

Essence of Ayodhya Verdict

The first sentence of the judgment says that this is a verdict in first appeals. In fact it is final verdict because there is no appeal to the judgement of SC particularly when it is decided by the constitutional bench. The Code of Civil Procedure and Indian Judicial system provides two higher forums to testing the verdict of the trial court. Here the dispute is finally decided in first appeal. May it be so, the thorough analysis of every aspect of the dispute gives no room to say that the parties lost any opportunity of fair trial. every issue in the dispute has been thoroughly examined, analysed and decided leaving no room for further judicial scrutiny.

Religious aspect of the dispute-

Both parties to the dispute, though juristic persons as a religious trust or entity, represent two prominent religious groups of Indians giving the dispute a pan-Indian view. One group claims ownership of the property on the ground that there existed a Masjid and people use to offer prayers on the said place. The other religious group claims ownership on the ground that physical incarnation of their god by name Shri Ram was born at the said place and prayers were offered to Lord Shri Ram from the said place before construction of Masjid and even after 1857 since the Masjid was abandoned and idols were placed in the Masjid. The basic difference of faith and worship between Hindus and Muslims is that Muslims believe in divine existence of god, who is omnipresent, omnipotent, most benevolent and helps any human, who with purest of his heart ask for his help. Hindus believe in divine as well as physical existence of god and they believe that god incarnates as human being to punish the sinners and to help the good ones. They believe in all the divine qualities of god as Muslims believe but the gods in every temple and home are being treated as humanly existing deities who bath, who are offered food and who sleep at night. This difference of faith underlines the prominence of dispute for the parties.

Political aspect of the disputes-

The political parties anywhere in the world believe in creating the wave in their favour on the basis of hype of promises. when they see that any issue in which society will generate public concern, they surge forward for such cause saying that they have solution to the said public concern. Ayodhya issue is also made a political issue by all political parties. During last 50 years every political party gained political advantages by promising construction of a temple at the disputed site. The Supreme Court considered the dispute as a property dispute. in the initial paras the judgement focused on describing what is the property. How the parties to claim ownership of property and how the High Court has decided the dispute. The Court has referred religious texts, travel logs and all available evidence placed during trial. I prominently refer to the part of the judgment which gives new dimensions to Indian Judicial System.

Cultural Assimilation-

In para no. 77 of the judgment the Court says that it is inappropriate for the court to enter upon any array of theology and to assume the role of interpreter of the Hadees. in the same para the court said that it is a secular institution setup under the constitutional regime and must clear from choosing one among many possible interpretations of theological doctrine and must prefer safer course of expecting faith and belief of the worshipper. In the same para the court also referred to cultural assimilation which makes changes in practices of religion according to culture and social context. As per the court cultural assimilation is the process which strengthen and reinforces true character of country which has been able to preserve its unity by accommodating, tolerating and respecting a diversity of religious faith and ideas. With this proposition the court firmly rejected the submissions to decide the dispute on the ambit faith of worshippers.

The Worship Act : A constitutional Commitment-

The court also referred to provisions of the Worship Act 1991 which is enacted to maintain status quo in respect of religious character of place of worship as it existed on 15 day August 1947. the Supreme Court observed the State by enacting the Law enforced the constitutional commitment

to uphold the equality of all religions and to uphold secularism which is part of basic features of constitution. as per the court the parliament determined the independence from colonial rule and furnished a constitutional basis for healing the injustices of past by providing confidence to every religious community that their places of worship will be preserved and the character of such places will not be altered.

Hindu idol is a legal person-

The court by examining various decisions of Indian Courts, American Courts and Common Law Courts dealt with the question whether the Hindu Idols is legal person? In para no 102 it is observed

“At the outset, it is important to understand that the conferral of legal personality on a Hindu idol is not the conferral of legal personality on divinity itself, which in Hinduism is often understood as the ‘Supreme Being’. The supreme being defies form and shape, yet its presence is universal. In the law of Hindu endowments and in the present proceedings, it has often been stated that legal personality is conferred on the ‘purpose behind the idol’.” the court also observed that Hinduism understands the supreme Being as existing in every aspect of universe. The Supreme Being is omnipresent. The idea of legal person is premised on the need of identify the subjects of legal system. An omnipresent being incapable of being identified or delineated in any manner meaningful to the law and no identifiable legal subject would emerge. The court ruled that the reasons for the recognition of idol as an entity in law are intrinsically tied to the historical circumstances in which recognition took place. The court then traced history of court verdicts by which idols to whom properties are devoted where required to be considered as juristic personality to decide the property disputes.”

Faith and belief: whether culminate in creation of property right-

While deciding one of the aspects of the dispute whether the entire land to which Parikrama is offered is property in dispute. The court again referred to the faith and beliefs of the devotees and whether it culminates into creation of property. The court observed that in a matter of faith and belief the absence of evidence may not be evidence of absence. Concluding this issue, the court ruled

“in order to provide a sound jurisprudential basis for the recognition of a Swayambhu deity, manifestation is crucial. Absent that manifestation which distinguishes the land from other property, juristic personality cannot be conferred on the land.”

The Court while deciding the issue of faith and belief observed that,

“Religiosity has moved hearts and minds. The court cannot adopt a position that accords primacy to the faith and belief of a single religion as the basis to confer both judicial insulation as well as primacy over the legal system as whole.”

Whether simple worshipper can sue in his personal capacity to protect the interest of deity-

The court considered an interesting question whether simple worshipper can sue in his personal capacity to protect the interest of deity, the court observed

“ In view of these observations, it is apparent that where the interests of the idol need to be protected, merely permitting interested worshippers to sue in their personal capacity does not afford the deity sufficient protections in law. In certain situations, a next friend must be permitted to sue on behalf of the idol – directly exercising the deity’s right to sue.” The court also ruled that, the fitness of the next friend is required to be tested and unless his bonafides determined he cannot be allowed to represent the juristic legal person. This principle be equally applicable in all cases where next friend is allowed to represent the party to the suit.”

Powers of de-facto manager-

In respect of suit for protection of trust property the court observed that the protection of trust property is of paramount importance. A person claiming to be de-facto manager can never setup a claim adverse to the party he is representing, it must be shown that de-facto manager is in possession of trust property and exercises complete control over right of management of properties without any hindrance from any quarters. And stray act of management does not vest a person with the right of the de-facto manager. In para no 382 of Judgement the court ruled that limited recognition of de-facto shebit did not confer upon him right to continue in perpetuity.

Courts be cautious while passing strictures regarding testimony of experts-

The court made cautionary remark while making comments regarding testimony of witnesses. The court found that the High Court seems to have unjustifiably harsh on the four historians who lead their evidence as per the court the weight which could be attributed to histoian is distinct matter but while analysing this aspect it was not necessary for the High Court to make observations in regard to the personal standing and qualification of the historians.

The Limitation Act is the statute of repose-

In a suit filed by Sunni Central Waqf Board seeking relief of declaration of ownership and possession defendants have raised issue of limitation majority of High Court Judges answered that the suit is not within limitation but the Supreme Court held otherwise. The Court observed that the Limitation Act is the statute of repose. Extension and exception to limitation are stipulated in statute. The court considered that the suit is for possession of immovable property falling under first column of article 142 of the Limitation Act. The suit has been filed within a period of 12 years of dispossession is within limitation. The supreme Court held that the high court erred in applying provision of article 120 of the Limitation Act treating the suit as suit for declaration.

No determination of rights and liabilities on the basis of our ideology, religion, the colour of skin-

While considering claims and counter claims of the parties regarding historical evidence to establish their point of view, the court observed in Para No.633,

"Human history is testament to the rise and fall of rulers and regimes. The law cannot be used as a device to reach back in time and provide a legal remedy to every person who disagrees with the course which history has taken. The courts of today cannot take cognisance of historical rights and wrongs unless it is shown that their legal consequences are enforceable in the present. Thus, before this Court embarks on a lengthy historical enquiry, it is important to consider the extent to which acts done and rights accrued under previous legal regimes have legal consequences today under our present laws."

The Court categorically stated in para 652 that court cannot entertain claims from the actions of Mogul Rulers against Hindu place of worship in the court of law today. The court observed,

"However, the adoption of the Constitution marks a watershed moment where we, the people of India, departed from the determination of rights and liabilities on the basis of our ideology, our religion, the colour of our skin, or the country when our ancestors arrived at these lands, and submitted to the rule of law. Under our rule of law, this court can adjudicate upon private property claims that were expressly or impliedly recognised by the British sovereign and subsequently not interfered with upon Indian independence."

Silences of the law need to be infused with meaning to retain its humane and compassionate face-

The court was aware the dispute between people professing two faiths cannot be decided simply as a property dispute and therefore, the court has resorted to Article 142 of the Constitution. The

court was conscious of the violence and unrest the Ayodhya dispute has created in the Indian society, The court in para no 674 observed

"The equitable power under Article 142 of the Constitution brings to fore the intersection between the general and specific. Courts may find themselves in situations where the silences of the law need to be infused with meaning or the rigours of its rough edges need to be softened for law to retain its humane and compassionate face. Above all, 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 of regions and religions, that the Indian citizen as a person and India as a nation must realise the sense of peace within. It is in seeking this ultimate balance for a just society that we must apply justice, equity and good conscience. It is in these situations, that courts are empowered to ensure a just outcome by passing an order necessary to ensure complete justice between the parties."

Principle of lost grant-

Para No.767 and 768 of Judgment lays down the principles for invoking doctrine lost grant. Relying on its previous judgements the Supreme Court ruled,

"From the analysis of the precedent on the subject, the following principles can be culled out:

(i) 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. However, the court is not bound to raise the presumption where there is sufficient and convincing evidence to prove possession or a claim to a land in which case the doctrine of lost grant will have no applicability;

(ii) 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. Once the assumption is made, the court shall, as far as possible, secure the possession of those who have been in quiet possession;

(iii) For a lawful presumption there must be no legal impediments. For the applicability of the doctrine it is necessary to establish that at the inception when the grant was made not only was there a valid grant but also capable grantees in whose favour the grant could have been made. In the absence of defined grantees, there will be no presumption of lost grant;

(iv) 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. The requisite period of use and possession is variable and to be determined from case to case; and

(v) 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.

768. In the present case, the plaintiffs in Suit 4 have set up a claim of declaration on the basis of a dedication of the mosque constructed by Babur in 1528 for the worship of the Muslim community and, in the alternate, on adverse possession, if it is established that the mosque was constructed on the site of a Hindu temple. There is no pleading by the plaintiffs to support the application of the doctrine of lost grant. The specific case of the plaintiffs is that of a dedication of the mosque for public worship by Muslims. This must be evaluated on the basis of the evidence which has been adduced. In fact, the alternate plea of adverse possession is destructive of a valid legal basis to apply the doctrine of lost grant as a rule of evidence. Adverse possession postulates the vesting of title in one

person and the existence of a long continued and uninterrupted possession of another, to the knowledge of and in a manner hostile to, the true title holder. The plea of adverse possession would lead to an inference against the application of the doctrine of lost grant as a plea of adverse possession is premised in title vesting in someone other than the alleged grantee. The decisions of this Court and those of the Privy Council recognising the doctrine as a rule of evidence show that the principle must be applied with caution. The doctrine does not constitute an independent, substantive head for the recognition of titles but is a rule of evidence.

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."

Burden of proof to prove title against a person in possession-

In para 784 and 785 of the judgement hon. Apex Court interpreted s. 110 of the Evidence Act as under,

"Section 110 of the Evidence Act 1872 speaks of the burden of proof as to ownership : when a question arises as to whether a person in possession of anything is the owner of such thing, the burden of proving that he is not the owner is cast on the person who avers that he is not the owner. In the process of applying the doctrine of lost grant as a rule of evidence, the court must be circumspect about not travelling beyond the limits set for it by the legislature.

Section 110 deals with the burden of proof. Where the provision applies, the burden of proving that another person who is in possession is not the owner lies on the person who affirms against the ownership of that other person. But, for Section 110 to be attracted, there must be a question as to whether any person is the owner of anything and the ownership claimed must be that of which he is shown to be in possession. Section 110 is based on the principle that title follows possession. That is why the provision postulates that where a person is shown to be in possession, and a question arises as to whether that person is the owner, the law casts the burden of disproving ownership on the individual who affirms that the person in possession is not the owner.

785. Several decisions of this Court have interpreted the provisions of Section 110. Section 110 is based on the principle that possession in and of itself may raise a presumption of title. But this applies when the facts disclose no title in either of the disputants in which case, as it is said, possession alone decides. Hence, on the other hand, it is also well-settled that the presumption cannot be arise when the facts are known.

In Nair Service Society Ltd. v K C Alexander³⁹⁸, Justice M Hidayatullah (as the learned Chief Justice then was) speaking for a three judge Bench of this Court held:-

—17...That possession may prima facie raise a presumption of title no one can deny but this presumption can hardly arise when the facts are known. When the facts disclose no title in either party, possession alone decides. In M S Jagadambal v Southern Indian Education Trust³⁹⁹ , Justice K Jagannatha Shetty, speaking for a two judge Bench of this Court held that possession continues with the title holder unless and until the defendant acquires title by adverse possession:

—18...The possession continues with the title holder unless and until the defendant acquires title by adverse possession.

There would be no continuance of adverse possession when the land remains submerged and when it is put out of use and enjoyment. In such a case the party having title could claim constructive possession provided the title had not been extinguished by adverse possession

before the last AIR 1968 SC 1165 1988 (Supp) SCC 144 submergence. There is no difference in principle between seasonal submersion and one which continues for a length of time. In Chief Conservator of Forests, Govt of A P v Collector⁴⁰⁰, Justice Syed Shah Mohammed Quadri, speaking for a two judge Bench of this Court held:

—20...presumption, which is rebuttable, is attracted when the possession is *prima facie* lawful and when the contesting party has no title. In State of A P v Star Bone Mill & Fertiliser Company⁴⁰¹, this Court held that the object of Section 110 is based on public policy. The object is to prevent persons from committing a breach of peace by taking the law into their own hands however good their title may be over the land in question. This object underlies provisions such as Section 6 of the Specific Relief Act 1963, Section 145 of the Code of Criminal Procedure 1973 and Sections 154 and 158 of the Indian Penal Code 1860. Justice B S Chauhan speaking for a two judge Bench of this Court explained in the above decision that:

—21...The said presumption is read under Section 114 of the Evidence Act, and applies only in a case where there is either no proof, or very little proof of ownership on either side. The maxim —possession follows title is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in the case of wastelands, or where nothing is known about possession one way or another. Presumption of title as a result of possession, can arise only where facts disclose that no title vests in any party.

Possession of the plaintiff is not *prima facie* wrongful, and title of the plaintiff is not proved. It certainly does not mean that because a man has title over some land, he is necessarily in possession of it. It in fact means, that if at any time a man with title was in possession of the said property, the law allows the presumption that such possession was in continuation of the title vested in him. A person must establish that he has continued possession of the suit property, while the other side claiming title, must make out a case of trespass/encroachment, etc. Where the apparent title is with the plaintiffs, it is incumbent upon the defendant, that in order to displace this claim of apparent title and to establish beneficial title in himself, he must establish by way of satisfactory evidence, circumstances that favour his version.

Even, a revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof, both forward and backward, can also be raised under Section 110 of the Evidence Act. (Emphasis supplied) In assessing this limb of the submission on the applicability of Section 110 the crucial test is whether the disputed site represents —anything of which the Muslim parties are —shown to be in possession. Unless the —shown to be in possession requirement is fulfilled, the presumption would not arise and there would be no question of placing the burden of establishing that the plaintiffs in Suit 4 are not the owners on the contesting Hindu parties.

Constitution postulates equality of all faiths-

The supreme court provided much needed sermon which Indian of every faith must keep in mind. In para no 800 the Supreme Court observed,

“The Constitution postulates equality of all faiths. Tolerance and mutual co-existence nourish the secular commitment of our nation and its people.”
