

**BRIEF SUMMARY****Subject matter of the decided cases**

OOS No. 1 of 1989 Shri Gopal Singh Visharad Vs. Zahur Ahmad and 8 others, OOS No. 3 of 1989 Nirmohi Aakhada etc. Vs. Baboo Priya Dutt Ram and others, OOS No. 4 of 1989 Sunni central Board of Waqfs U.P. Lucknow and others Vs. Gopal Singh Visharad and others and O.O.S.No. 5 of 1989 Bhagwan Sri Ram Virajman at Ayodhya and others Vs. Rajendra Singh and others were filed before the Court of Civil Judge, Faizabad. Thereafter on the request of State of U.P. the cases were transferred to this Court and Hon'ble the Chief Justice constituted special Bench.

Government of India decided to acquire all area of the disputed property and the suits were abated. Thereafter the apex court directed this Court to decide the case as per judgement in Dr.M. Ismail Faruqui and others Vs. Union of India and others reported in (1994) 6 SCC 360.

**OOS No. 4 of 1989 (Reg. Suit No.12-61)****The Sunni Central Board of Waqfs U.P., Lucknow & others***Versus***Gopal Singh Visharad and others**

The instant suit has been filed for declaration in the year 1961 and thereafter in the year 1995 through amendment relief for possession was added.

Plaint case in brief is that about 443 years ago Babur built a mosque at Ayodhya and also granted cash grant from royal treasury for maintenance of Babri Mosque. It was damaged in the year 1934 during communal riots and thereafter on 23.12.1949 large crowd of Hindus desecrated the mosque by placing idols inside the mosque. The disputed property was attached under Section 145 Cr.P.C. and thereafter the suit was filed for declaration and for delivery of possession beyond the period of limitation.

On behalf of the defendants separate written statements were filed alleging that structure is not a mosque and it was constructed after demolishing the temple against the tenets of Islam. The A.S.I. report was obtained which proved the earlier construction of religious nature.

On the basis of the report of the Archeological Survey of India massive structure of religious nature is required to be maintained as national monument under the Ancient Monument Archeological Site and Remains Act, 1958. The Apex Court in **Rajiv Mankotia Vs. Secretary to the President of India and others, AIR 1997 Supreme Court page 2766 at para 21** directed the Government of India to maintain such national monuments. Thus, it is mandatory on the part of the Central Government to comply with the provisions of Act No. 24 of 1958 and ensure to maintain the dignity and cultural heritage of this country .

On behalf of some of the defendants, it was alleged that not only in the outer courtyard but also in the inner courtyard people used to worship the birth place of deity and it is being worshipped from times immemorial. The Court dismissed the suit. Issue wise finding is as under;

<b>O.O.S. No. 4 of 1989</b>
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### **Issues No. 1 and 1(a)**

1. Whether the building in question described as mosque in the sketch map attached to the plaint (hereinafter referred to as the building) was a mosque as claimed by the plaintiffs? If the answer is in the affirmative?
- 1(a) When was it built and by whom-whether by Babar as alleged by the plaintiffs or by Meer Baqi as alleged by defendant No. 13?

**Decided in favour of defendants and against the plaintiffs.**

**Issues No. 1(b)**

1(b) Whether the building had been constructed on the site of an alleged Hindu temple after demolishing the same as alleged by defendant No. 13? If so, its effect?

**Decided in favour of defendants and against the plaintiffs on the basis of A.S.I. Report.**

1(A). Whether the land adjoining the building on the east, north and south sides, denoted by letters EFGH on the sketch map, was an ancient graveyard and mosque as alleged in para 2 of the plaint? If so, its effect?

**Deleted vide courts order dated 23.2.96.**

**Issues No. 1(B)a**

1-B(a). Whether the building existed at Nazul plot no. 583 of the Khasra of the year 1931 of Mohalla Kot Ram Chandra known as Ram Kot, city Ahodhya (Nazul estate of Ayodhya ? If so its effect thereon)?"

**Property existed on Nazul Plot No. 583 belonging to Government.**

**Issues No. 1(B)(b)**

1B(b). Whether the building stood dedicated to almighty God as alleged by the plaintiffs?

**Decided against the plaintiffs.**

**Issues No. 1(B)(c)**

1-B (c). Whether the building had been used by the members of the Muslim community for offering prayers from times immemorial ? If so, its effect?

**Decided against the plaintiffs.**

**Issues No. 1(B)(d)**

1-B(d). Whether the alleged graveyard has been used by the members of Muslim community for burying the dead bodies of the members of the Muslim community? If so, its effect?

**Issue 1 B (d) deleted vide court order dated 23.2.96.**

**Issues No. 2, 4, 10, 15 & 28**

2. Whether the plaintiffs were in possession of the property in suit upto 1949 and were dispossessed from the same in 1949 as alleged in the plaint?
4. Whether the Hindus in general and the devotees of Bhagwan Sri Ram in particular have perfected right of prayers at the site by adverse and continuous possession as of right for more than the statutory period of time by way of prescription as alleged by the defendants?
10. Whether the plaintiffs have perfected their rights by adverse possession as alleged in the plaint?
15. Have the Muslims been in possession of the property in suit from 1528 A.D. Continuously, openly and to the knowledge of the defendants and Hindus in general? If so, its effect?
28. “Whether the defendant No. 3 has ever been in possession of the disputed site and the plaintiffs were never in its possession?”

**These issues are decided against the plaintiffs.**

**Issues No. 3**

3. Is the suit within time?

**Decided against the plaintiffs and in favour of defendants.**

**Issues No. 5(a)**

- 5(a) Are the defendants estopped from challenging the character of property in suit as a waqf under the administration of plaintiff No. 1 in view of the provision of 5(3) of U.P. Act 13 of 1936?

**(This issue has already been decided in the negative vide order dated 21.4.1966 by the learned Civil Judge).**

**Issues No. 5(b)**

- 5(b). Has the said Act no application to the right of Hindus in general and defendants in particular, to the right of their worship?

**Decided against the plaintiffs and in favour of defendants.**

**Issues No. 5(c)**

- 5(c). Were the proceedings under the said Act conclusive?  
(This issue has already been decided in the negative vide order dated 21.4.1966 by the learned Civil Judge.)

**Issues No. 5(d)**

- 5(d). Are the said provision of Act XIII of 1936 ultra-vires as alleged in written statement?  
(This issue was not pressed by counsel for the defendants, hence not answered by the learned Civil Judge, vide his order dated 21.4.1966).

**Issues No. 5(e) and 5(f)**

- 5(e). Whether in view of the findings recorded by the learned Civil Judge on 21.4.1966 on issue no. 17 to the effect that, “No valid notification under section 5(1) of the Muslim Waqf Act (No. XIII of 1936) was ever made in respect of the property in dispute”, the plaintiff Sunni Central Board of Waqf has no right to maintain the present suit?
- 5(f). Whether in view of the aforesaid finding, the suit is barred on account of lack of jurisdiction and limitation as it was filed after the commencement of the U.P. Muslim Waqf Act, 1960?

**Both these issues are decided against the Plaintiffs.**

**Issue No. 6**

6. Whether the present suit is a representative suit, plaintiffs representing the interest of the Muslims and defendants representing the interest of the Hindus?

**Decided in favour of plaintiffs and against the defendants.**

**Issue No. 7(a)**

- 7(a). 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?

**Decided against the plaintiffs and in favour of the defendants.**

**Issue No. 7(b)**

7(b). Whether Mohammad Asghar was the Mutwalli of alleged Babri Masjid and did he contest the suit for and on behalf of any such mosque?

**Decided against the plaintiffs and in favour of the defendants.**

**Issue No. 7(c)**

7(c). 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?

**Decided against the plaintiffs.**

**Issue No. 7(d)**

7(d). Whether in the aforesaid suit, title of the Muslims to the property in dispute or any portion thereof was admitted by plaintiff of that suit? If so, its effect?

**Decided against the plaintiffs.**

**Issue No. 8**

8. Does the judgment of Case No. 6/281 of 1881, Mahant Raghubar Dass Vs. Secretary of State and others, operate as res judicate against the defendants in suit?

**Decided against the plaintiffs and this judgment will not operate as resjudicata against the defendants in suit.**

**Issue No.9**

9. Whether the plaintiffs served valid notices under Sec. 80 C.P.C. **(Deleted vide order dated May 22/25, 1990).**

**Issues No.11, 13, 14, 19(a) & 19(c)**

11. Is the property in suit the site of Janam Bhumi of Sri Ram Chandraji?
13. Whether the Hindus in general and defendants in particular had the right to worship the Charans and 'Sita Rasoi' and other idols and other objects of worship, if any, existing in or upon the property in suit?
14. Have the Hindus been worshipping the place in dispute as Sri Ram Janam Bhumi or Janam Asthan and have been visiting it as a sacred place of pilgrimage as of right since times immemorial? If so, its effect?
- 19(a). Whether even after construction of the building in suit deities of Bhagwan Sri Ram Virajman and the Asthan Sri Ram Janam Bhumi continued to exist on the property in suit as alleged on behalf of defendant No. 13 and the said places continued to be visited by devotees for purposes of worship? If so, whether the property in dispute continued to vest in the said deities?
- 19(c). Whether any portion of the property in suit was used as a place of worship by the Hindus immediately prior to the construction of the building in question? If the finding is in the affirmative, whether no mosque could come into existence in view of the Islamic tenets, at the place in dispute?

**Decided against the plaintiffs.**

**Issue No.12**

12. Whether idols and objects of worship were placed inside the building in the night intervening 22<sup>nd</sup> and 23<sup>rd</sup> December, 1949 as alleged in paragraph 11 of the plaint or they have been in existence there since before? In either case, effect?  
**Idols were installed in the building in the intervening night of 22/23<sup>rd</sup> December, 1949.**

**Issue No.17**

17. Whether a valid notification under Section 5(1) of the U.P. Muslim Waqf Act No. XIII of 1936 relating to the property in suit was ever done? If so, its effect?

**(This issue has already been decided by the learned Civil Judge by order dated 21.4.1966).**

**Issue No.18**

18. What is the effect of the judgment of their lordships of the Supreme Court in Gulam Abbas and others Vs. State of U.P. and others, A.I.R. 1981 Supreme Court 2198 on the finding of the learned Civil Judge recorded on 21<sup>st</sup> April, 1966 on issue no. 17?

**Decided against the plaintiffs and in favour of defendants.**

**Issue No.19(b)**

19(b). Whether the building was land-locked and cannot be reached except by passing through places of Hindu worship? If so, its effect?

**Decided against the plaintiffs and in favour of the defendants.**

**Issue No.19(d)**

19(d). Whether the building in question could not be a mosque under the Islamic Law in view of the admitted position that it did not have minarets?

**Decided against the plaintiffs and in favour of the defendants.**

**Issue No. 19(e)**

19(e). Whether the building in question could not legally be a mosque as on plaintiffs own showing it was surrounded by a



graveyard on three sides.

**Decided against the plaintiffs.**

**Issues No.19(F)**

19(F). Whether the pillars inside and outside the building in question contain images of Hindu Gods and Goddesses? If the finding is in the affirmative, whether on that account the building in question cannot have the character of Mosque under the tenets of Islam?

**Decided against the plaintiffs and in favour of the defendants.**

**Issue No.20(a)**

20(a). Whether the Waqf in question cannot be a Sunni Waqf as the building was not allegedly constructed by a Sunni Mohammedan but was allegedly constructed by Meer Baqi who was allegedly a Shia Muslim and the alleged Mutwalis were allegedly Shia Mohammedans? If so, its effect?

**Decided against the plaintiffs.**

**Issue No.20(b)**

20(b). Whether there was a Mutwalli of the alleged Waqf and whether the alleged Mutwalli not having joined in the suit, the suit is not maintainable so far as it relates to relief for possession?

**Suit is not maintainable and the issue is decided in favour of the defendants.**

**Issue No.21**

21. Whether the suit is bad for non-joinder of alleged deities?

**Decided against the plaintiffs and in favour of the defendants.**

**Issues No. 23 & 24**

23. If the wakf Board is an instrumentality of state? If so, whether the said Board can file a suit against the state itself?
24. If the wakf Board is state under Article 12 of the constitution? If so, the said Board being the state can file any suit in representative capacity sponsering the case of particular community and against the interest of another community)”.  
 25. “Whether demolition of the disputed structure as claimed by the plaintiff, it can still be called a mosque and if not whether the claim of the plaintiffs is liable to be dismissed as no longer maintainable?”

**Issues are decided against the plaintiffs and the suit is not maintainable.**

**Issues No. 25 & 26**

25. “Whether Muslims can use the open site as mosque to offer prayer when structure which stood thereon has been demolished?”
26. “Whether Muslims can use the open site as mosque to offer prayer when structure which stood thereon has been demolished?”

**Decided against the plaintiffs and in favour of the defendants.**

**Issue No. 27**

27. “Whether the outer court yard contained Ram Chabutra, Bhandar and Sita Rasoi? If so whether they were also demolished on 6.12.1992 along with the main temple?”

**Yes, issue is decided in positive.**

**Issue No.16 & 22**

16. To what relief, if any, are the plaintiffs or any of them, entitled?
22. Whether the suit is liable to be dismissed with special costs?

**Plaintiffs are not entitled for any relief.**

**The suit is dismissed with easy costs.**

**O.O.S No. 1 of 1989 (R.S.No.2-50)****Sri Gopal Singh Visharad Vs. Zahoor Ahmad and others**

The instant suit has been filed on the assertion that the father of the plaintiff on 14.1.1950 was not allowed to touch the deity. Accordingly the injunction has been sought on behalf of the defendants including the State Government to not disallow the plaintiff to touch the deity.

State Government opposed the claim and stated that in order to control the crowd reasonable restrictions were imposed.

The suit was dismissed for the reasons (i) no valid notice was given, (ii) the plaintiff has no legal character and (iii) the State Government can impose reasonable restrictions in public interest to control the crowd and to enable every body to have the Darshan of the deity.

Finding of the court issue wise is as follows;

**O.O.S. No.  
1 of 1989**

**Issues No. 1, 2 and 6**

1. Is the property in suit the site of Janam Bhumi of Shri Ram Chandra Ji?
2. Are there any idols of Bhagwan Ram Chandra Ji and are His Charan Paduka' situated in the site in suit.?
6. Is the property in suit a mosque constructed by Shansha Babar commonly known as Babri mosque, in 1528A.D.?

**Connected with issues No. 1(a), 1(b), 1-B (b), 19-d, 19-e and 19-f of the Original Suit No. 4 of 1989, wherein these issues have been **decided in favour of defendants and against the Sunni Central Waqf Board, U.P.****

**Issues No. 3, 4 & 7**

3. Has the plaintiff any right to worship the 'Charan Paduka' and the idols situated in the place in suit.?

4. Has the plaintiff the right to have Darshan of the place in suit.?
7. Have the Muslims been in possession of the property in suit from 1528A.D.?

**Connected with Issues No. 1-B(c), 2, 4, 10, 11, 12, 13, 14, 15, 19-a, 19-b, 19-c, 27 and 28 of Original Suit No. 4 of 1989, wherein these issues have been decided in favour of defendants and against the plaintiffs.**

### **Issues No. 9, 9(a), 9(b) & 9(c)**

9. Is the suit barred by provision of section (5) (3) of the Muslim Waqfs Act (U.P. Act 13 of 1936);?
- (a) Has the said act no application to the right of Hindus in general and plaintiff of the present suit, in particular to his right of worship.?
- (b) Were the proceedings under the said act referred to in written statement para 15 collusive? If so, its effect?
- (c) Are the said provisions of the U.P. Act 13 of 1936 ultra-vires for reasons given in the statement of plaintiff's counsel dated 9.3.62 recorded on paper No.454-A-?

**Connected with Issues No. 5-a, 5-b, 5-c, 5-d, 5-e, 5-f, 7-b, 17(issue no.17 of O.O.S. No.4 of 1989 has already been decided by the Civil Judge, Faizabad) 18, 20-a, 20-b, 23, 24, 25 and 26 of Original Suit No. 4 of 1989, wherein these issues have been decided in favour of defendants and against the plaintiffs.**

### **Issues No. 5(a) & 5(b)**

- 5(a) 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 & others.?
- 5(b) Was it decided against the plaintiff.?

**Connected with issue No. 1-B (a) of Original Suit No. 4 of 1989.**

**Property existed on Nazul plot No. 583 belonging to Government.**

**Issues No. 5(c) & 5(d)**

- 5(c) Was that suit within the knowledge of Hindus in general and were all Hindus interest in the same.?
- 5(d) Does the decision in same bar the present suit by principles of Resjudicata and in any other way?

**Connected with** issue No. 7-a, 7-c, 7-d and issue no. 8 in Original Suit No. 4 of 1989, wherein these issues have been **decided in favour of defendants and against the plaintiffs.**

**Issue No. 13**

13. Is the suit No.2 of 50 Shri Gopal Singh Visharad Vs. Zahoor Ahmad bad for want of notice under section 80 C.P.C. ?

**Decided in favour of defendants and against the plaintiffs.**

**Issue No. 8**

8. Is the suit barred by proviso to section 42 Specific Relief Act.?

**Decided against the plaintiffs and in favour of defendants.**

**Issues No. 11(a) & 11(b)**

- 11(a) Are the provisions of section 91 C.P.C. applicable to present suit ? If so is the suit bad for want of consent in writing by the advocate general ?

- 11(b) Are the rights set up by the plaintiff in this suit independent of the provisions of section 91 C.P.C. ? if not its effect. ?

**Decided in favour of plaintiffs and against the defendants.**

**Issue No. 12**

12. Is the suit bad for want of steps and notices under order 1 Rule 8 C.P.C. ? If so its effect. ?

**Decided in favour of plaintiffs and against the defendants.**

**Issue No. 14**

14. Is the suit no.25 of 50 Param Hans Ram Chandra Vs. Zahoor Ahmad bad for want of valid notice under section 80 C.P.C. ?

**Withdrawn, no finding is required.**

**Issue No. 15**

15. Is the suit bad for non-joinder of defendants?  
**NO**

**Issue No. 10**

10. Is the present suit barred by time ?  
**NO**

**Issue No. 16 & 17**

16. Are the defendants or any of them entitled to special costs under section 35-A C.P.C.?  
17. To what reliefs, if any, is the plaintiff entitled. ?

**Plaintiff is not entitled for the relief claimed and the suit is dismissed with easy costs.**

**OOS No. 3 of 1989****Nirmohi Akhara & Anr. Vs. Shri Jamuna Prasad Singh & Ors.**

The suit was filed by Nirmohi Akhara, alleging that right from times immemorial, they are worshipping the deities. Accordingly the management of the temple may be handed over to the plaintiff by defendant- State Government.

The defendants have contested the claim and this Court found the suit barred by time and also on merits that the plaintiff failed to prove the case.

Finding of the court issue wise is as follows;

**O.O.S. No.  
3 of 1989**

**Issues No. 1, 5 and 6**

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

**Connected with Issues No. 1, 1(a), 1(b), 1B(b), 12, 19(d), 19(e) and 19(f) of O.O.S. No. 4 of 1989, wherein these issues have been **decided in favour of defendants and against the plaintiffs.****

**Issues No. 2, 3, 4 & 8**

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

8. Have the rights of the plaintiffs extinguished for want of possession for over 12 years prior to the suit ?

Connected with Issues No. 1B(c), 2, 4, 10, 11, 12, 13, 14, 15, 19(a), 19(b), 19(c), 27 & 28 of O.O.S. No. 4 of 1989.

**Decided against the Plaintiffs.**

### **Issues No. 7(a), 7(b) & 16**

- 7(a) Has there been a notification under Muslim Waqf Act (Act no.13 of 1936) declaring this property in suit as a Sunni Waqf ?

- 7(b) Is the said notification final and binding ? Its effect.

16. Is the suit bad for want of notice u/s 83 of U.P. Act 13 of 1936 ?

Connected with issues no. 5(a), 5(b), 5(c), 5(d), 5(e), 5(f), 7(b), 17, 18, 20(a), 20(b), 23, 24, 25 and 26 in O.O.S No. 4 of 1989, wherein these issues have been **decided against the plaintiffs.**

### **Issue No. 9**

9. Is the suit within time ?

Connected with issues no. 3 decided in O.O.S. No. 4 of 1989.

**Decided in favour of defendants and against the plaintiffs.**

### **Issues No. 10(a) & 10(b)**

- 10(a) Is the suit bad for want of notice u/s 80 C. P.C.

- 10(b) Is the above plea available to contesting defendants ?

**Decided in favour of the plaintiffs and against the defendants.**

### **Issue No. 11**

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

Connected with Issue No. 21 of O.O.S. No. 4 of 1989.

**Decided in favour of defendants and against the plaintiffs.**



**Issue No. 14**

14. Is the suit not maintainable as framed ?

**Decided in favour of the plaintiffs and against the defendants.**

**Issue No. 17**

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

**Decided in favour of the plaintiffs and against the defendants.**

**Issue No. 15**

15. Is the suit properly valued and Court-Fee paid sufficient ?  
**(Already decided)**

**Issues No. 12 & 13**

12. Are defendants entitled to special costs u/s 35 C.P.C. ?  
**No.**

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

**O.O.S. No. 5 of 1989(R.S.NO. 236/1989)****Bhagwan Sri Rama Virajman & Ors. Vs. Sri Rajendra Singh & Ors.**

The instant suit was filed on behalf of the deities and Sri Ram Janm Bhumi through the next friend, praying that the defendants be restrained not to interfere in the construction of the temple of plaintiff nos. 1 and 2 on the ground that the deities are perpetual minors and against them Limitation Laws do not run.

This Court is of the view that place of birth that is Ram Janm Bhumi is a juristic person. The deity also attained the divinity like Agni, Vayu, Kedarnath. Asthan is personified as the spirit of divine worshipped as the birth place of Ram Lala or Lord Ram as a child. Spirit of divine ever remains present every where at all times for any one to invoke at any shape or form in accordance with his own aspirations and it can be shapeless and formless also. Case has been decided on the basis of decision of Hon'ble the Apex Court specially the law as laid down in **1999(5) SCC page 50, Ram Janki Deity Vs. State of Bihar, Gokul Nath Ji Mahraj Vs. Nathji Bhogilal AIR 1953 Allahabad 552, AIR 1967 Supreme Court 1044 Bishwanath and another Vs. Shri Thakur Radhabhallabhji and others** & other decisions of Privy Council and of different High Courts.

Finding of the court issue wise is as follows:

<b>O.O.S. No. 5 of 1989</b>
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**ISSUES NO. 1, 2 & 6**

1. Whether the plaintiffs 1 and 2 are juridical persons?
2. Whether the suit in the name of deities described in the plaint as plaintiffs 1 and 2 is not maintainable through plaintiff no. 3 as next friend?
6. Is the plaintiff No. 3 not entitled to represent the plaintiffs 1 and 2 as their next friend and is the suit not competent on this account ?

**Decided in favour of the plaintiffs and against the defendants.**

**ISSUES NO. 9, 10, 14 & 22**

9. Was the disputed structure a mosque known as Babri Masjid ?
10. Whether the disputed structure could be treated to be a mosque on the allegations, contained in paragraph-24 of the plaint ?
14. Whether the disputed structure claimed to be Babri Masjid was erected after demolishing Janma-Sthan temple at its site?
22. Whether the premises in question or any part thereof is by tradition, belief and faith the birth place of Lord Rama as alleged in paragraphs 19 and 20 of the plaint ? If so, its effect ?

**Connected with issues No.1, 1(a), 1(b), 1B(b), 11, 19(d), 19(e) & 19(f) in O.O.S. No. 4 of 1989.**

**Decided against Sunni Waqf Board and in favour of the plaintiffs.**

**ISSUES NO.15, 16 & 24**

15. Whether the disputed structure claimed to be Babri Masjid was always used by the Muslims only, regularly for offering

Namaz ever since its alleged construction in 1528 A.D. To 22<sup>nd</sup> December 1949 as alleged by the defendants 4 and 5 ?

16. Whether the title of plaintiffs 1 & 2, if any, was extinguished as alleged in paragraph 25 of the written statement of defendant no. 4 ? If yes, have plaintiffs 1 & 2 reacquired title by adverse possession as alleged in paragraph 29 of the plaint ?
24. Whether worship has been done of the alleged plaintiff deity on the premises in suit since time immemorial as alleged in paragraph 25 of the plaint?

**Connected with issues no. 1-B(c), 2, 4, 12, 13, 14, 15, 19(a), 19(b), 19(c), 27 & 28 of O.O.S. No.4 of 1989.**

**Above issues are decided against Sunni Central Waqf Board and Others.**

### **Issue No.17**

17. Whether on any part of the land surrounding the structure in dispute there are graves and is any part of that land a Muslim Waqf for a graveyard ?

**Deleted vide this Hon'ble Court order dated 23.2.96.**

### **Issue No.23**

23. Whether the judgment in suit No. 61/280 of 1885 filed by Mahant Raghur 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 ?

**Decided against the defendants and in favour of the plaintiffs.**

### **Issue No.5**

- (5) Is the property in question properly identified and described

in the plaint ?

**Decided in favour of the plaintiffs and in favour of the defendants.**

**Issues No. 7 & 8**

- (7) Whether the defendant no. 3, alone is entitled to represent plaintiffs 1 and 2, and is the suit not competent on that account as alleged in paragraph 49 of the additional written statement of defendant no. 3 ?
- (8) Is the defendant Nirmohi Akhara the “Shebait” of Bhagwan Sri Rama installed in the disputed structure ?

**Decided against the defendant no.3 and in favour of plaintiffs no. 1, 2 and 3.**

**Issues No.19**

19. Whether the suit is bad for non-joinder of necessary parties, as pleaded in paragraph 43 of the additional written statement of defendant no. 3 ?

**Suit is maintainable.**

**Issue No.20**

20. Whether the alleged Trust, creating the Nyas defendant no. 21, is void on the facts and grounds, stated in paragraph 47 of the written statement of defendant no. 3 ?

**Decided in favour of the plaintiffs and against the defendant no.3.**

**Issue No.21**

21. Whether the idols in question cannot be treated as deities as alleged in paragraphs 1, 11, 12, 21, 22, 27 and 41 of the written statement of defendant no. 4 and in paragraph 1 of the written statement of defendant no. 5 ?

**Decided in favour of the plaintiffs and against the defendants no. 4 and 5.**

**Issues No. 26 & 27**

26. Whether the suit is bad for want of notice under Section 80 C.P.C. as alleged by the defendants 4 and 5?
27. Whether the plea of suit being bad for want of notice under Section 80 C.P.C. can be raised by defendants 4 and 5 ?

**Decided against defendant nos. 4 & 5.**

**Issue No.25**

25. Whether the judgment and decree dated 30<sup>th</sup> March 1946 passed in suit no. 29 of 1945 is not binding upon the plaintiffs as alleged by the plaintiffs ?

**Decided in favour of the plaintiffs and against the defendants.**

**Issue No.29**

29. Whether the plaintiffs are precluded from bringing the present suit on account of dismissal of suit no. 57 of 1978 (Bhagwan Sri Ram Lala Vs. state) of the Court of Munsif Sadar, Faizabad?

**Decided in favour of the plaintiffs and against the defendants.**

**Issue No.28**

28. Whether the suit is bad for want of notice under Section 65 of the U.P. Muslim Waqfs Act, 1960 as alleged by defendants 4 and 5 ? If so, its effect?

**Decided in favour of the plaintiffs and against defendants no. 4 and 5.**

**Issue No.18**

**18.** Whether the suit is barred by Section 34 of the Specific Relief Act as alleged in paragraph 42 of the additional written statement of defendant no. 3 and also as alleged in paragraph 47 of the written statement of defendant no. 4 and paragraph 62 of the written statement of defendant no. 5 ?

**Decided in favour of the plaintiffs and against the defendants.**

**Issues No. 3(a), 3(b), 3(c), 3(d) & 4**

**3(a)** Whether the idol in question was installed under the central dome of the disputed building (since demolished) in the early hours of December 23, 1949 as alleged by the plaintiff in paragraph 27 of the plaint as clarified on 30.4.92 in their statement under order 10 Rule 2 C.P.C. ?

**3(b)** Whether the same idol was reinstalled at the same place on a chabutra under the canopy?

**3(c)** “Whether the idols were placed at the disputed site on or after 6.12.92 in violation of the courts order dated 14.8.1989, 7.11.1989 and 15.11. 91 ?

**3(d)** If the aforesaid issue is answered in the affirmative, whether the idols so placed still acquire the status of a deity?”

**(4)** Whether the idols in question had been in existence under the “Shikhar” prior to 6.12.92 from time immemorial as alleged in paragraph-44 of the additional written statement of defendant no. 3 ?

**Decided in favour of the plaintiffs and against the defendants.**

**Issue No.11**

**(11)** Whether on the averments made in paragraph-25 of the plaint, no valid waqf was created in respect of the structure in

dispute to constitute it as a mosque ?

**Decided in favour of the plaintiffs and against the defendants.**

**Issue No.12**

(12) If the structure in question is held to be mosque, can the same be shifted as pleaded in paragraphs 34 and 35 of the plaint?

**Deleted vide court order dated 23.2.96.**

**Issue No.13**

(13) Whether the suit is barred by limitation ?

**Decided in favour of the plaintiffs and against the defendants.**

**Issue No.30**

30. To what relief, if any, are plaintiffs or any of them entitled?

**Plaintiffs are entitled for the relief claimed and the suit is decreed with easy costs.**