mahant Raghubar Das was allowed to contest the aforesaid suit of 1885 representing the entire Hindu community. Admittedly, the plaintiff (Suit-1), thus, was neither party in the said suit of 1885 nor it can be said that he was represented by Mahant Raghubar Das nor that the plaintiff in Suit-1 is claiming any interest deriving title from the earlier plaintiff of Suit-1885. So far as the Nirmohi Akhara is concerned though Mahant Raghubar Das was a Mahant of the Math at the relevant time but there is nothing apparent from the plaint or other material to suggest that he filed the aforesaid suit on behalf of Math Nirmohi Akhara or for its benefit. Moreover the plea of res judicata has not been raised to bar Suit-3. So far as Suit-5 is concerned, Ram Janamsthan, which is one of the plaintiffs, is not an endowment in suit 1885. It is claiming itself to be the deity, a juridical personality in its own rights. So far as Suit-4 is concerned, the plea of res judicata, a plea of defence clearly inapplicable to bar that suit.

967. From the pleadings of Suit 1885, it is also difficult to hold that Ramjanamsthan was itself the plaintiff represented by

Mahant Raghubar Das and the said suit was filed for the benefit of said deity. In fact, the words "Janamsthan" in the title of the Suit 1885 has been mentioned as referring to a pious place and like an address but not treating as a deity or a juridical person of its own. Whether Mahant Raghubar Das filed the aforesaid suit on behalf of or for the benefit of Nirmohi Akhara does not appear from the pleadings of the said Suit. It would be entering in to realm of conjectures, if we presume to hold that the prayer for construction of temple at Chabutara ultimately would have benefited Nirmohi Akhara and, therefore, it must be deemed that the said suit was filed by Mahant Raghubar Das for the benefit of Nirmohi Akhara. When he claims himself to be Mahant of Janamsthan in filing the said suit without any reference to Nirmohi Akhara whether he intended to claim his own ownership or his own rights only or whether it was on behalf of Nirmohi Akhara is not to be guessed. In the absence of any indication or express words in the pleadings, it must be held that whatever he claimed in Suit-1885 was confined to himself and not to Nirmohi Akhara. Apparently, it is therefore difficult to hold that the parties in the suits in question are same as that of Suit 1885 or that the plaintiff of Suit 1885 was the person under whom the plaintiffs in Suits- 1, 3 and 5 are claiming their rights and, therefore, one of the essential conditions to attract res judicata does not exist.

968. After having said so we proceed further to find out as to whether the issue in the subsequent suit is the same which was directly and substantially an issue either actually or constructively in the former suit.

969. What has been pleaded in para 6(D) and 6(E) of the plaint (Suit-4) is that the two questions namely the existence of

Babri Masjid and the right of Hindus to construct a temple on land adjoining the Masjid were the matter directly and substantially in issue in Suit 1885 and therefore, in respect to the said issues, the judgment in Suit 1885 shall operate *res judicata*.

970. Sri Jilani and Sri Siddiqui, learned counsels for Muslim parties vehemently argued that it is not open to the Hindu parties to plead that there is no mosque at the disputed site or there existed a temple throughout. The pleadings and the facts in detail of suit 1885 have already been narrated and it does not appear therefrom that there was any issue with respect to the existence of mosque at the disputed site or that of the right of Hindus to construct a temple on land adjoining the Masjid. Existence of *Chabutara* in the outer courtyard of the disputed site was not disputed by Muslim parties either in Suit 1885 or in the present set of suits.

971. Mahant Raghubar Das, as an individual, was interested in making some construction over Chabutara which was already having a small temple. In order to provide better facilities to Hindu worshipers he wanted to make further construction on the said *Chabutara* so as to make it a bigger temple. Whether the building inside the courtyard was a mosque; whether it was validly constructed or whether there was any valid wakf etc. were not the questions involved in the said matter at any stage. From the plaint of Suit 1885 it is evident that Mahant Raghuvar Das had no concern with the area inside the courtyard and his concentration was only to raise some construction on *Chabutara* measuring 21 ft. x 17 ft. situated in the outer courtyard in the site plan. He mentioned the building of the inner courtyard as mosque but there was no issue on this aspect at all. The question therefore that it was a question directly and substantially in issue

that the building in dispute was a mosque would amount to stretching and reading too much in the suit of 1885 which actually do not exist. The submission, in our view, is thoroughly misconceived.

972. So far as the second aspect is concerned that the right to construct a temple on the land adjoining the mosque was denied, this submission has been made in much wider terms and it travels beyond what was actually the pleadings, issues and the decisions in Suit 1885. The ultimate Court declined to decree the suit of Mahant Raghubar Das in Suit 1885 on the ground of lack of cause of action, law and order situation considering the topography of the area at that time but no issue whatsoever was actually decided by the Court of second appeal in which the judgments of the Courts below ultimately merged.

973. In our view the plaintiffs (Suit 4) have misconstrued the purport of the words "matters directly and substantially in issue" as used in Explanation IV Section 11 of C.P.C.

974. Even otherwise, we fail to understand as to how this pleading in plaint could have been taken by the plaintiff in Suit-4 since, in our view, this could have been, if permissible, to be taken as a plea in defence when such issues are raised by some parties. In any case, we are clearly of the view that the judgments in Suit 1885 by no means can be said to operate as *res judicata* in respect to the matters as are pleaded in para 6(D) and (E) of the plaint in Suit-4.

975. As we have referred to the pleadings of Suit-1885, we find that the plaintiff claim was right to make construction over Chabutara being its owner as well as in possession. Ownership with respect to Chabutara was disputed by defendant no. 2 (Suit 1885). It is for this reason a specific question i.e. Issue No. 6

was framed as to who own and possess the said Chabutara. The trial court held that since the plaintiff was in possession of the said Chabutara since long, therefore, he can be said to be owner and thus decided Issue No. 6 in his favour. However, it decline to grant any relief to the plaintiff for a different reason namely that ti would not be in the interest of the public at large and to maintain law and order and peace between two communities to make some construction at a place in the vicinity whereof a mosque existed. The first appellate court did not decide Issue No. 6 though it directed to struck off the observations and findings with respect to the ownership of the plaintiff qua Issue No. 6 (Suit-1885) but by itself did not record any finding as to whether the plaintiff was owner of the said Chabutara or not and this question left open by the first appellate court. It however dismissed the suit on the ground that it is not in public interest to allow such construction at a place where in the vicinity mosque existed. In the second appeal the Judicial Commissioner while confirming the lower courts judgments of dismissal of suit also observed that the plaintiff failed to prove his ownership over Chabutara. However, it did not decide the issue as to who own and possess the said Chabutara. The observation that the one party fail to place any evidence in support of an issue like the issue of ownership in the present case would not mean that the ownership of the other party had been accepted by the Court. It is thus clear that though in Suit-1885 the plaintiff sought relief on the ground of his ownership but could not succeed, besides other reasons, also for failure in placing any evidence to show his ownership but simultaneously it is clear that the courts did not decide at all as to who own the said Chabutara and no finding in this regard has been recorded by the Courts. Rather

Judicial Commissioner's judgment also shows that he has given his additional reason for dismissing the suit that there being no injuria hence the very cause of action to the plaintiff did not exist. The issue of ownership of the inner courtyard premises or the entire outer courtyard premises was not at all involved in the aforesaid suit. Hence it cannot be said that the issues engaged in the present suits were directly and substantially involved in the earlier suit of 1885. The another test to attract the doctrine of res judicata, therefore, also fails as lacking in the present cases.

976. There is another angle to this aspect. It was clarified in **P.M.A. Metropolitan (supra)** that when a decision is taken in appeal the rule is that it is the appellate decision and not the decision of the trial court that operates as res judicata. Consequently, where a suit is decided both on merits and on technical grounds by the trial court but the appellate court maintains it on technical ground like beyond limitation or suit being not properly constituted then the decision rendered on merits by the trial court seizes to have finality. The Apex Court refer to and relied on the Privy Council's decision in **Abdullah Ashgar Ali Khan Vs. Ganesh Dass, AIR 1917 PC 201** where construing the expression "heard and finally decided" in Section 10 of the British Baluchistan Regulations 9 of 1886 the Privy Council held where suit was dismissed by two courts on merits but the decree was maintained in second appeal because the suit was not properly constituted then the finality on merits stood destroyed. The Apex court clarified this position in para 47 of the judgement as under:

> *"47. The rationale of these decisions is founded on the principle that if the suit was disposed of in appeal not on merits but for want of jurisdiction or for being barred by*

time or for being defectively constituted then the finality of the findings recorded by the Trial Court on merits stands destroyed as the suit having been found to be bad for technical reasons it becomes operative from the date the decision was given by the trial court thus rendering any adjudication on merits impliedly unnecessary. On the same rationale, once the Royal Court of Appeal allowed the Review Petition and dismissed the appeal as the ex-communication of Dionysius was contrary to principles of natural justice and he had not become heretic then the finding on authenticity of the canon etc. rendered in the original order was rendered unnecessary. Therefore, the finding recorded on the authenticity of the canon and power of the Patriarch etc. recorded in the earlier order could not operate as res judicate in subsequent proceedings."

977. The above aspect was also considered by the Apex Court from another angle in para 48 of the judgement in **P.M.A. Metropolitan (supra)** as under:

"48. Last but not the least reason to hold that the finding in the Vattipanam Suit recorded by the High Court in its original judgment on canon etc. could not operate as res judicata is where a decree is one of dismissal in favour of the defendants, but there is an adverse finding against him, a plea of res judicata cannot be founded upon that decision because the defendant having succeeded on the other plea had no occasion to go further in appeal against the adverse finding recorded against him [see Midnapur Zamindari Company Ltd. vs. Naresh Narayan Roy, AIR 1922 PC 241]. Mr. Parasaran, the learned senior counsel

for the appellant, urged that this is not an absolute rule as there is mutuality in res judicata and even the succeeding party is bound by the question decided against him. Reliance was placed on Mt. Munni Bibi and Anr. vs. Tirloki Nath and Ors., AIR 1931 PC 114, V.P.R.V.Chockelingam Chetty vs. Seethai Ache and Ors., AIR 1927 PC 252, Sham Nath Madan vs. Mohammad Abdullah, AIR 1967 J&K 85 and Arjun Singh vs. Tara Das Ghosh, AIR 1974 Patna 1 (FB). The two Privy Council decisions do not appear to be of any assistance as the first one, Mt. Munni Bibi (supra), is the leading decision on the principle of res judicata amongst co-defendants. True the Patriarch and Catholico were co-defendants and there was lis too but in view of the finding on natural justice and apostacy the finding on other issues was rendered unnecessary. The rule of res judicata amongst co-defendants is also governed by those rules which apply to normal rule of res judicata. The decision in Chockalingam Chetty (supra) is an authority for the principle that where an appeal is filed without impleading a defendant through whom other defendants derived title then the decision in his favour operates as res judicata between plaintiff and other defendants as well. Similarly, in the decision of the Patna High Court in Arjun Singh (supra) the primary question was whether a party against whom a finding is recorded has got a right of appeal even though the ultimate decision was in his favour and it was held that there was no bar, but what was necessary was that the finding so recorded should operate as res judicata. On facts it was found that the Appellate Court while maintaining the order of dismissal of the suit

on preliminary issue recorded findings on other issues which were against the plaintiff, yet the plaintiff was not entitled to file an appeal as the findings on merits which were adverse to him could not operate as res judicata. In Sham Nath's case (supra) the learned Single Judge rejected the plea of res judicata raised on behalf of the plaintiff, but while considering the alternative argument, observed that an adverse finding recorded against a defendant in a suit dismissed could not operate as res judicata unless the adverse finding formed a fundamental part of the decree itself. None of the decisions, therefore, are of any help to the appellant."

978. Similarly, as we have already said, the issue which was involved in 1885 Suit, having not been decided by the courts, all the ingredient which are condition precedent to attract to plea of res judicata, therefore are wanted in the cases in hand.

979. It was further contended that the observations of the courts below that in the map appended to the plaint the building in the inner courtyard was shown as mosque, the statement of defendant no. 2 that the mosque was constructed by Babur and the similar observations made by the appellate courts having not been disputed or challenged by the plaintiff in the said case, the findings recorded in the decision are final and binding on the parties before us. We are afraid that neither the same can be said to be a finding recorded by the courts nor for the said purpose the judgment of Suit-1885 constitute evidence by virtue of Section 40 to 43 of the Evidence Act which read as under:

*"**Section 40. Previous judgments relevant to bar a second suit or trial.--**The existence of any judgment, order or decree which by law prevents any court from taking*

cognisance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognisance of such suit or to hold such trial."

*"**Section 41. Relevancy of certain judgments in probate, etc, jurisdiction.--**A final judgment, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title or any such person to any such thing, is relevant.*

Such judgment, order or decree is conclusive proof;

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property."

*"**Section 42. Relevancy and effect of judgments, orders***

or decrees, other than those mentioned in s. 41.-- *Judgments, orders or decrees other than those mentioned in s. 41, are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state."*

*"**Section 43. Judgments, etc, other than those mentioned in ss 40-42, when relevant—**Judgments, orders or decrees, other than those mentioned in ss 40, 41, and 42, are irrelevant unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act."*

980. Evidently Sections 40, 41 and 42 are not attracted in this case and that being so the judgment is irrelevant and cannot be an evidence in respect to the facts in issue in these cases. We are not shown any other provision of the Evidence Act, 1872 whereunder the judgments of Suit-1885 can be said to be relevant except Section 13 which reads as under:

*"**Section 13. Facts relevant when right or custom is in question.--**Where the question is as to existence of any right or custom, the following facts are relevant:*

(a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence;

(b) particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted or departed from."

981. Learned counsels for the Muslim parties contended that it was asserted in Suit-1885 that a mosque was constructed by

Emperor Babur in the inner courtyard of the disputed site and also he created a waqf resulting in the vesting of land in the Almighty. The plaintiff was not granted any permission etc. by the Emperor or his successor and, therefore, he cannot be the owner of the land over which the Chabutara is existed. They also contended that the fact of construction of mosque by Babur was noticed by the first appellate court in its judgment and he found that after 358 years it is too late in the day to reverse the process and the parties, therefore, should maintain status quo. These facts relating to the rights and custom are relevant and for the said purpose the judgments of 1885 Suit can be seen as a valid piece of evidence. It is said that this aspect of the matter in the judgment relates to a matter of public nature. We however find it difficult to subscribe to the said submission. It is though true that the judgments wherein do not operate as res judicata can be admitted in evidence to show the existence of a judgment in favour of a party. It may also be admitted as proof of the facts of litigation, its results and effect upon the parties which makes a certain course of conduct probable or improbable on the part of the one of the parties. (See **Shiv Charan Vs. State of U.P., AIR 1965 (All.) 511**)

982. It is also true that a judgment in another suit which is not inter partes may be evidence under this Section for certain purposes, i.e., to prove the fact of the judgment; to show who the parties to the suit were; to show what was the subject matter of the suit; to show what was decided or declared by the judgment; to show what documents had been filed by the parties in the proceedings; to establish the transaction referred to in the judgment; to show the conduct of the parties, or particular instances of the other side or a right or assertion or title. (See

Harihar Prasad Singh Vs. Deo Narain, AIR 1956 SC 305)

983. However, the reasons upon which a judgment is founded, cannot be regarded as, nor can any finding of fact there come to other than the transaction itself, relevant in another case. (See **Gobinda Narain Singh Vs. Sham Lal, AIR 1931 P.C. 98=LR 58 IA 125)**

984. Similarly, recitals in a judgment are no evidence whatever to prove the exact admissions made by a party or witness. (See **Indra Singh Vs. Income Tax Commissioner, AIR 1943 Pat. 169** and **Abdulla Vs. Kunbammad, AIR 1960 Ker. 123)**

985. This Court in **Hira Lal Vs. Hari Narain, AIR 1964 All 302** held that a right in dispute cannot be proved on the basis of the finding in respect of that right in a previous suit not inter partes. A judgment, recording a finding, recognizing certain right cannot be used as evidence to prove the right in another suit not between the same parties.

986. Dealing with the issue of res judicata as to when, how and in what manner it would operate, the Apex Court in **P.M.A. Metropolitan (supra)** observed that the pleadings of the parties give rise to various issues whereupon the questions framed and answered, if any, by the court, and, in these circumstances the crucial issue arises whether the direction issued by the Court and not the judgement, i.e., any finding recorded would operate as res judicata. The Court referred to and followed its Constitution Bench decision in **Mysore State Electricity Board vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Ors., AIR 1963 SC 1128 (**para 12) where it was observed:

> *"It is well settled that in order to decide whether a decision in an earlier litigation operates as res judicata,*

the court must look at the nature of the litigation, what were the issues raised therein and what was actually decided in it.....it is indeed true that what becomes res judicata is the "matter" which is actually decided and not the reason which leads the court to decide the 'matter'".

987. The judgement in **P.M.A. Metropolitan (supra)** which followed the above Constitution Bench decision also is a three judges decision and it virtually set at rest the question as to what would constitute res judicata and this is what is reiterated in para 55 of the judgement:

> *"These observations are well settled and reiterate established principle laid down by the Courts for the same, sound and general purpose for which the rule of res judicata has been accepted, acted, adhered and applied, dictated by wisdom of giving finality even at the cost of absolute justice."*
>
> *"Such is the principle of finality. True that the questions must have been adjudicated stricto sensu as observed by this Court.. . . ."*

988. If an issue has been decided by the Court or a dispute has actually been decided by the Court, it should not be allowed to be re-adjudicated as that would be contrary to the principle of finality but no more and no less. If the dispute has actually not been decided on the issues framed or that the matter has been decided by the appellate court on some technical reason, in that case as already observed since it is the final judgement of appellate courts that would hold the field, it cannot be said that since the trial court has decided the issue, it must operate as res judicata. We have no hesitation in applying the principle of finality in a case where the issues raised have actually been

decided even if wrongly but where the judgement of the ultimate court shows that a particular issue has not been decided or left open or nothing is said about that, we find it difficult to hold that even in such a case the parties can be non suited in a subsequent matter on the ground of an earlier decision where the issue which has arisen in the subsequent suit has not been decided actually. The principle of finality has been noticed in detail in an English case, i.e., **Ampthill Peerage Case, (1976) 2 All ER 411** where at pages 423 and 424 it was held:

> *"Our forensic system, with its machinery of cross-examination of witnesses and forced disclosure of documents, is characterised by a ruthless investigation of truth. Nevertheless, the law recognises that the process cannot go on indefinitely. There is a fundamental principle of English law (going back to Coke's Commentary on Littleton) generally expressed by a Latin maxim which can be translated: 'It is in the interest of society that there should be some end to litigation'. This fundamental principle finds expression in many forms. Parliament has passed Acts (the latest only last year) limiting the same within which actions at law must be brought. Truth may be thus shut out, but society considers that truth may be bought at too high a price, that truth bought at such expense is the negation of justice. The great American Judge, Story, J. delivering the judgment of the Supreme Court of the United States in Ball v. Morrison (1828 (1) Peters 351) called the first of these Acts of limitation 'a statute of repose'; and in England Best CJ called it 'an act of peace' (A'Court v. Cross). The courts of equity, originally set up to make good deficiencies in the common*

law, worked out for themselves a parallel doctrine. It went by the technical name of laches. Courts of equity would only give relief to those who pursued their remedies with promptitude. Then, people who have long enjoyed possession, even if they cannot demonstrate a legal title, can rarely be dispossessed. Scottish law goes even further than English: delay in vindicating a claim will not only bar the remedy but actually extinguish the right. But the fundamental principle that it is in society's interest that there should be some end to litigation is seen most characteristically in the recognition by our law--by every system of law--of the finality of a judgment. If the judgment has been obtained by fraud or collusion it is considered a nullity and the law provides machinery whereby its nullity can be so established. If the judgment has been obtained in consequence of some procedural irregularity, it may sometimes be set aside. But such exceptional cases conclude the matter. That, indeed, is one of society's purposes in substituting the law suit for the vendetta....And once the final appellate court has pronounced its judgment, the parties and those who claim through them are concluded, and if the judgment is as to the status of a person, it is called a judgment in rem and everyone must accept it. A line can thus be drawn closing the account between the contestants. Important though the issues may be, how extensive so ever the evidence, whatever the eagerness for further fray, society says; 'We have provided courts in which your rival contentions have been heard. We have provided a code of law by which they have been adjudged. Since judges and juries are fallible human

beings, we have provided appellate courts which do their own fallible best, to correct error. But in the end you must accept what has been decided. Enough is enough.' And the law echoes : res judicata, the matter is adjudged'. The judgment creates an estopel-which merely means that what has been decided must be taken to be established as a fact, that the decided issue cannot be reopened by those who are bound by the judgment, that the clamouring voices must be stilled, that the bitter waters of civil contention (even though channeled into litigation must be allowed to subside".

989. In our view, except of the fact that Raghubar Das, Mahat Janam Asthan, Ram Kot, Ayodhya failed to prove his claim of ownership over Chabutara in the outer courtyard may a relevant fact for which the judgments of Suit 1885 may be seen but beyond that the observations and reasons etc. of the Court in the judgment are not such facts relevant which are covered by Section 13 or any other of the Evidence Act so as to make the said judgments admissible in evidence and in the absence thereof, as said in Section 43, the judgment as evidence is irrelevant.

990. There is also nothing on record to show that Suit 1885 was filed on behalf of the entire Hindu community as a whole or the persons interested in Janam Asthan namely, in representative capacity nor there is anything to show that the suit was in the knowledge of Hindus in general and all Hindus were interested in the same. No material or evidence has come on record in proof thereof.

991. Though Mahat Raghubar Das was a Mahant at the relevant time of Nirmohi Akhara but no plea of res judicata or

estoppal has been raised in respect to Suit-3 which has been filed by Nirmohi Akhara. In the absence of any such plea Suit-3 cannot be said to be barred by any such principle. So far as Suit-1 and 5 are concerned, as we have already discussed, the necessary indicias to attract plea of res judicata wanting, the issues pertaining to res judicata and estoppal would not be attracted in those cases.

992. Coming to the various authorities cited by Sri Siddiqui on behalf of the plaintiff (Suit-4), we do not find that the view which we have recorded hereinabove comes in conflict or in contradiction to the exposition of law laid down thereon.

993. In **Talluri Venkata Seshayya (supra)** it was held that the provisions of Section 11 are mandatory. We agree. On facts, however, Section 11 in that case was found attracted but has no application to the present case inasmuch therein the earlier suit was brought by two persons which was dismissed on the ground that the temples were private temples and the property endowed to the temple. Being a private endowment, the alienation thereof was valid. The second suit filed as representative suit by some persons in public interest for declaring certain temples as public temples and for setting aside alienation of endowed property by the Manager. The plaintiff of the second suit conceded before the Court that they could be deemed to be persons claiming under the plaintiff in the prior suit and the issue in both the suits are same as is apparent from the following :

> *"Mr. Dunne, on behalf of the appellants, conceded that subject to the question of bona fides, the present appellants must be deemed to be claiming under the plaintiffs in the 1861 suit within the meaning of Expl. 6, S. 11 Civil P.C., as they were both claiming as representing the public interest*

in the temples and the Kowtharam lands. He further conceded that the matter in issue in the two suits was substantially the same."

994. Section 11 was sought to be wriggle out by contending that the earlier suit was not a bona fide litigation, brought in collusion with the defendants and there was gross negligence, which facts, however, could not be proved. The said judgment, therefore, in our view, does not render any help to the parties in holding Suits-1 and 5 barred by res judicata on account of decision of Suit-1885.

995. In **K. Ethirajan (supra)**, the property in dispute owned by widow Gangammal's sister's son and was allowed to occupy a portion of the suit properties since before commencement of (Tamil Nadu) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (hereinafter referred to as "T.N. Ryotwari Act, 1948. The widow Gangammal died in the year 1939. One M. Gurunathan (subsequently died and his legal representatives were impleaded as respondents before the Apex Court) claimed right to the property by inheritance showing his relationship with Gangammal's son and her husband's brother. Claiming title to the suit property by inheritance, Gurunathan filed Suit No. 530 of 1948 which was decided on 27.6.1949 against the step brother of Gangammal describing the latter as in unlawful possession of the suit property. Gurunathan obtained a decree of eviction against the step brother of Gangammal in the aforesaid suit. K. Ethirajan was not a party to the said suit, which was decreed on 27.6.1949 though he was in occupation of the portion of the suit property. The Director of Settlement in the proceedings initiated in accordance with Section 18 (4) of T.N. Ryotwari Act, 1948 recognized joint ownership and possession

of K. Ethirajan and M. Gurunathan on the suit property and granted a joint patta in their favour on 28.8.1970. The said joint patta was upheld by higher authorities under T.N. Ryotwari Act, 1948. The claim of M. Gurunathan for recognition of his exclusive right to the suit properties being nearest heir of Gangammal was rejected by all the authorities concerned under the aforesaid Act. It is on the basis of this joint patta, K. Ethirajan filed a suit for the portion in his possession which was decreed by Trial Court as well as first appellate Court. The Courts below while granting decree of partition in favour of plaintiff K. Ethirajan, apart from relying on the joint patta, also relied on the judgement passed in previous litigation with regard to the the suit properties between K. Ethirajan and M. Gurunathan. It appears that M. Gurunathan had filed Original Suit No. 9003 of 1973 against K. Ethirajan seeking his eviction and delivery of possession of the portion of suit property of the dimensions 37'X20' with a superstructure thereon used for residence. The suit was defended by K. Ethirajan on the ground, inter alia, that he is in possession of the disputed land and the superstructure being the adopted son of Gangammal and had been granted a joint patta in the proceedings which concluded in his favour under the Act of 1948. The earlier Suit of 1973 was dismissed by the Trial Court vide judgment dated 6.10.1976 holding that K. Ethirajan was in possession of the suit property as a mere licensee of M. Gurunathan (deceased) but was in possession of the suit property as owner since 1940. The Trial Court also held that K. Ethirajan having remained in continuous possession of the suit property as owner had perfected his title by remaining in adverse possession for more than the statutory period of 12 years. The appeal no. 389 of 1977 preferred by M.

Gurunathan against the judgement dated 6.10.1976 was dismissed on 24.4.1979 holding that K. Ethirajan was in possession since much prior to the grant of the alleged licence/permission to him and, therefore, the contention of M. Gurunathan that he was licensee of Gurunathan was incorrect. The Court also relied on the proceedings pertaining to grant of joint patta. However, the plea of adverse possession of K. Ethirajan was negatived on the ground that if he was basing his claim of ownership and possession on the basis of joint patta, the question of adverse possession inter se between co-owners would not arise. The matter did not carry further and attained finality. Based on this judgment, the Trial Court and first Appellate Court in latter suit granted a preliminary decree of partition of suit property in favour of K. Ethirajan, the plaintiff this time. In the second appeal, the High Court upset the findings of both the Courts below and dismissed the suit of K. Ethirajan observing that in the earlier litigation between the parties, the defence set up by K. Ethirajan was on the basis of adverse possession and he never set up a case of co-ownership and, therefore, it barred the second suit by K. Ethirajan on the basis of joint ownership of the suit property. The Apex Court held the High Court in error and reversed the judgment and restored the judgment of Trial Court and the first appellate Court. After going through the judgment of the earlier litigation as well as the present one, the Apex Court found that the earlier suit filed by M. Gurunathan was dismissed by the Trial Court on the ground that the case of grant of leave and patta set up by him was not approved and the defendant, i.e., K. Ethirajan being in possession since 1940 onwards had perfected his title by adverse possession. The appellant Court though negatived the plea of

adverse possession, but relying on the joint patta came to the conclusion that the parties were co-owners and it was held that between co-owner, plea of adverse possession cannot be accepted. The decree of dismissal of suit was upheld by the appellate Court on the ground that plea of grant of licence by M. Gurunathan was not proved and the parties were co-owners under the joint patta in their favour. The judgment of the appellate Court dismissing the suit on the finding of co-ownership was not challenged any further and attained finality. In these circumstances, the Court held that the dispute of title to the suit properties between the parties was an issue directly and substantially involved in the earlier suit which was decided by the first appellate Court and thus the principle of res judicata would attract. It was observed that M. Gurunathan or his legal representatives are estopped from questioning the claim of co-ownership of K. Ethirajan and his legal representatives and for that purpose, the Apex Court also relied on the law laid down in **Hope Plantations Ltd. (supra)**.

996. Thus, it is evident from what has been observed by the Apex Court that the issue was directly and substantially involved in the earlier litigation between the same parties and was decided also, hence, would operate as res judicata in the subsequent suit. This obviously is not the case before us. Firstly, we have not been able to find out that the parties in the earlier suit are same as in the present one or that the parties or any of them in the cases in hand are litigating through the plaintiff (Suit-1885). Secondly, the issue of ownership of Mahant Rathubar Das though was directly raised but the first appellate Court while striking off the finding of Trial Court on the aforesaid issue did not consider further to decide the same either

way and left it undecided. It, however, upheld the decree of dismissal on the ground of public order, propriety etc. This judgment of the first appellate Court as such was affirmed in second appeal Therefore, the necessary ingredients for attracting plea of res judicata lack in the present cases.

997. Reliance was also placed on para 17 and 18 of the judgment in **K. Ethirajan (supra)** which may also be discussed herein. It was contended on behalf of the respondents in K. Ethirajan that the earlier suit was for a limited property, i.e, a portion of the suit property measuring 37'X20' with superstructure thereon and, therefore, even if res judicata and estoppel would apply, it would be confined only in respect to that portion of land and not beyond that. The Apex Court, however, negatived the petitioners' submissions observing that in the earlier litigation, M. Gurunathan sought eviction of K. Ethirajan from portion of suit property by claiming exclusive title to the whole property involved in the subsequent suit. K. Ethirajan took the defence of adverse possession and co-ownership on the basis of joint patta. The Apex Court from the pleadings came to the conclusion that it is not correct to hold that earlier litigation was restricted only to a portion of the whole property involved in the present suit and held as under :

> *"Looking to the pleadings of the parties in that suit (copies of which are placed before us in additional paper-book), the ground urged by the respondent that in the earlier litigation, claim of exclusive ownership set up by deceased-M. Gurunathan was restricted only to a portion of the whole property involved in this suit, does not appear acceptable. On the basis of pleadings of the earlier suit, we find that the issue directly involved was claim of exclusive*

ownership of deceased-M. Gurunathan to the whole property left behind by deceased-Gangammal although eviction was sought of the defendant from a particular portion of the land on which he had built a hut for residence. The suit was resisted by deceased-K. Ethirajan claiming adverse possession and alternatively as co-owner on the basis of joint patta (Ex. A-7).”

998. Further, the Apex Court in para 20 of the judgment held as under :

*“**20.** The argument that principle of res judicata cannot apply because in the previous suit only a part of the property was involved when in the subsequent suit the whole property is the subject-matter can not be accepted. The principle of res judicata under Section 11 of the Code of Civil Procedure is attracted where issues directly and substantially involved between the same parties in the previous and subsequent suit are the same-may be- in previous suit only a part of the property was involved when in the subsequent suit, the whole property is the subject-matter.”*

999. There cannot be any dispute on the principle, but as we have already observed that the issue of title having not been decided by the first appellate Court and on the contrary the findings of the Trial Court with respect to ownership of the plaintiff, Raghubar Das, in Suit-1885 having been directed to be expunged, there remained virtually no decision or finding on the issue pertaining to ownership of suit property in Suit 1885 and, therefore, in our considered view, the plea of res judicata or estoppel would have no application hereat.

1000. In **Krishna Chendra Gajapati Narayan Deo (supra)**,

the only question of law considered and decided by Privy Council is, if an issue was not property raised in the plaint, but both the parties without protest chose to join the issue and obtained a decision thereon in an earlier litigation, that would also operate as res judicata in the latter litigation. The exposition of law aforesaid also has no application whatsoever in these cases for the reason we have already discussed. The result of the judgment of the first appellate Court in Suit 1885 is that the issue pertaining to ownership remained undecided and in the second appeal, the Judicial Commissioner's judgment shows that the plaintiff Mahant Raghubar Das therein was found to have shown no material to prove his ownership but who owned the property in dispute in Suit 1885 as such was not decided. Therefore, it cannot be said that the judgment of Suit 1885 may operate res judicata to the suits in question.

1001. The Privy Council in **Midnapur Zamindary Co. Ltd. (supra)** on page 149 of the judgment observed *"Can it be said under these circumstances that the point was not raised, that the Court did not consider it to be necessary issue did not impliedly decide that it was necessary and did not decide the issue on the merits? We think the answer is clearly in the negative. Then what of the decree? It is true that it does not expressly refer to the tenancy right, but it gave a decree for possession. What, then, did it intend to give? For the appellant it is said that all that was given was possession as co-proprietor and that the question whether such possession was free of the alleged tenancy right was left untouched. But if so, what was the necessity of discussing the question in the judgment? We ought not, we think, to assume that the Judges discussed a question which was irrelevant to the case, and then granted no relief in respect of it;*

but rather that as they had discussed and negatived the alleged tenancy right in the judgment they intended to, and did give a decree which should give effect to these findings. If so, the learned Judges' decree in effect gave to the respondent before us a right to the lands in that suit free of that alleged tenancy right claimed. We are of opinion therefore that the issue as to the appellants' right is res judicata."

1002. The above exposition is also unexceptional, but, in our view again has no application in these suits since the facts are different.

1003. Sri Siddiqui has placed reliance on para 32, 34, 35, 36, 38, 39, 48 and 50 of the judgment in **State of Karnataka and another Vs. All India Manufacturers Organization and others (supra)**. Para 32, 34 and 36 refer to Section 11 and general principles of res judicata. The principle laid down by the Apex Court is :

> *"The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be opened to the parties to re-agitate the matter again and again."*

1004. We have also expressed our view which are strictly in conformity with what has been observed by the Apex Court.

1005. The basic question raised therein was the applicability of plea of res judicata in public interest litigation. The Apex Court held that it would apply. It followed its earlier judgment in **Forward Construction Company Vs. Prabhat Mandal (Regd.) 1986 (1) SCC 100** and Explanation IV of Section 11 C.PC. In para 38 the Court reminded the spirit behind Explanation IV Section 11 C.P.C. by referring to the observations of Wigram, V.C. In **Henderson Vs. Henderson**

(1843-60) All ER Rep 378 and said:

> *"The plea of res judicata applies, except in special case (sic), not only to parties upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which property belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."*

1006. In para 39 also, similar observation of Somervell, L.J. In **Greenhalgh Vs. Mallard (1942) 2 All ER 225 (CA)** have been quoted which says *"I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect to them."*

1007. Para 48, 49 and 50 refer the above principle and philosophy behind Explanation IV and say that it is to prevent abuse of the process of Court through re-agitation of settled issues. The observation in **Greenhalgh (supra)** was found to have been referred approvingly by the Apex Court in **State of U.P. Vs. Nawab Hussain (supra)** (para-4). The aforesaid observations being exposition of law with respect to Explanation IV Section 11 are also unexceptionable. The principles of law and the cases where Explanation IV would be attracted cannot be doubted but whether the same are attracted in the cases in hand is the moot question, which we find in negative. In our view, the above judgment also lends no support

to the objection that the suits in question are barred by principle of res judicata in the light of the decision in Suit-1885.

1008. In **Lal Chand (supra)**, one Radha Kishan owned a house no. 142, Katra Mashru, Delhi. He let out a portion consisting of five rooms on the ground floor and two rooms on the second floor to one Lal Chand. Radha Kishan filed suit no. 42 of 1958 in the Court of Sub-Judge, Delhi seeking eviction of Lal Chand and against four others. He alleged that Lal Chand had sublet the premises. The eviction was sought on three grounds including that he required the premises for his own use and occupation. It was decreed on the ground of need for own use and occupation. Rest of the grounds were rejected. The decree was upheld in appeal but with respect to premises, the appellate Court thought that the requirement of landlord would be met if possession of two rooms at the second floor is given to him. However, since there was no provision for giving possession of a part of the disputed premises in Delhi Rent Control Act, 1952, the entire decree was confirmed and the same stood continued in the second appeal also. The suit property being situated in a slum area, the landlord filed an application under Section 19 (2) of the Slum Areas (Improvement and Clearance) Act, 1956 (in short "Slum Act, 1956") for permission of the competent authority to execute decree for possession. The competent authority after taking note of Section 19 (4) of Slum Act, 1956 permitted the landlord to execute the decree in respect to two rooms situated on the second floor only and refused permission to execute decree in regard to the premises situated on the ground floor. The order was upheld in appeal and consequently the tenants handed over possession of two rooms on second floor to the landlord.

Thereafter, the landlord filed a fresh regular suit no. 435 of 1936 against Lal Chand and others for possession of the remaining rooms on the ground floor. In the above circumstances, the Apex Court held the subsequent suit barred by res judicata observing as under :

> "*19. Only one more aspect of the matter needs to be adverted to. The respondent after obtaining a decree for eviction against Lal Chand and his alleged sub-tenants applied for permission of the competent authority to execute that decree. Permission was granted to him to execute the decree in respect only of the two rooms on the second floor and in pursuance of that permission he obtained possession of those two rooms. We are unable to understand how after working out his remedy under the Delhi Rent Control Act as modified by the Slum Clearance Act, it is competent to the respondent to bring a fresh suit for evicting the appellants from the premises on the ground floor. The authorities under the Slum Clearance Act who are exclusively invested with the power to determine whether a decree for eviction should be permitted to be executed and, if so, to what extent, had finally decided that question, refusing to allow the respondent to execute the decree in respect of the ground floor premises. By the present suit, the respondent is once again asking for the relief which was included in the larger relief sought by him in the application filed under the Slum Clearance Act and which was expressly denied to him. In the circumstances, the present suit is also barred by the principle of resjudicata. The fact that Section 11 of the Code of Civil Procedure cannot apply on its terms, the earlier*

proceeding before the competent authority not being a suit, is no answer to the extension of the principle underlying that section to the instant case. Section 11, it is long since settled, is not exhaustive and the principle which motivates that section can be extended to cases which do not fall strictly within the letter of the law. The issues involved in the two proceedings are identical, those issues arise as between the same parties and thirdly, the issue not sought to be raised was decided finally by a competent quasi-judicial tribunal. The principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded on equity, justice and good conscience which required that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue. Were it permissible to bring suits of the present nature, the beneficial jurisdiction conferred on the competent authority by the Slum Clearance Act would become illusory and meaningless for, whether the competent authority grants or refuses permission to execute a decree for eviction, it would always be open to the landlord to enforce the ejectment decree by filing a substantive suit for possession. Verily, the respondent is executing the eviction decree by instalments, now under the garb of a suit. Apart from the fact that the suit is barred on account of principles analogous to res judicata, it is plainly in violation of the injunction contained in Section 19 (1) (b) of the Slum Clearance Act, if regard is to be had to the substance and not for the form

of the proceedings."

1009. From the facts noticed above, we have no manner of doubt that the application of res judicata in the above case was rightly applied but in the facts of the cases in hand, the aforesaid judgement has no application.

1010. In **Sulochana Amma (supra)**, Explanation- VIII of Section 11 came to be considered before the Apex Court and it was held that an order or an issue which had arisen directly and substantially between the parties or their privies and decided finally by a competent Court or Tribunal, though of limited or special jurisdiction which includes pecuniary jurisdiction, will operate as res judicata in a subsequent suit or proceeding, notwithstanding the fact that such Court of limited or Special jurisdiction was not a competent Court to try the subsequent suit. The only requirement is that the issue must directly and substantially has arises in a latter suit between the same parties or the privies. The question decided therein does not apply to the present suits.

1011. In **State of Punjab and others Vs. M/s. Surinder Kumar (supra)**, the question was about the meaning of the words "might and ought" used in Section 11 C.P.C. M/s Surinder Kumar and Co. had the leasehold right to vend the Indian made Foreign liquor at Ludhiana for financial year April 1, 1995 to March 31, 1996 at their shops located at 44 places, licensed to sell under L-2 and L-14. The Excise Department initiated certain proceedings against them and cancelled licence. Against the order of cancellation, writ petitions were filed impleading the then Minister for Excise and Taxation as one of the respondents alleging mala fide in cancellation of licence. The Division Bench allowed the writ petition vide judgement