

## Case Comment M.Siddiq (D) through L.R's v. Mahanth Suresh Das & Others (`Ramajamabhoomi' judgment)

*Justice A.V.Chandrashekara\**

The dispute with regard to 1500 square yards in the town of Ayodhya was dealt with by a full bench of the Hon'ble High Court of Allahabad in four original suits which had been clubbed to record common evidence for rendering a common judgment. The dispute was of great significance to both the Hindus as well as Muslims. Hindus had asserted that the disputed area is the birth place of **Lord Sri Rama** and that a mosque had been illegally built by demolishing the temple. Whereas, Muslims strongly believed that a mosque had been built by Mughal Emperor Babur on a vacant land and that it was a Wakf dedicated to God.

A suit was instituted in 1950 by Sri Gopal Singh Visharad in the Court of Civil Judge at Faizabad seeking a declaration that he was entitled to offer prayer at the `**Ramajamabhumi** temple near the idols.<sup>1</sup> Another suit was filed in 1950 by Paramhans Ramchandra Das which was later withdrawn in 1990.<sup>2</sup>

The *Nirmohi Akhara* representing a religious sect among Hindus chose to file a civil suit in 1959<sup>3</sup> claiming that they were, at all material times, in charge and management of the structure at the disputed site,

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\* The author was a Former Judge, High Court of Karnataka

<sup>1</sup> Hereinafter referred to as Suit 1.

<sup>2</sup> Hereinafter referred to as Suit 2.

<sup>3</sup> Hereinafter referred to as Suit 3.

which according to Nirmohi Akhara, was a temple until 29.12.1949, on which date an order of attachment was passed u/s.145 of Cr.PC, 1898.

U.P. Sunni Central Board of Wakf and few Muslim residents of Ayodhya instituted a civil suit in the year 1961<sup>4</sup> for a declaration of their absolute title to the mosque on the ground that it had been built on a vacant land and endowed to God at the instance of Babur and thus it had become a Wakf.

In 1989, a comprehensive civil suit<sup>5</sup> was filed on behalf of the deity Ram Lalla Virajman and the birth place of Ram by a Trust represented by one of its trustee as the next friend seeking the following reliefs:-

A. Declaration that the entire premises of Sri Rama Janma Bhumi at Ayodhya, as described and delineated belongs to the plaintiff Deities.

B. Perpetual injunction against the Defendants prohibiting them from interfering with, or raising any objection to, or placing any obstruction in the construction of the new Temple building at Sri Rama Janma Bhumi, Ayodhya, after demolishing and removing the existing buildings and structures etc., situate thereat, in so far as it may be necessary or expedient to do so for the said purpose.

After recording voluminous oral and documentary evidence and hearing arguments, the High Court held that suits filed by Nirmohi Akhara and U.P. Sunni Wakf Board were barred by time; but still held by a split 2:1 verdict that the Hindu and Muslim parties were entitled to 1/3 share each and the remaining 1/3 share was allotted to Nirmohi Akhara.

All the four aggrieved parties had filed separate appeals before the Supreme Court. Taking into consideration the gravity of the issues

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<sup>4</sup> Hereinafter referred to as Suit 4.

<sup>5</sup> Hereinafter referred to as Suit 5.

involved, a constitution bench of five judges was constituted and the then Chief Justice of India Sri Justice Ranjan Gogoi himself presided over the bench which heard the arguments for forty days and ultimately held that, the case of the plaintiff Bhagwan Sri Ram Virajaman (Suit No. 5) is more probable than the case put up in other suits with regard to the title subject to the following directions:

*“We accordingly order and direct as follows:*

*1 ...*

*2. 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:*

*(i) 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. The scheme to be framed by the Central Government shall make necessary provisions in regard to the functioning of the trust or body including on matters relating to the management of the trust, the powers of the trustees including the construction of a temple and all necessary, incidental and supplemental matters;*

*(ii) 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. The Central Government will be at liberty to make suitable provisions in respect of the rest of the acquired land by handing it over to the Trust or body for management and development in terms of the scheme framed in accordance with the above directions; and*

*(iii) Possession of the disputed property shall continue to vest in the statutory receiver under the Central Government, until in exercise of*

*its jurisdiction under Section 6 of the Ayodhya Act of 1993, a notification is issued vesting the property in the trust or other body.*

*3. (i) Simultaneously, with the handing over of the disputed property to the Trust or body under clause 2 above, a suitable plot of land admeasuring 5 acres shall be handed over to the Sunni Central Waqf Board, the plaintiff in Suit 4.*

*(ii) The land shall be allotted either by:*

*(a) The Central Government out of the land acquired under the Ayodhya Act 1993; or*

*(b) The State Government at a suitable prominent place in Ayodhya;*

*The Central Government and the State Government shall act in consultation with each other to effectuate the above allotment in the period stipulated.*

*(iii) The Sunni Central Waqf Board would be at liberty, on the allotment of the land to take all necessary steps for the construction of a mosque on the land so allotted together with other associated facilities;*

*(iv) Suit 4 shall stand decreed to this extent in terms of the above directions; and*

*(v) The directions for the allotment of land to the Sunni Central Waqf Board in Suit 4 are issued in pursuance of the powers vested in this Court under Article 142 of the Constitution.*

*4. In exercise of the powers vested in this Court under Article 142 of the Constitution, we direct that in the scheme to be framed by the Central Government, appropriate representation may be given in the Trust or body, to the Nirmohi Akhara in such manner as the Central Government deems fit.*

*5. The right of the plaintiff in Suit 1 to worship at the disputed property is affirmed subject to any restrictions imposed by the relevant authorities with respect to the maintenance of peace and order and the performance of orderly worship.*

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

Hon’ble Supreme Court, being the first appellate Court in terms of Sec.96 of CPC has reassessed the voluminous documentary and oral evidence by formulating as many as 21 apt points for consideration as mandated in Order 41 Rule 31 of CPC and those points are found in paragraph 52(G) of the current decision.

**The important aspects considered were:**

1. Limitation – as the High Court had held that suits filed by Nirmohi Akhara and UP Sunni Wakf Board were barred by time.
2. Whether the disputed Mosque was constructed on the remains of a demolished Hindu temple as contended by the Hindus or whether the Mosque was constructed on a vacant land?
3. Whether the disputed place is the birth place of Lord Sri Ram as per the faith and belief of Hindus?
4. Whether the idol of Sri Ram Lalla Virajman is a juristic person and if so whether next friend is entitled to represent the Suit No.5?
5. Whether the idols were installed by Hindus on the intervening night of 22<sup>nd</sup> and 23<sup>rd</sup> December 1949 beneath the Central Dome of the Mosque?
6. Whether the disputed Mosque was a Wakf as per the tenets of Islam and whether it had been dedicated as a Wakf or alternatively it was a Wakf by public user?
7. Whether the Hindus and Muslims have established their claim of worship and respective possessory title and whether suit no.5 filed on behalf of the idol of Lord Sri Ram is a comprehensive suit without being hit by the principles of *Res judicata* especially in the light of the dismissal of the suit, first appeal and second

appeal filed by Mahanth Raghubir Das i.e. suit instituted by him in 1885?

8. Whether the U.P. Sunni Wakf Board has proved its plea of Adverse possession.
9. Possession and effect of discontinuance of possession under Article 110 of the Evidence Act, 1872.
10. Scope of the report of Expert u/s. 45-A of Evidence Act and its acceptability even if objections are filed.
11. What is the scope of Order 7 Rule 7 of CPC to mould the reliefs especially in the light of High Court granting 1/3 share each to Nirmohi Akhara and U.P.Sunni Wakf Board inspite of holding their suits being barred by time.
12. Effect of an interim order of attachment made u/s.145 of Cr.PC in 1949 without passing a final order and applicability of Article 47 of Limitation Act, 1908.
13. Who is a shebait and whether the Nirmohi Akhara which had filed the suit in 1959 claiming to be in management of the temple was a shebait?
14. Scope of Article 142 of the Constitution to do complete justice for directing the Government to allot 5 acres of land to Sunni Wakf Board?
15. The purpose to direct the Central Government to constitute a trust for building and managing Temple of Lord Sri Ram and the consequential scheme to be formulated in terms of Sec.92 of CPC.
16. The scope of Order X Rule 1 of CPC with regard to the Civil Court's duty to record admission/denial after completion of pleadings. The submissions made by the learned counsel representing Sunni Wakf Board before the High Court of Allahabad to the effect that there was no evidence with regard to Namaz being offered prior to 1885 and recording of the same had

enabled the High Court to consider only the events that took place after 1885.

**The decision is classic for four reasons:**

1. It is a unanimous decision with regard to the title suits by a Constitution Bench of the Supreme Court. There may not be an occasion in the near future for the Supreme Court to constitute a Constitution Bench for deciding title dispute based on evidence.
2. The entire oral and documentary evidence is reassessed on the touchstone of broad preponderance of probabilities keeping in mind the scope of Sections 101 to 104 of Evidence Act and the plethora of decisions referred to by the counsels.
3. Addressing all relevant issues which normally crop up in suits relating to title and possession.
4. Supreme Court firmly rejected all attempts to lead the Court to interpret religious doctrine in an absolute and extreme form and question the faith of worshiper, as such a course would be destructive of the values underlying Article 25 of the Constitution.

This decision is of great help to the lawyers as well as judges to understand many fundamental principles of law which were well established in earlier judgments. The same have been eloquently reiterated especially in areas like –

- Scope of Expert opinion and its acceptability.
- Wakf by lost grant or by public user
- Effect of interim order of attachment on title suits
- Dispossession and continuous possession
- Effect of the change of legal regimes including,

- a. the Mughal Rule under which Mosque was built and the subsequent civil suit filed in 1885 by Mahanta Raghubirdas claiming to be the Mahanta of Ramjanmasthan,
- b. Rule of British and Rule of Law under the Constitution of India with reference to Articles 269 and 372(1) of the Constitution of India.

A thorough reading of this decision enables the lawyers to draft the pleadings and conduct civil cases effectively and similarly judges in the trial courts and first appellate courts to adjudicate the controversies comprehensively.