



**TAX N LEGAL
PARTNERS**
ADVOCATES & SOLICITORS

Case Summary:

M Siddiq (D) Thru Lrs v Mahant Suresh Das¹ (Ayodhya Verdict)

Introduction to the facts

Back in 1856-57, riots broke out between Hindus and Muslims in the vicinity of a structure, which the Hindus claimed as the birthplace of Lord Ram and the Muslims claimed as the Babri Masjid. The British government constructed a grill-brick wall dividing the premises into two parts; the inner courtyard including the mosque was used by the Muslims and the outer courtyard was used by the Hindus. On 22.12.1949, the locks of the mosque were broken by some people who placed idols of Lord Ram in the inner part of the structure. On 29.12.1949, the Additional City Magistrate attached the property and passed a preliminary order under which only 2-3 pujaris were allowed to go inside the place. General public was prohibited from entering. Various suits by both the communities were instituted in the period of 1950-89, which sought the title to the property and requested permission to offer prayers, all of which were taken up together by the Allahabad High Court. On 30.09.2019, the High Court held Muslims, Hindus and Nirmohi Akhara as joint title holders of the property and allotted 1/3 share to each of them. Various appeals were filed against this decision and the matter was referred to a constitutional bench on 10.01.2019.

Questions before the Court

Sixteen primary questions and issues were framed by the Hon'ble Court in the instant case. For the sake of brevity, only some would be referred here.

Did a Hindu temple exist at the property which was demolished by Babur for the construction of the Babri Masjid?

The Court, among other evidences, deliberated a lot upon the report of Archaeological Survey of India (ASI). The ASI report on one hand found a pre-existing structure of non-Islamic origin below the existing structure, and on the other failed to determine whether that structure was actually demolished by Babur to build a

¹ Civil Appeal No. 10866 of 2010 in the Supreme Court of India.



mosque on it. The credibility of this report was challenged vehemently by the Muslims on multiple grounds. However, the Court rejected each the grounds and observed that the credentials of ASI are beyond reproach.

Whether the property in dispute, i.e. 'Asthan Sri Ram Janam Bhumi, Ayodhya', is a juristic person?

The juristic personality of 'Bhagwan Sri Ram Virajman' was never in dispute. The dispute was regarding the legal personality of a 'part' of the disputed property (the Asthan Sri Ram Janam Bhumi part of the whole property, the place where Lord Ram was supposedly born). After delving into the jurisprudence revolving around juristic personalities, the Court refused to accept the property as a juristic person. Taking note of the arguments of Hindus based upon their religious practices, the Court held that the *"performance of the parikrama...cannot be claimed as the basis of an entitlement in law to a proprietary claim over property"*. It also noted that *"the elevation of land to the status of a juristic person fundamentally alters its characteristics as immovable property, a severe consequence against which a court must guard."* It lastly concluded that it is impermissible to determine from the belief and faith of Hindus whether the property is a legal person.

Is Nirmohi Akhara a shebait of Lord Ram in the disputed premises?

It was submitted by Nirmohi Akhara that they were de-facto shebait due to their century-long presence at the disputed site. After making a detailed discussion on the position of a shebait in Indian law, the Court held that *"the claim of Nirmohi Akhara, taken at the highest is that of an intermittent exercise of certain management rights"*. This degree of control did not satisfy legal standard of management that is required for one to be recognized as a shebait.

Did the parties establish the claim of worship and a possessory title over the disputed property?

Nirmohi Akhara contended that the structure was not a mosque at all, and was always a temple. Though its suit was held to be barred by limitation, the Court still scrutinized oral testimonies in support of the Nirmohi Akhara and found them to be *"hearsay and inconsistent"* and at times, acknowledging the existence of the mosque. The evidence analysed resulted into a *"full adjudication of the claims of Nirmohi Akhara"* wherein it failed to prove all its contentions.

The contention of the Muslims was that the 'entire property of the mosque', was waqf property. The Court considered in great detail the evidences and testimonies before it for this issue. However, the evidence adduced was found to be insufficient of proving that the entire disputed property was utilized by the Muslims for public religious worship. On the other hand, in the opinion of the Court, it was sufficiently proved by the

Hindus that the outer courtyard was in the possession of the devotees of Lord Ram. Moreover, accepting the contentions of the Muslims would have rendered the land as a juristic person, which was not permissible. This is because it would lead to absolute destruction of the rights of Hindus which would be impermissible in light of the evidence that was adduced by the Hindus.

It was concluded that with respect to the outside courtyard, the Hindus established a clear case of a possessory title *“by virtue of long, continued and unimpeded worship”*. However, for the inner courtyard, both the Hindus and the Muslims had contested claims to offering worship, without conclusively establishing any continued possessory right.

Was the High Court right in dividing the property into three shares?

The Court at the outset pointed out that the suits before the Hon’ble Allahabad High Court were not of partition. The Court in instant case held that the Hon’ble High Court *“granted reliefs which were not the subject matter of the prayers in the suits”* and that it wrongly relied upon Order VII Rule 7 of the CPC for the same.

Final Directions

Giving relief as prayed in some suits and by also invoking its powers under article 142 of the Constitution, the Supreme Court laid down the final directions:

1. The Central Government, within 3 months, must formulate a scheme wherein a Trust would be set up. The scheme shall also lay down the functions of the Trust and the powers of the trustees including the construction of a temple.
2. Possession of the inner and outer courtyards to be given to the Trust.
3. A 5-acre suitable plot of land on which it may construct a mosque to be allotted to Sunni Central Waqf Board by either the Central Government or the State Government.
4. Representation may be given to Nirmohi Akhara in the trust so formed.

Concluding Remarks

The decision marks an end to a century long legal battle. The decision seems to be an exercise of adjudicatory function taking into account the plethora of evidences, and not much exercise of statutory interpretation. The 1045-page judgement is also one of the longest written judgements and scrutinizes a plethora of records

and documents. From a reader's perspective, it seems like the Court did not think that the evidences forwarded by the Muslims carried as much weight as was carried by the evidences forwarded by the Hindus. While it seems like the main judgement tries to avoid answering the question of Hindus' belief of Lord Ram being born at the exact alleged spot so as to not link it with the title of the property; the addendum takes a different road. The addendum explicitly answers whether "*the disputed structure being the birth-place of Lord Ram according to the faith and belief of the Hindu devotees*" with a big yes.

However, a strange departure with the judgement was that it was not just unanimous, but also anonymous. The judgement does not name the author of either the judgement or the addendum. Even though there is no law that mandates authorship of every judgment to be revealed, nor do the *Supreme Court Rules of 2013* lay it down as such. This particularly seemed to have been done to avoid uninvited blames of bias or undue praise for favour.

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