There is clear evidence to indicate that the worship by the Hindus in the outer courtyard continued unimpeded in spite of the setting up of a grill-brick wall in 1857. Their possession of the outer courtyard stands established together with the incidents attaching to their control over it.

[Case Brief] M Siddiq (D) Thr Lrs V/s Mahant Suresh Das & Ors

Case name: M Siddiq (D) Thr Lrs V/s Mahant Suresh Das & Ors

Case number: Civil Appeal Nos 10866-10867 of 2010 with similar appeals

Court: Supreme Court of India

Bench: RANJAN GOGOI, CJ.
S A BOBDE, J.
DR DHANANJAYA Y CHANDRACHUD, J.
ASHOK BHUSHAN, J.
S ABDUL NAZEER, J.

Decided on: November 09, 2019

Relevant Act/Sections:

- **BRIEF FACTS AND PROCEDURAL HISTORY:**

1. **These appeals centre around a dispute between two religious communities both of whom claim ownership over a piece of land measuring 1500 square yards in the town of Ayodhya.** The disputed property is of immense significance to Hindus and Muslims. The Hindu community claims it as the birthplace of Lord Ram, an incarnation of Lord Vishnu. The Muslim community claims it as the site of the historic Babri Masjid built by the first Mughal Emperor, Babur.
2. The cause of action starts in 1856-57, riots broke out between Hindus and Muslims in the vicinity of the structure. The colonial government attempted to raise a buffer between the two

communities to maintain law and order by set ting up a grill-brick wall having a height of six or seven feet. This would divide the premises into two parts.

3. **In January 1885, Mahant Raghubar Das, claiming to be the Mahant of Ram Janmasthan instituted a suit (Suit of 1885‖) before the Sub-Judge, Faizabad**. The relief which he sought was permission to build a temple on the Ramchabutra situated in the outer courtyard, measuring seventeen feet by twenty-one feet. A sketch map was filed with the plaint. On 24 December 1885, the trial judge dismissed the suit.
4. The controversy entered a new phase on the night intervening 22 and 23 December 1949, when the mosque was desecrated by a group of about fifty or sixty people who broke open its locks and placed idols of Lord Ram under the central dome.
5. **On 16 January 1950, a suit was instituted by a Hindu devotee, Gopal Singh Visharad, (Suit 1) before the Civil Judge at Faizabad,** alleging that he was being prevented by officials of the government from entering the inner courtyard of the disputed site to offer worship.
6. **On 5 December 1950, another suit was instituted by Paramhans Ramchandra Das (Suit 2) before the Civil Judge, Faizabad** seeking reliefs similar to those in Suit 1. Suit 2 was subsequently withdrawn on 18 September 1990.
7. **On 17 December 1959, Nirmohi Akhara instituted a suit through its Mahant (Suit 3) before the Civil Judge at Faizabad** claiming that its ―absolute right‖ of managing the affairs of the Janmasthan and the temple had been impacted by the Magistrate‘s order of attachment and by the appointment of a receiver under Section 145.
8. **On 18 December 1961, the Sunni Central Waqf Board and nine Muslim residents of Ayodhya filed a suit (Suit 4) before the Civil Judge at Faizabad** seeking a declaration that the entire disputed site of the Babri Masjid was a public mosque and for the delivery of possession upon removal of the idols. On 6 January 1964, the trial of Suits 1, 3 and 4 was consolidated and Suit 4 was made the leading case.
9. **On 1 July 1989, a Suit (Suit 5‖) was brought before the Civil Judge Faizabad by the deity (Bhagwan Shri Ram Virajman‖) and the birth-place (Asthan Shri Ram Janam Bhumi, Ayodhya‖), through a next friend** for a declaration of title to the disputed premises and to restrain the defendants from interfering with or raising any objection to the construction of a temple. Suit 5 was tried with the other suits.
10. **On 10 July 1989, all suits were transferred to the High Court of Judicature at Allahabad. On 21 July 1989, a three judge Bench was constituted by the Chief Justice of the High Court for the trial of the suits**. On an application by the State of Uttar Pradesh, the High

Court passed an interim order on 14 August 1989, directing the parties to maintain status quo with respect to the property in dispute

11. The Central Government acquired an area of about 68 acres, including the premises in dispute, by a legislation called the Acquisition of Certain Area at Ayodhya Act 1993 (Ayodhya Acquisition Act 1993‖).

12. Writ petitions were filed before the High Court of Allahabad and this Court challenging the validity of the Act of 1993. The decision of a Constitution Bench of this Court, titled **Dr M Ismai Faruqui v Union of India held Section 4(3), which provided for the abatement of all pending suits as unconstitutional. The rest of the Act of 1993 was held to be valid.**

Case in High court

13. **The recording of oral evidence before the High Court commenced on 24 July 1996**. During the course of the hearings, the High Court issued directions on 23 October 2002 to the Archaeological Survey of India (ASI‖) to carry out a scientific investigation and have the disputed site surveyed by Ground Penetrating Technology or Geo-Radiology (GPR‖).
14. The GPR report dated 17 February 2003 indicated a variety of anomalies which could be associated with ancient and contemporaneous structures‖ such as pillars, foundations, wall slabs and flooring extending over a large portion of the disputed site.
15. **On 30 September 2010, the Full Bench of the High Court comprising of Justice S U Khan, Justice Sudhir Agarwal and Justice D V Sharma delivered the judgment, which is in appeal. Justice S U Khan and Justice Sudhir Agarwal held all the three sets of parties‖ – Muslims, Hindus and Nirmohi Akhara - as joint holders of the disputed premises and allotted a one third share to each of them in a preliminary decree.**
16. Justice Sudhir Agarwal partly decreed Suits 1 and 5. Suits 3 and 4 were dismissed as being barred by limitation.

Proceedings before this Court

17. **On 9 May 2011, a two judge Bench of this Court admitted several appeals and stayed the operation of the judgment and decree of the Allahabad High Court**.
18. **On 8 March 2019, a panel of mediators comprising of (i) Justice Fakkir Mohamed Ibrahim Kalifulla, a former Judge of this Court; (ii) Sri Sri Ravi Shankar; and (iii) Mr Sriram Panchu, Senior Advocate was constituted.** Time granted to the mediators to complete the mediation proceedings was extended on 10 May 2019. Since no settlement had

been reached, on 2 August 2019, the hearing of the appeals was directed to commence from 6 August 2019.

19. Hence this appeal

➢ ISSUE BEFORE THE COURT:

1. Whether Suits 3, 4 and 5 or any of them are barred by limitation?
2. Whether Suits 1, 3 and 5 are barred by res judicata?
3. Whether a Hindu temple existed at the disputed site;
    a. Whether the temple was demolished by Babur or at his behest by his commander for the construction of the Babri Masjid
    b. Whether the mosque was constructed on the remains of and by using the materials of the temple and
    c. What, if any are the legal consequences arising out of the determination on (a)(b) and (c) above
4. Whether the Muslims and or the Hindus have established the claim of worship and a possessory title over the disputed property?
5. Whether the High Court was justified in passing a preliminary decree for a three way division of the disputed property in equal shares between the Nirmohi Akhara, the plaintiffs of Suit 4 and the plaintiffs of Suit 5?
6. What, if any, relief ought to be granted in Suits 1, 3, 4 and 5?

➢ RATIO OF THE COURT

1. Mr P N Mishra, learned Counsel appearing on behalf of defendant no 20 in Suit 5 (Akhil Bharatiya Shri Ram JanmBhumi Punrudhar Samiti) has made an earnest effort to demonstrate that the Babri Masjid lacked the essential features of a valid mosque under Islamic jurisprudence. The submissions, essentially deal with two facets:

    (i) Features bearing on the location, construction and design of a mosque;

    (ii) The requirements for a valid dedication.

2. The judges held that this Court, as a secular institution, set up under a constitutional regime must steer clear from choosing one among many possible interpretations of theological doctrine and must defer to the safer course of accepting the faith and belief of the worshipper.

3. At the heart of the legal dispute in the present batch of appeals is the question whether the first and second plaintiff in Suit 5 - Bhagwan Sri Ram Virajman‖ and Asthan Sri Ram Janam Bhumi, Ayodhya, possess distinct legal personalities or, in other words, are juristic persons.
4. The court held that legal personality is not human nature. Legal personality constitutes recognition by the law of an object or corpus as an embodiment of certain rights and duties. An artificial legal person is a legal person to the extent the law recognises the rights and duties ascribed to them, whether by statute or by judicial interpretation. Juristic persons so created do not possess human nature. But their legal personality consists of the rights and duties ascribed to them by statute or by the courts to achieve the purpose sought to be achieved by the conferral of such personality.
5. The juridical person (i.e. the pious purpose represented by the idol) can in law accept offerings of movable and immovable property which will vest in it. The legal personality of the idol, and the rights of the idol over the property endowed and the offerings of devotees, are guarded by the law to protect the endowment against maladministration by the human agencies entrusted with the day to day management of the idol.
6. The court held that the idol as an embodiment of a pious or benevolent purpose is recognised by the law as a juristic entity. The state will therefore protect property which stands vested in the idol even absent the establishment of a specific or express trust. The pious purpose, or 'benevolent idea' is elevated to the status of a juristic person and the idol forms the material expression of the pious purpose through which legal relations are affected.
7. For the devotees of Lord Ram, the first plaintiff in Suit 5, Bhagwan Sri Ram Virajman‖ is the embodiment of Lord Ram and constitutes the resident deity of Ram Janmabhumi. The court observed that in the present case, the first plaintiff has been the object of worship for several hundred years and the underlying purpose of continued worship is apparent even absent any express dedication or trust and To ensure the legal protection of the underlying purpose and practically adjudicate upon the dispute the legal personality of the first plaintiff was recognised.
8. The court while discussing status of second plaintiff relied on following cases-
    a) Madura, Tirupparankundram v Alikhan Sahib
    b) Shiromani Gurdwara Prabandhak Committee, Amritsar v Som Nath Dass
    c) Sir Seth Hukum Chand v Maharaj Bahadur Singh

    The court held that In the present case, the recognition of Asthan Sri Ram Janam Bhumi' as a juristic person would result in the extinguishment of all competing proprietary claims to the land in question. In the present case, there exists no act of dedication and therefore the question

of whom the property was dedicated to does not arise and consequently the need to recognise the pious purpose behind the dedication itself as a legal person also does not arise.

9. The bench observed Section 145 proceedings do not purport to decide a party's title or right to possession of the land. The property held in attachment in proceedings under Section 145 is ‘custodia legis’. Hence, it is not necessary to secure possession from a party who is not in possession and is hence, not in a position to deliver possession.
10. The court held that Substantive rights with respect to title and possession of the property could have been dealt with only in civil proceedings before a civil court. The Magistrate did not have jurisdiction to determine questions of ownership and title. The proceedings under Section 145 could not have resulted in any adjudication upon title or possession of the rightful owner as that is within the exclusive domain of civil courts.
11. The claim of Nirmohi Akhara for management and charge therefore rests on its assertion of being a shebait. In the case of a shebait as the above decisions authoritatively explained, the elements of office and of a proprietary interest are blended together.
12. The court also held that the period of limitation under Article 120 is six years. Nirmohi Akhara claims that the cause of action arose on 5 January 1950. The suit was instituted on 17 December 1959. Hence, the suit is outside the prescribed period of limitation and is barred.
13. The recognition of a person or a group of persons as shebaits is a substantive conferment of the right to manage the affairs of the deity. The purpose for which legal personality is conferred upon an idol as the material embodiment of the pious purpose is protected and realised through the actions of the human agent, that is the shebait.
14. A claim of rights as a de facto shebait must be substantiated with proof that person is in exclusive possession of the trust property and exercises complete control over the right of management of the properties without any let or hindrance from any quarters whatsoever. For all practical purposes, this person is recognised as the person in charge of the trust properties.
    It cannot be said that the acts of Nirmohi Akhara satisfy the legal standard of management and charge that is exclusive, uninterrupted and continuous over a sufficient period of time. Despite their undisputed presence at the disputed site, for the reasons outlined above, Nirmohi Akhara is not a shebait.
15. Court was emphatic in its rejection of the argument that the 1885 suit filed by Mahant Raghubar Das brought about a bar on filing suits 3 (Nirmohi Akhara) and 5 (Shri Ram Virajman). The argument of the Sunni Waqf Board in particular was that the 1885 suit was filed by a 'Mahant' belonging to the Nirmohi Akhara and this created a legal impediment to the filing of suits 3

and 5. The reason for such a legal bar is the principle of res judicata, which places a restriction on parties to a legal dispute from recontesting the issues in such dispute once it has been conclusively settled by the court in a previous suit.

16. Court though held that none of the conditions required for applying res judicata was attracted by way of the 1885 suit. Specifically, Mahant Raghubar had initiated the suit to assert a right that was personal to him, observed the Court. Thus, such a suit cannot bar Hindu devotees at large, who were not represented by the Mahant in the 1885 suit. Moreover, the prayers, and the issues in 1885 suit were all different from the suits from which the appeals were filed
17. While considering archaeological evidence within the framework of Section 45 of the Evidence Act and the court-ordered excavation in the context of the provisions of Rule 10A of Order XXVI of the CPC, it is nonetheless necessary for the court to appreciate both the strength and the limits of the discipline. Archaeology is no exception.
18. In so far as suit 4 filed by the Sunni Waqf Board, Court noted that the cause of action had arisen on 23 December 1949, when there was desecration of the disputed structure. Thereafter, the suit was filed on 18 December 1961.
19. Court observed that although the pleadings may give an impression that it was a suit for declaration, a complete reading of it would indicate that it was one for possession. It pointed out how the plaintiff in suit 4 had specifically pleaded that they were in possession of the disputed site till the date of desecration and ceased to be in possession thereafter. This clearly indicates that the suit was one for possession and falling under Article 142 with a limitation period of 12 years, held the Court. Given this, the suit was held to be within limitation period.
20. The court observed with the development of statutory law and judicial precedent, including the progressive codification of customs in the Hindu Code and in the Shariat Act 1937, the need to place reliance on justice, equity and good conscience gradually reduced.
21. This Court in Namdeo is consistent with and similar to the analogous situation of unreasonable and oppressive contractual terms and in that sense, justice, equity and good conscience was analogous to English law only where English law itself was in conformity with the principles supported by justice, equity and good conscience.
22. The bench also gathered that the evidence adduced does not demonstrate that the entire disputed property was utilised by the resident Muslim community for public religious worship. It is evident that the outer courtyard was in fact used by and was in the possession of the devotees of Lord Ram.
23. Sunni Waqf Board had relied heavily on the argument that the entire disputed site was dedicated by Babur for the purpose of public worship, thus creating a waqf. The implication of

such a dedication is that the dedicated property then becomes inalienable. Failing such an argument, the Board had also argued that the disputed site had become a 'waqf by user', i.e., by virtue of continuous prayers being offered at the site, it had attained the status of a waqf property. Nevertheless, the Court rejected both the arguments.

24. In fact, the Court went on to observe that there was sufficient evidence to show that outer courtyard was being used without contest by the Hindus, negating the argument of continuous use. For the reasons indicated above, the plaintiffs in Suit 4 have failed to meet the requirements of adverse possession.
25. The court held that in the present case, absent any pleadings and of evidence on the basis of which a presumption could be raised of the application of the doctrine, it must necessarily follow that the doctrine of lost grant has no application.
26. On 6 December 1992, the structure of the mosque was brought down and the mosque was destroyed. The destruction of the mosque took place in breach of the order of status quo and an assurance given to this Court. The destruction of the mosque and the obliteration of the Islamic structure was an egregious violation of the rule of law.
27. The allotment of land to the Muslims is necessary because though on a balance of probabilities, the evidence in respect of the possessory claim of the Hindus to the composite whole of the disputed property stands on a better footing than the evidence adduced by the Muslims, the Muslims were dispossessed upon the desecration of the mosque on 22/23 December 1949 which was ultimately destroyed on 6 December 1992.
28. The Supreme Court unanimously dismissed the claims of ownership over the disputed site made by the Shia Waqf Board.

➢ LAW LAID DOWN

1. The court held that the Places of Worship Act imposes a non-derogable obligation towards enforcing our commitment to secularism under the Indian Constitution. The law is hence a legislative instrument designed to protect the secular features of the Indian polity, which is one of the basic features of the Constitution.
2. Non-retrogression is a foundational feature of the fundamental constitutional principles of which secularism is a core component. The Places of Worship Act is thus a legislative intervention which preserves non-retrogression as an essential feature of our secular values.
3. The court held that where a suit is instituted for possession or for declaration of title before a competent civil court, the proceedings under Section 145 should not continue. Proceedings

under Section 145 are not in the nature of a trial before a civil court and are merely in the nature of police proceedings.

4. The position of a shebait is a substantive position in law that confers upon the person the exclusive right to manage the properties of the idol to the exclusion of all others. In addition to the exclusive right to manage an idol's properties, the shebait has a right to institute proceedings on behalf of the idol.
5. The position in law with respect to when a worshipper may institute proceedings is settled. A worshipper can institute a suit to protect the interests of the deity against a stranger where a shebait is negligent in its duties or takes actions that are hostile to the deity.
6. Where the rights of the parties are not governed by a particular personal law, or where the personal law is silent or incapable of being ascertained by a court, where a code has a lacuna, or where the source of law fails or requires to be supplemented, justice, equity and good conscience may properly be referred to.\
7. The law needs to be determined, interpreted and applied in this case to ensure that India retains its character as a home and refuge for many religions and plural values. It is in the cacophony of its multi-lingual and multi-cultural voices, based on a medley or regions and religions, that the Indian citizen as a person and India as a nation must realise the sense of peace within.
8. Muslim law does not require an express declaration of a Waqf in every case. The dedication resulting in a waqf may also be reasonably inferred from the facts and circumstances of a case or from the conduct of the wakif. In the absence of an express dedication, the existence of a waqf can be legally recognised in situations where property has been the subject of public religious use since time immemorial.
9. The following principles were culled out for doctrine of lost grant-
    a) The doctrine of lost grant supplies a rule of evidence. The doctrine is applicable in the absence of evidence, due to a lapse of time, to prove the existence of a valid grant issued in antiquity.
    b) Where it is impossible for the court to determine the circumstances under which the grant was made, an assumption is made about the existence of a valid and positive grant by the servient owner to the possessor or user. The grant maybe express or presumed.
    c) For a lawful presumption there must be no legal impediments.
    d) For the applicability of the doctrine of lost grant, there must be long, uninterrupted and peaceful enjoyment of an incorporeal right. Uninterrupted enjoyment includes continuous use or possession.

e) A distinction has to be made between an assertion of rights due to a prolonged custom and usage and that by doctrine of lost grant.

10. This Court in the exercise of its powers under Article 142 of the Constitution must ensure that a wrong committed must be remedied. Justice would not prevail if the Court were to overlook the entitlement of the Muslims who have been deprived of the structure of the mosque through means which should not have been employed in a secular nation committed to the rule of law. The Constitution postulates the equality of all faiths.

➢ DECISION HELD BY COURT:

1. The three-way bifurcation by the High Court was legally unsustainable. Even as a matter of maintaining public peace and tranquillity, the solution which commended itself to the High Court is not feasible.
2. Having weighed the nature of the relief which should be granted to the Muslims, the court directed that land admeasuring 5 acres be allotted to the Sunni Central Waqf Board either by the Central Government out of the acquired land or by the Government of Uttar Pradesh within the city of Ayodhya.
3. Suit 3 instituted by Nirmohi Akhara is held to be barred by limitation and shall accordingly stand dismissed;
4. Suit 4 instituted by the Sunni Central Waqf Board and other plaintiffs is held to be within limitation. The judgment of the High Court holding Suit 4 to be barred by limitation is reversed; and
5. Suit 5 is held to be within limitation.
6. Suit 5 is held to be maintainable at the behest of the first plaintiff who is represented by the third plaintiff. There shall be a decree in terms of prayer clauses (A) and (B) of the suit, subject to the following directions
    a) The Central Government shall, within a period of three months from the date of this judgment, formulate a scheme pursuant to the powers vested in it under Sections 6 and 7 of the Acquisition of Certain Area at Ayodhya Act 1993. The scheme shall envisage the setting up of a trust with a Board of Trustees or any other appropriate body under Section 6.
    b) Possession of the inner and outer courtyards shall be handed over to the Board of Trustees of the Trust or to the body so constituted.

7. All the appeals shall stand disposed of in the above terms. Parties are left to bear their own costs.