In the Court of District Judge, Varanasi.

Present: Dr. Ajaya Krishna Vishvesha, **H.J.S.**
CNR No.UPVR 050010672021
Original Suit No. 18 of 2022

Smt. Rakhi Singh and others Vs. State of U.P and others.

Disposal of Application 35C

12-09-2022

Application 35C has been filed by the defendant no.4 under Order 7 Rule 11(d) of CPC. In this application, the applicant/defendant no.4 has prayed that plaint of this case is barred under Order 7 Rule 11(d) CPC. Therefore, the plaint be rejected.

In the application 35C, it has been mentioned by the applicant/defendant no.4 that the suit has been filed by the plaintiff for the declaration that the plaintiffs have right to worship the God at plot no. 9130 and the defendants be restrained from interfering in the worship, Arti and Bhog of Gods by the plaintiffs at plot no. 9130. The defendants be also restrained from demolishing and destroying any part of it. It has been narrated in the application 35C that Gyanvapi Masjid is established at plot no. 9130 since about 600 years and it exists there till today. In this mosque, the common Muslims of Varanasi city and nearby area have been offering Namaz of five times and Namaz of Eid & Jumma without any interference. The Parliament has enacted the **Places of Worship (Special Provisions) Act, 1991** in the year 1991. In this Act, it has been provided that the places of worship will remain in the same position in which they were on 15th August, 1947 and regarding such places of worship, no suit will be maintainable in any court. Further, in 1983, **Shri Kashi Vishwanath Act, 1983** was enacted in Uttar Pradesh. In this Act, it has been provided that Board of Trustees will be created which will look after Shri Kashi Vishwanath Mandir and all Gods and Goddesses in its compound.

It has also been mentioned in the application 35C that from the perusal of the plaint, it is clear that the facts mentioned in para 1 to 14 relates to Gyanvapi Mosque and reference has been made regarding worship at Gyanvapi Mosque which is situated since 600 years and such assertions are barred by the Places of Worship (Special Provisions) Act, 1991. In para 29 of the plaint, it has been mentioned that the building complex is under the control of Masajid Intezamia Committee. Therefore, it is clear that the whole plaint relates to Gyanvapi Mosque which is a clever drafting.

It has also been mentioned in application 35C that Gyanvapi Mosque, which has been described in para 12 of the plaint and its sub paragraphs from I to XIV, is a Waqf property and it has been entered at Sl. No. 100 (Varanasi) as property of U.P. Sunni Central Board of Waqf, Lucknow. It has also been alleged in the application that the suit is barred by Act no.42 of 1991 and Act no.29 of 1983 and Act no.43 of 1995. It has been prayed that as the suit is barred under Order 7 Rule 11 CPC, the plaint be rejected.

The learned counsel for the plaintiffs has filed objections paper no.39C against the application of defendant no.4 paper no.35C. In the objections, the plaintiffs have stated that defendant no.4 has not gone through the averments made in the plaint. The plea of applicability of the Places of Worship (Special Provisions), Act 1991 has been raised only to prolong the proceedings as defendant no.4 does not want the decision of the suit on merit. In fact, there is no Mosque within the settlement plot no. 9130 situated in the area of Dashashwamedh ward Police Station-Dashashwamedh, District Varanasi which has been described as the property in question in the suit. It has been averred in the suit that the entire property in question vests in the deity from the time immemorial. If any person or persons forcibly, without any authority of law, offer Namaz within the property in question or at a particular place, the same cannot be called as Mosque. Nobody has the right to encroach upon the land/property already vesting in the deity. The principle of 'first in existence' or ' prior in existence' is the paramount consideration for determining the right of worship at a particular place where two communities are claiming right to worship. It has also been mentioned in the objections that in para 1 of the suit, the property as well as the nature of the relief claimed in the suit have been specified. The suit has been filed inter alia for restraining the defendants from interfering in performance of Darshan, Pooja of Goddess Maa Shringar Gauri, Lord Ganesha, Lord Hanuman, Nandi Ji, Visible and Invisible deities, Mandaps and Shrines existing within the whole temple complex i.e. at the property in question. The case of the plaintiff is that the above mentioned deities are continuously existing within the property in the suit since before 15-08-1947. The worshipers have right to Darshan and Pooja of deities at the property in question and they have every right to file the suit to protect and reserve their right to religion flowing from Arcticle 25 of the Constitution of India.

In the objections, it has also been mentioned that specific averments have been made in the plaint to the effect that Shri Adi Visheshwar

Jyotirlingam exists along with the images of Maa Shringar Gauri, Lord Hanuman, Lord Ganesh and other Visible and Invisible deities within the temple complex at land no. 9130 commonly known as Shri Adi Visheshwar Temple which are being worshipped by devotees of Lord Shiva from the time immemorial despite the fact that Aurangzeb during his barbarous rule got demolished a portion of the Temple, over which Muslims without any authority of law raised some constructions over the land of the deities but the deities continued to be dejure owner of the property. The image of Maa Shringar Gauri exists within the property in question at the back side of Gyanvapi in Ishan Kon. The Hindus are continuously performing pooja of Maa Gauri, Lord Hanuman, Lord Ganesha and other Visible and Invisible deities with rituals and are doing circumambulation (Parikrama) of the temple of Lord Visheshwar. The Hindus continued in the possession of cellar (Tehkhana) towards South and other parts of the demolished Temple with its ruins and Lord Adi Visheshwar is still in existence in its original shape in the western part of the old Temple at the property in question. The plaintiffs have already moved an application for appointing an Advocate Commissioner for making inspection of property in question in the light of the averments made in the plaint.

It is established principle of law that in exercising powers under Order 7 Rule 11 of CPC, the Court has to take into consideration only the averments made in the plaint and the defendant's case cannot be taken into consideration at that stage. From the averments made in the plaint as mentioned above, it is clear that deities mentioned in the suit are existing within the suit property since before 15th August, 1947 and therefore, the provisions of the Act of 1991 could not be applicable in this case at all. Under the Hindu law, the property once vested in the deities shall continue to be deity's property and its destruction, if any, cannot change the nature of the property.

In **M Siddiq Vs. Mahant Suresh Das** popularly known as **Ayodhya Case** reported in 2019 (15) SCALE, the Hon'ble Supreme Court has held that the idol constitutes the embodiment or expression of the pious purpose upon which legal personality is conferred. The destruction of the idol does not result in the termination of the pious purpose and consequently the endowment. Even where the idol is destroyed or the presence of the idol is intermittent or entirely absent, the legal personality created by the endowment continues to subsist.

The plaintiffs have further stated in their objections that in view of the pleadings made in the plaint and the ratio of the law propounded by the Hon'ble Supreme Court, it is clear that the present suit is not barred by any of the provisions of Places of Worship (Special Provisions) Act, 1991.

It has also been mentioned in the objections that the Board of Trustees constituted under the provisions of Shri Kashi Vishwanath Act, 1983 has not taken any step for proper Darshan, Pooja and performance of rituals of Maa Shringar Gauri, Lord Ganesh, Lord Hanuman and other visible and invisible deities within whole temple complex i.e. the property involved in the suit. The plaintiffs have filed the present suit for Darshan and Pooja of existing deities because the Board of Trustees, defendant no.5 has failed to perform its statutory duties under the aforesaid Act of 1983. The Hon'ble Supreme Court has held in the **Ayodhya Case** that a worshipper can institute a suit to protect the interest of the deity against a stranger whereas the shebait/trustee is negligent in its duties. The factual position raised in the application filed by the defendant can be decided only after framing of issues and recording evidence which would be laid by the plaintiffs to prove its case.

Section 4 of the Places of Worship (Special Provisions) Act, 1991 provides that the **religious character of a place of worship existing on the 15th Day of August, 1947** shall continue to be the same as it exists on that day. Therefore, the parties to the suit are required to prove before the Court regarding the religious character of the property as was prevalent on 15th August, 1947. The determination of religious character is a matter of evidence which can be laid by either of the parties. The plaintiffs have laid foundation to establish that the religious character of the property in dispute was of Hindu temple and deities were being worshipped within the property in dispute. The plaintiffs have further submitted that no building can be constructed as Mosque over the property of Hindu deity or after demolishing a temple.

The plaintiffs have further submitted that in view of the factual situation and legal position, this Court may decide every issue of the fact after giving opportunity to the plaintiffs to lead evidence and prove their case. On the basis of application filed under Order 7 Rule 11 CPC, the controversy regarding religious character of the property can not be decided and such a question can be decided only after adducing evidence.

The plaintiffs have further submitted in their reply that the property in dispute is included within the scope of the **'temple'** as defined in Section 4 (9) of the **Uttar Pradesh Kashi Vishwanath Temple Act, 1983** as mentioned in

para 22 of the plaint. The religious character of the entire property in suit has already been declared by the U.P. State Legislature and there is no question of applicability of the provisions of the Act of 1991. The U.P. State Legislature has already recognised the existence of Jyotirlinga within the definition of temple which is in existence beneath the disputed structure and is being called as Gyanvapi Mosque by Muslims.

The plaintiffs have further submitted in their reply that property in question is not a Waqf property and a non Waqf property can not be registered by the Waqf Board. It is further submitted that the alleged registration of the property at Waqf no. 100, Varanasi is illegal and void.

The plaintiffs have further submitted in their reply that from catena of decisions as mentioned in para 42 of the reply, paper no. 39C, it has been established that in exercise of powers under Order 7 Rule 11 of the CPC, the Court is not required to go into the averments made by the defendants in their written statement or in any application and only the averments made by the plaintiffs have to be taken into consideration to decide the applicability of aforesaid provisions. In view of the law propounded by the Hon'ble Supreme Court, the present suit can not be dismissed in exercise of the powers under Order 7 Rule 11 of the CPC. It has been prayed in the reply 39C by the plaintiffs that the application filed by the defendant no.4 under Order 7 Rule 11 (d) of the CPC is misconceived. It is not maintainable and, therefore, it is liable to be rejected.

Learned counsel for the defendant no.4 filed 4 papers with the list 100C which include copy of judgment and order dated 17-05-2022 (paper no.101C) passed by the Hon'ble Supreme Court of India in Special Leave to Appeal (Civil) No. 9388/2022 Committee of Management Anjuman Intezamia Masajid, Varanasi Versus Rakhi Singh & Others dated 17-05-2022, copy of Office Memorandum of U.P. Sunni Central Waqf Board (paper no.102C) regarding Waqf No.100 Banaras dated 08-10-2018, copy of Supplement to the Government Gazette of United Provinces dated 25-02-1944 (paper no.103C), translation of the Gazette (paper no.104C).

Defendant no.4 has filed 10 papers with list 220C, photostat copy of Map of Bandobast 1883-84 year, Plot No.9130 Mauja Shahar Khas Pargana Dehat Amanat, District Banaras (paper no.221C), photostat copy of Khasra Bandobast Mauja Shahar Khas Pargana Dehat Amanat, District Banaras year 1291 Fasali (1983-84), Plot No. 9130 in Urdu with Hindi and English translation (paper no.222C), photostat copy of Register Iqtbas under Section

37 Muslim Waqf Act regarding Waqf No.100, District Varanasi (paper no.223C), photostat copy of Lease Deed executed by the U.P. Sunni Central Waqf Board in favour of State of U.P. in the year 1993 with Map of Plot no. 8276 (paper no.224C), photostat copy of letter of the Secretary, Sunni Central Waqf Board to District Magistrate, Varanasi dated 05-08-1993 regarding Plot No. 8276 (paper no.225), Photostat copy of Office Memorandum of Waqf Board dated 21-09-1993 regarding Plot No.8276 (paper no.226C), photostat copy of letter by Secretary, U.P. Sunni Central Waqf Board to D.M. Varanasi regarding Plot No. 8276 dated 22-12-1993 (paper no.227C), photostat copy of Joint Secretary for Secretary, U.P. Sunni Central Board of Waqf dated 11-04-1994 (paper no.228C), photostat copy of judgment dated 25-08-1937 passed in O.S.No.62/1936 (paper no.229C) and photostat copy of exchange deed dated 09-07-2021 between His Exellency Governor, U.P. through Chief Executive Officer, Shri Kashi Vishwanath Mandir, Varanasi and Anjuman Intezamia Masajid, Varanasi (paper no.230C).

I have heard the learned counsel for the plaintiff no.1, learned counsel for the plaintiff nos.2 to 5, learned counsel for the defendant no.4, learned D.G.C. (Civil) on behalf of defendant nos. 1 to 3 & 5 and perused the record.

Provision of Order 7 Rule 11 C.P.C.:-

The provisions of Order 7 Rule 11 C.P.C are as follows:-

Rejection of Plaint:- The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was

prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

Scope of Court's power under Order 7 Rule 11 CPC:-

The plaintiffs cited **Urvashiben and another v. Krishnakant Manuprasad Trivedi** 2019 All. C.J. 445**, Saleem Bhai Vs. State of Maharashtra** 2003(1) SCC 557**, Kuldeep Singh Pathania Vs. Bikram Singh Jaryal** 2017(5) SCC 347**, Shaukathussain Mohammed Patel Vs. Khatunben Mohmmedbhai Polara** 2019 (10) SCC 226 **and Srihari Hanumandas Totala Vs. Hemant Vithal Kamat** 2021 SCC Online SC 565**,** in which Hon'ble Supreme Court has held that it is well settled that for the purpose of deciding application filed under Order 7 Rule 11 of CPC, only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the parties can not be gone into at this stage.

The plaintiffs have also cited **M/s Kisan Rice Mill Karhal District Mainpuri and Ors. vs. Krishi Utpadan Mandi Samiti and Ors.,** in which Hon'ble Allahabad High Court has held that maintainability of the suit has to be judged from the relief prayed for by the plaintiffs.

In **P. V. Gururaj Reddy & Anr. Vs. P. Neeradha Reddy & Ors.** 2015(1) SCC 331**,** Hon'ble Supreme Court has held that the plaint has to be read as a whole to find out whether it discloses a cause of action.

In **Mayar (H.K.) Ltd. & Ors. Vs. Owners & Parties, Vessel M.V. Fortune Express & Ors.** 2006(3) SCC 100, it has been held by Hon'ble Supreme Court that the mere fact that in the opinion of the Judge the plaintiff may not succeed, cannot be a ground for rejection of a plaint.

In **Kamala & Ors. Vs. K.T. Eshwara Sa & Ors.** 2008(12) SCC 661**,** Hon'ble Supreme Court has held that whether a plaint discloses a cause of action or not is essentially a question of fact.

The learned counsel for the defendant no.4 cited **T. Arivandandam vs T. V. Satyapal & Anr.** 1977 (4) SCC 467 in which Hon'ble Supreme Court has held that the trial Court should remember that if on a meaningful and not formal reading of the plaint, it is found that the plaint is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the court should exercise its power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing

by examining the party searchingly under Order X, C.P.C. An activist judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Ch.XI) and must be triggered against them.

The learned counsel for the defendant no.4 also cited **M/s Frost International Ltd. v. M/s Milan Developers and Builder Pvt. Ltd. & Anr.** 2022 All. C.J. 1102 in which Hon'ble Supreme Court held that if on the perusal of the plaint averments, the plaintiff has made out a cause of action for filing the suit, the plaint can not be rejected under Order 7 Rule 11 C.P.C. In this judgment, Hon'ble Supreme Court cited **D Ramchandran** v. **R. V. Janki Raman** 1999 (3) SCC 367 in which it was held that if the allegations in the plaint prima facie show a cause of action, the court can not embark upon an inquiry whether the allegation are true in fact. However, on a meaningful reading of the plaint, if it is found that the suit is manifestly vexatious and without any merit and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 C.P.C.

Therefore, in view of the law laid down in the above mentioned rulings, it is clear that while deciding an application under Order 7 Rule 11 of CPC, only the averments of the plaint must be seen and the defence made in the suit must not be considered. However, if the suit does not disclose a right to sue, the plaint can be rejected under Order 7 Rule 11 C.P.C.

From the perusal of the application paper no.35C, the main contentions of defendant no.4 are as follows:-

(a) The suit of the plaintiffs is barred by Section 4 of the Places of Worship (Special Provisions) Act, 1991 (Act no.42 of 1991);

(b) The suit of the plaintiffs is barred by Section 85 of the Waqf Act, 1995 (Act no.43 of 1995);

(c) The suit of the plaintiffs is barred by the Uttar Pradesh Shri Kashi Vishwanath Temple Act, 1983 (Act no.29 of 1983)

Therefore, this Court has to analise and determine whether the suit of the plaintiffs is barred by the above mentioned Enactments.

A. Whether the suit of the plaintiffs is barred by Section 4 of the Places of Worship (Special Provisions) Act, 1991 (Act no.42 of 1991):-

Section 3 & 4 of the above mentioned Act provide as follows:-

Bar of conversion of places of worship:-

No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof.

Declaration as to the religious character of certain places of worship and bar of jurisdiction of Courts, etc:-

(1) It is hereby declared that the religious character of a place of worship existing on the 15th day of August, 1947 shall continue to be the same as it existed on that day.

(2) If, on the commencement of this Act, any suit, appeal or other proceeding with respect to the conversion of the religious character of any place of worship, existing on the 15th day of August, 1947, is pending before any Court, tribunal or other authority, the same shall abate, and no suit, appeal or other proceedings with respect to any such matter shall lie on or after such commencement in any Court, tribunal or other authority:

Provided that if any suit, appeal or other proceeding, instituted or filed on the ground that conversion has taken place in the religious character of any such place after the 15th day of August, 1947, is pending on the commencement of this Act, such suit, appeal or other proceeding shall not so abate and every such suit, appeal or other proceeding shall be disposed of in accordance with the provisions of sub-section(1).

(3) Nothing contained in sub-section (1) and sub-section(2) shall apply to,-

(a) any place of worship referred to in the said sub-sections which is an ancient and historical monument or an archaeological site or remains covered by the Ancient Monuments and Archaeological site or remains covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) or any other law for the time being in force;

(b) any suit, appeal or other proceeding, with respect to any matter referred to in sub-section (2), finally decided, settled or disposed of by a Court, tribunal or other authority before the commencement of this Act;

(c) any dispute with respect to any such matter settled by the parties amongst themselves before such commencement;

(d) any conversion of any such place effected before such commencement by acquiescence;

(e) any conversion of any such place effected before such commencement which is not liable to be challenged in any Court, tribunal or

other authority being barred by limitation under any law for the time being in force.

Therefore, from the plain reading of the provisions of Sections 3 & 4 of the Places of Worship (Special Provisions) Act, 1991, it is clear that conversion of any place of worship of any religious denomination or any section thereto into a place of worship of a different section of the same religious denomination or of a different religious denomination is prohibited. It is also noteworthy that the religious character of place of worship as it existed on 15th August, 1947 shall remain same and it will not be allowed to be changed.

Now, we have to examine whether the reliefs claimed in the suit are barred by Section 4 of the Act or not?

In this suit, the plaintiffs have claimed following reliefs:-

a- Decree the suit for declaration, declaring that plaintiffs are entitled to have Darshan, Pooja and perform all the rituals of Maa Srinigar Gauri, Lord Ganesh, Lord Hanuman and other visible and invisible deities within old temple complex situated at settlement Plot No.9130(Nine Thousand One Hundred Thirty) in the area of Ward and P.S. Dashashwamedh District Varanasi;

b- Decree the suit for permanent injunction restraining the defendants from imposing any restriction, creating any obstacle, hindrance or interference in performance of daily Darshan, Pooja, Aarti, Bhog and observance of rituals by devotees of Goddess Maa Sringar Gauri at Asthan of Lord Adi Visheshwar along with Lord Ganesh, Lord Hanuman, Nandiji and other visible and invisible deities within old temple complex situated at settlement Plot No. 9130 in the area of Ward and P.S. Dashashwamedh District Varanasi;

c- Decree the suit for permanent injunction restraining the defendants from demolishing, damaging, destroying or causing any damage to the images of deities Goddess Maa Sringar Gauri at Asthan of Lord Adi Visheshwar along with Lord Ganesh, Lord Hanuman, Nandiji and other visible and invisible deities within old temple complex situated at settlement Plot No. 9130 in the area of Ward and P.S. Dashashwamedh, District Varanasi;

d- Decree the suit for mandatory injunction directing the Government of Uttar Pradesh and District Administration to make every security arrangement and facilitate daily Darshan, Pooja Aarti, Bhog by devotees of Maa Sringar Gauri along with Lord Ganesh, Lord Hanuman,

Nandiji and other images and deities within the precincts of temple complex knwon as 'Ancient temple' existing at settlement Plot No. 9130 within the area of Ward and P.S. Dashashwamedh the heart of the city of Varanasi;

e- Grant such other relief for which the plaintiffs may be found entitled to or which may be deemed fit and necessary in the interest of justice; and

f- Decree the suit with costs in favour of plaintiffs and against the defendants.

Therefore, through this civil suit, the plaintiffs are claiming right to have Darshan, Pooja and performance of rituals of Maa Sringar Gauri, Lord Ganesh and Lord Hanuman and prayed that decree for such declaration be passed. Permanent prohibitory injunction has also been claimed for restraining the defendants from creating any obstacle in performance of Darshan, Pooja, Bhog and other rituals of Goddess Maa Sringar Gauri, Lord Ganesh, Lord Hanuman, Nandiji at Asthan of Lord Adi Visheshwar.

It is pertinent to note here that in para 9 of the plaint, it has been mentioned that the image of Maa Sringar Gauri exists within the property in question at the backside of Gyanvapi in northeast corner. The Hindus are continuously performing Pooja of Goddess Maa Sringar Gauri, Lord Hanuman, Lord Ganesh and other deities alongwith rituals and are taking Parikrama of the temple of Lord Visheshwar.

It is also pertinent to note here that in para 36 of the plaint, it has been mentioned by the plaintiffs that on 4th day of Chaitra Navaratra Samvat 2078 i.e. on 16th April, 2021 the devotees were allowed to have Darshan and Pooja of Maa Sringar Gauri. The plaintiffs alongwith number of devotees performed Pooja of Goddess Maa Sringar Gauri on 16-04-2021 but thereafter the devotees are not allowed to perform daily Pooja.

In para 42 of the plaint, It has been mentioned that in the year 1993, the Government of Uttar Pradesh without any authority of law and without passing any written order directed the District Administration of Varanasi to restrict the entry of devotees of Lord Shiva within old temple on all the days and thereafter the devotees are being allowed to worship within old temple only on 4th day of Chaitra in Vasantic Navratra. The plaintiffs occassionally go for worship of Lord Shiva, Maa Sringar Gauri, Lord Ganesh, Lord Hanuman Virajman within old temple. They perform Pooja and have Darshan from outside and perform rituals there. They also worship within old temple whenever they are allowed to enter there.

In para 43 of the plaint, it has been mentioned that devotees of Lord Shiva were performing daily pooja and worship of Maa Sringar Gauri and other deities within old temple continuously till 1990 when during Ayodhya movement the Government of Uttar Pradesh to appease Muslims put restriction in daily pooja and since 1993 the State Administration working under the oral orders of the State Government are allowing the devotees to perform pooja only on 4th (Fourth) day of Vasantik Navratra in Chaitra.

In para 10 of the plaint, the plaintiffs have mentioned that the Hindus continued in possession of the cellar (Tehkhana) towards South and other parts of the demolished temple with its ruins and Lord Adi Vesheshwar is still in existence in its original shape in the western part of the old temple at the property in question.

From the above mentioned averments made in the plaint, it is clear that the plaintiffs are claiming that till the year 1993, they were allowed to have Darshan and Pooja of Maa Sringar Gauri daily which exists within the property in question at the backside of Gyanvapi in northeast corner but thereafter the District Administration, Varanasi restricted their entry within the disputed property on all days and they were being allowed to worship within old temple only on 4th day of Chaitra in Vashantik Navaratra. Therefore, according to the plaintiffs, evenafter 15th August, 1947 they were worshiping Maa Sringar Gauri, Lord Ganesh and Lord Hanuman daily upto the year 1993. If this contention is proved then the suit is not barred by Section 4 of the Places of Worship (Special Provisions) Act, 1991. At this stage, the averments made in the plaint are to be seen and plaintiffs will have right to prove their averments by cogent evidence.

The learned counsel for the plaintiffs cited **Sri Bapu Lal Mansukh Lal Thakkar Vs. The Additional District Judge** (on 6th July, 2005) in which the Hon'ble Allahabad High Court held that from a bare reading of Section 9 of CPC, it is clear that the Civil Courts, subject to provisions contained in the Code, have jurisdiction to try all the suits of civil nature except the suits of which cognizance is either expressly or impliedly barred. From the discussion made above, there can be no room for doubt to hold that if the infringement of any fundamental right, which includes in it civil right of individual being in respect of the religious relief or faith, is complained of, the Civil Court would not decline to entertain it merely because it pertains to religious right or ceremonies though the same is claimed as integral part of religious faith according to tenets of particular religious faith.

The plaintiffs have also cited Re the Matter of **Guruvayur Devaswom Board- (G.D.B.)** DBP No.21 of 2021; 21st June, 2022 proceeding initiated, in which Hon'ble Kerala High Court has held that worshipper is a person who shows reverence and adoration for a deity. Right to worship is a civil right of course in an accustomed manner and subject to the practice and tradition in each temple.

In **Ugam Singh** v. **Kesari Mal** 1970 (3) SCC 831, Hon'ble Supreme Court has held that a right to worship is a civil right, interference with which raises a dispute of civil nature though as noticed earlier disputes which are in respect of rituals or ceremonies alone cannot be adjudicated by Civil Courts if they are not essentially connected with civil rights of an individual or a sect on behalf of whom a suit is filed.

In **P.M.A. Metropolitan & Ors.** v. **Moran Mar Marthoma & Anr.** 1995 Supp. (4) SCC page 286, it has been held by Hon'ble Supreme Court that the Civil Courts have jurisdiction to entertain the suits for violation of fundamental rights guarranteed under Article 25 & 26 of the Constitution of India and the expression civil nature used in Section 9 is wider than even civil proceedings and thus extends to such religious matters which have civil consequence.

The learned counsel for the plaintiffs also cited **Ram Jankijee Deities & Ors vs State Of Bihar And Ors** 1999 (5) Supreme Court cases 50 in which it was held that to constitute a temple it is enough if it is a place of public religious worship and if the people believe in its religious efficacy irrespective of the fact whether there is an idol or a structure or other paraphernalia. It is enough if the devotees or the pilgrims feel that there is some superhuman power which they should worship and invoke its blessings.

In the above mentioned ruling, the Hon'ble Supreme Court also cited **Bhupati Nath Smrititirtha** v. **Ram Lal Maitra** ILR (1909) 37 Cal 128, in which Hon'ble Calcutta High Court observed that a Hindu does not worship the 'idol' or the material body made of clay or gold or other substance, as a mere glance at the mantras prayers will show. They worship the eternal spirit of the deity or certain attributes of the same, in a suggestive form, which is used for the convenience of contemplation as a mere symbol or emblem. It is the incantation of the mantras peculiar to a particular deity that causes the manifestation or presence of the deity or, according to some, the gratification of the deity.

The learned counsel for the plaintiffs also cited **M. Siddiq (Ram Janam Bhumi Temple) v. Suresh Das** (2020) 1 SCC Page 266, in which Hon'ble Supreme Court has held that legal personality is not conferred on the Supreme Being. The Supreme Being has no physical presence for it is understood to be omnipresent the very ground of being itself. The court does not confer legal personality on divinity. Divinity in Hindu philosophy is seamless, universal and infinite. Divinity pervades every aspect of the universe. The attributes of divinity defy description and furnish the fundamental basis for not defining it with reference to boundaries physical or legal. For the reason that it is omnipresent it would be impossible to distinguish where one legal entity ends and the next begins. The narrow confines of the law are ill suited to engage in such an exercise and it is for this reason, that the law has steered clear from adopting this approach. In Hinduism, physical manifestations of the Supreme Being exist in the form of idols to allow worshippers to experience a shapeless being. The idol is a representation of the Supreme Being. The idol, by possessing a physical form is identifiable.

In the above mentioned ruling, it has also been observed by the Hon'ble Supreme Court that the idol constitutes the embodiment or expression of the pious purpose upon which legal personality is conferred. The destruction of the idol does not result in the termination of the pious purpose and consequently the endowment. Even where the idol is destroyed, or the presence of the idol itself is intermittent or entirely absent, the legal personality created by the endowment continues to subsist. In our country, idols are routinely submerged in water as a matter of religious practice. It cannot be said that the pious purpose is also extinguished due to such submersion. The establishment of the image of the idol is the manner in which the pious purpose is fulfilled. A conferral of legal personality on the idol is, in effect, a recognition of the pious purpose itself and not the method through which that pious purpose is usually personified. The pious purpose may also be fulfilled where the presence of the idol is intermittent or there exists a temple absent an idol depending on the deed of dedication. In all such cases the pious purpose on which legal personality is conferred continues to subsist.

The Hon'ble Supreme Court has further observed in this case that the recognition of the Hindu idol as a legal or " juristic" person is therefore based on two premises employed by courts. The first is to recognise the pious purpose of the testator as a legal entity capable of holding property in an ideal

sense absent the creation of a trust. The second is the merging of the pious purpose itself and the idol which embodies the pious purpose to ensure the fulfilment of the pious purpose. So conceived, the Hindu idol is a legal peron. The property endowed to the pious purpose is owned by the idol as a legal person in an ideal sense. The reason why the court created such legal fiction was to provide a comprehensible legal framework to protect the properties dedicated to the pious purpose from external threats as well as internal maladministration. Where the pious purpose necessitated a public trust for the benefit of all devotees, conferring legal personality allowed courts to protect the pious purpose for the benefit of the devotees.

The learned counsel for the plaintiffs also gave a refence of treaties **"The Hindu Law of Religious and Charitable Trust"** Tagore Law Lectures by B.K. Mukherjea fifth edition (A.C.Sen) published by Eastern Law House in which at page 150, it has been mentioned that before the image can be used for worship it has to be properly consecrated. On an auspicious day a ceremony is held known as the pranapratishtha, 'life implacing, ' in which the *murti* or gross form of the deity is infused with life by the chanting of 'mantras, by mystic passes, besprinkling with water from holy places, and anointing with ghee, to the sound of trumpets and conches. Thereafter the deity is believed to reside within the form (vigraha) of the image, which is thus a symbolical reflection (pratima) of the deity and becomes worshipful (archya). The image is now treated as a living being, either permanently residing in the clay, or occupying the clay when summoned by the avahana, and then honoured by the other services of upachara or worship. Thus the power of the god Shiva is believed to be ever hovering over the form of his consecrated linga.

It is pertinent to note here that learned counsel for the plaintiffs cited **Dr. M. Ismail Faruqui and Others** v**. Union of India and Others** (1994) 6 Supreme Court Cases 360 and argued that a mosque is not an essential part of the practice of the religion of Islam and namaz (prayer) by Muslims can be offered anywhere, even in open. He has further argued that in Ismail Faruqui case, Hon'ble Supreme Court has held at page 418 that the correct position may be summarised thus. Under the Mahomedan Law applicable in India, title to a mosque can be lost by adverse possession (Mulla's Principles of Mahomedan Law, 19th Edn. by M. Hidayatullah Section 217; and Shahid Ganj v. Shiromani Gurudwara AIR 1940 PC 116). If that is the position in law, there can be no reason to hold that a mosque has a unique or special status,

higher than that of the places of worship of other religions in secular India to make it immune from acquisition by exercise of the sovereign or prerogative power of the State. A mosque is not an essential part of the practice of the religion of Islam and namaz (prayer) by Muslims can be offered anywhere, even in open. Accordingly, its acquisition is not prohibited by the provisions in the Constitution of India. Irrespective of the status of mosque in an Islamic country for the purpose of immunity from acquisition by the State in exercise of the sovereign power, its status and immunity from acquisition in the secular ethos of India under the Constitution is the same and equal to that of the places of worship of the other religions, namely, church, temple etc. It is neither more nor less than that of the places of worship of the other religions. Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger national purpose keeping in view that such acquisition should not result in extinction of the right to practise the religion, if the significance of that place be such. Subject to this condition, the power of acquisition is available for a mosque like any other place of worship of any religion. The right to worship is not at any and every place, so long as it can be practised effectively, unless the right to worship at a particular place is itself an integral part of that right.

The main argument of the learned counsel for the plaintiffs is that the plaintiffs have not sought declaration or injunction over the property/land plot no.9130. They have not sought the relief for converting the place of worship from a Mosque to Temple. The plaintiffs are only demanding right to worship Maa Sringar Gauri and other visible and invisible deities which were being worshipped incessantly till 1993 and after 1993 till now once in a year under the regulatory of State of Uttar Pradesh. Therefore, the Places of Worship (Special Provisions) Act, 1991 does not operate as the bar on the suit of plaintiffs. The suit of the plaintiffs is limited and confined to the right of worship as a civil right and fundamental right as well as customary and religious right. I agree with the learned counsel for the plaintiffs.

The learned counsel for the defendant no. 4 argued that at the disputed property, Gyanvapi Mosque is situated. In para 5 and 6 of the plaint, it has been mentioned that Islamic ruler Aurangzeb got the temple demolished in the year 1669 and constructed a Mosque there which is situated at plot no. 9130. In the Khasra Bandobast, 1291 Fasali, Gyanvapi Masjid has been shown at plot no.9130. The defendant no.4 filed Khasra Bandobasti of the year 1883-84 which is paper no. 220C. This Gyanvapi Masjid is registered as Waqf no.100,

Varanasi in the gazette. Therefore, Gyanvapi Masjid is Waqf property and plaintiffs have no right to worship there.

The learned counsel for the defendant no.4 cited **Ballabh Das & Anr. v. Nur Mohammad & Anr.** AIR 1936 Privy Counsel 83, in which it was held that Khasra itself create rights as instrument of title and it is not merely a historical material where the Khasra itself is the instrument which confers or embodies the right and there is no other document which creates title. The Khasra and the Map are instrument of title or otherwise the direct foundation of right.

In my view, this argument of defendant no.4 does not hold much water because the plaintiffs are claiming only right to worship at the disputed property. They want to worship Maa Sringar Gauri and other visible and invisible deities with the contention that they worshipped there till the year 1993 and the plaintiffs are not claiming ownership over the disputed property. They have also not filed the suit for declaration that the disputed property is a temple.

It is pertinent to note here that Hon'ble Supreme Court of India in catena of cases, has held time and again that entries in Revenue Record does not create title. In this context, the learned counsel for the plaintiffs cited **Bhimabai Mahadev Kambekar (Dead) Through L.R. v. Arthur Import and Export Company and Others** (2019) 3 Supreme Court Cases 191. Hon'ble Supreme Court of India held that mutation entries in the Revenue Records neither create nor extinguish title over property. Mutation entries do not have any presumptive value of title. They only enable person, in whose favour entries have been made, to pay land revenue.

The learned counsel for the plaintiffs also cited **Prabhagiya Van Adhikari, Awadh Van Prabhag v. Arun Kumar Bhardwaj (Dead) through L.Rs. and Ors.** in which Hon'ble Supreme Court of India has held that the revenue record is not a document of title. Therefore, even if the name of the lessee finds mention in the revenue record but such entry without any supporting documents of creation of lease contemplated under the Forest Act is inconsequential and does not create any right, title or interest over 12 bighas of land claimed to be in possession of the lessee as the lessee of Gaon Sabha.

Therefore, merely on the basis of entries in the revenue record, no presumption of title can be drawn regarding a mosque or a temple.

The learned counsel for the defendant no.4 has also argued that in **Suit No. 62 of 1936 Din Mohammad & Ors. Vs. Secretary of the State,** the

court of Civil Judge, Varanasi passed judgment and decree dated 24-08-1937. In the judgment and decree, the learned Civil Judge, Varanasi passed the following orders:

1. It is declared that only mosque and courtyard with the land underneath are Hanafi Muslim Wakf and that the plaintiffs and other Hanfi Muslims have a right of offering prayer and of doing other religious but legitimate acts only in the mosque and on the courtyard and that they have a right to celebrate urs. etc, once a year at the two graves to the west of mosque and also to use the Khandhar as passage for going over the roof of the mosque.

2. It is further declared that they have no right to offer ordinary, funeral or alvida prayer on any portion of the land marked red in the plaint map, which will be part of the decree.

3. They may if they like offer prayers on the roof of the mosque and of the dhobi's house and in the house over the northern gate and in the house to East of the gate and also over the Chabutara to the north of the mosque over which exists many graves. parties bear their own costs.

The learned counsel for the defendant no.4 further pleaded that against the judgment and decree dated 24-08-1937, appeal was filed in Hon'ble High Court bearing Civil Appeal No. 466 of 1937 Din Mohammad v. Secretary of State. The Hon'ble Allahabad High Court upheld the judgment and order dated 24-08-1937 passed by the Civil Judge (Sr. Div.), Varanasi and dismissed the first appeal. Therefore, by the order of the court of Civil Judge (Sr. Div.) and Hon'ble Allahabad High Court, the Mosque, courtyard, sahanland and land appurtenant to it is property of Hanfi Muslim Waqf and Hanfi Muslims have right to offer namaz and religious activities of Muslims.

In my view, this argument of defendant no.4 does not seem to be convincing because as learned counsel for the plaintiffs argued that the Hindus were not parties in the above suit and their application for impleadment in the suit was rejected. Therefore, the decree passed in the above mentioned suit cannot have binding effect against the plaintiffs or the Hindu community and their right to worship cannot be defeated on the strength of above mentioned decree.

Therefore, in the light of the law laid down by Hon'ble Supreme Court of India and Hon'ble Allahabad High Court, it is clear that right to worship is a civil right and any interference in it will raise a dispute of civil nature and under Section 9 of C.P.C., Civil Court has jurisdiction to decide such case involving such a dispute. In the present case, the plaintiffs are demanding right

to worship Maa Sringar Gauri, Lord Ganesh, Lord Hanuman at the disputed property, therefore, Civil Court has jurisdiction to decide this case.

Further, according to the pleadings of the plaintiffs, they were worshipping Maa Sringar Gauri, Lord Hanuman, Lord Ganesh at the disputed place incessantly since a long time till 1993. After 1993, they were allowed to worship the above mentioned Gods only once in a year under the regulatory of State of Uttar Pradesh. Thus, according to plaintiffs, they worshipped Maa Sringar Gauri, Lord Hanuman at the disputed place regularly even after 15th August, 1947. Therefore, **The Places of Worship (Special Provisions) Act, 1991** does not operate as bar on the suit of the plaintiffs and the suit of plaintiffs is not barred by Section 9 of the Act.

B- Whether the suit of the plaintiffs is barred by Section 85 of The Waqf Act 1995:-

The learned counsel for the defendant no.4 has argued that the suit of the plaintiffs is barred by Section 85 of The Waqf Act 1995 because the subject matter of the suit is a Waqf property and only Waqf Tribunal Lucknow has right to decide the suit. Section 85 of the Waqf Act, 1995 is as follows:

Bar of jurisdiction of Civil Court, revenue Court and other authority - No suit or other legal proceeding shall lie in any Civil Court, revenue Court and other authority in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under this Act to be determined by a Tribunal.

Waqf has been defined in the Waqf Act, 1995 as the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim Law as pious, religious or charitable and includes:-

i) a waqf by user but such Waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;

ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;

iii) "grant", including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and such other purposes as recognised by Muslim Law.

In the Waqf Act, 1995 ' **person interested in a Waqf**' has been defined as any person who is entitled to receive any pecuniary or other benefits from the waqf and includes-

i) any person who has a right to offer prayer or to perform any religious rite in a mosque, idgah, imambara, dargah, khanqah, peerkhana and karbala, maqbara, graveyard or any other religious institution connected with the waqf or to participate in any religious or charitable institution under the waqf;

ii) the waqif and any descendant of the waqif and the Mutawalli.

Waqif- The term waqif has been defined in Section 3(r) of the Waqf Act, 1995. As any person making the dedication of any movable or immovable property for any purpose recognised by the Muslim Law as pious, religious or charitable.

The learned counsel for the defendant no.4 cited **Syed Mohammad Salie Labbai by LR.** v. **Mohd. Hanifa by LR** in which Hon'ble Supreme Court has held that even if there is no actual delivery of possession, the mere fact that members of the mohammadan public are permitted to offer prayer with azan and iqamah, the waqf is complete and irrevocable where a Mosque is in existence for a long time and prayers have been offered therein, the court will infer that it is not by leave and license but that the dedication is complete and the property no longer belongs to the owner.

The learned counsel for the defendant no.4 also cited **Rajsthan Waqf Board vs. Devaki Nandan Pathak & Ors.** AIR 2017 Supreme Court 2155, in which Hon'ble Supreme Court has held that question whether suit land is a Waqf property or not can be decided only by the Tribunal and not by the Civil Court.

The learned counsel for the defendant no.4 also cited **Sagir Khan & Anr.** v. **Maqsood Husaain Khan & Anr.** 2015 (5) AWC 4862, Hon'ble Allahabad High Court has held that after conjoint reading of Section 7 and 85, it is apparent that whereever there is dispute regarding nature of property or whether suit property is waqf property or not, it is tribunal constituted under Waqf Act which has exclusive jurisdiction to decide the same.

The learned counsel for the defendant no.4 also cited **Board of Waqf West Bengal** v. **Anis Fatma Begum & Anr.** 2011 All. C.J. 989, in which it has been held by Hon'ble Supreme Court that matter relating to Waqf at the first instance should be filed before the Waqf Tribunal and not before the Civil Court or High Court.

The learned counsel for the defendant no.4 also cited **Shamsuddin & Ors.** v. **State of U.P. & Ors.** in which Hon'ble Allahabad High Court held that land used from time immemorial for religious purpose i.e. for a Mosque or burial of dead by members of Muslim community, the land would be dedicated to the God almighty and it has to be treated as a Waqf.

The learned counsel for the defendant no.4 argued that in the light of law laid down in the above rulings, the suit of the plaintiffs is barred by Section 85 of the Waqf Act, 1995.

The learned counsel for the defendant no.4 further argued that defendant no.4 has filed copy of office memorandum dated 08-10-2018 of U.P. Sunni Central Waqf Board regarding Waqf no.100, Banaras in which Masjidshahi Alamgiri Halka Chowk Banaras alongwith houses is entered at serial no.100. The contention of the learned counsel for the defendant no.4 is that the disputed property is registered as Waqf property of Banaras at Sl. no.100.

The learned counsel for the defendant no.4 further argued that the Waqf property is separated from the property of Shri Kashi Vishwanath Mandir Trust and this fact is clearly established with the help of the Exchange Deed paper no.224C which was executed between the U.P. Sunni Central Board of Waqf and State of U.P. through Collector. The learned counsel contended that board of trustees of Shri Kashi Vishwanath Temple and U.P. State were of the view that police control room should be established for the security of the disputed property. The Board of Trustees and U.P. Government discussed the matter with office bearers of U.P. Sunni Central Board of Waqf and requested them to give some land on lease or license. In the year 1993-94, U.P. Sunni Central Waqf Board gave some land to the U.P. Government on licence through S.S.P., Varanasi. Police Control room was established accordingly and in the Year 2021, U.P. State and Board of Trustees of Shri Kashi Vishwanath temple exchanged the land with each other. Defendant no.4 has filed both the papers bearing paper nos.227C and 230C. The argument of the learned counsel for the defendant no.4 is that from these documents, it is clear that U.P. Government and Board of Trustees of Kashi Vishwanath Temple considered that property as Waqf property and, therefore, first of all, land was taken on licence and later by exchange.

The learned counsel for the defendant no.4 also argued that by list 220C ,the defendant no.4 has filed copy of Naksha Bandobast pertaining to plot no.9130 for the Year 1883-84 in which plot no.9130 has been shown. He has

also filed copy of Khasra Bandobast pertaining to plot no.9130 for the year 1883-84 (paper no.222C) in which plot no.9130 under the ownership of Makbooza-Ahle-Islam and in the nature of property Masjid Pokhta-Zumma Masjid Mai Ahata has been recorded. The defendant no. 4 has also filed copy of Nakal Ikhtbas Register under Section 37 of Muslim Waqf Act showing Waqf No.100 of district, Varanasi. In this paper, it has been mentioned at Sl.No.100 Masjid Shahi Alamgiri Mashoor has been recorded with Shahen Shah Alamgiri as Waqif. It is a public Waqf and recorded as Jama Masjid Aam Pokhta Mai Ahata. In column no.10, it has been mentioned that entire income of the property Gyanvapi Masjid (Aurangzeb) is spent on Jama Masjid.

The learned counsel for the defendant no.4 argued that these papers prove that disputed property is waqf property and this court has no jurisdiction to decide this case.

The learned counsel for the plaintiffs argued that argument of defendant no.4 cannot be accepted. According to him, this suit is not barred by Section 85 of Waqf Act.

The learned counsel for the plaintiffs argued that in para 7 of the plaint, the plaintiffs have mentioned that it is undisputed that no waqf can be created over the property belonging to and vested in the deity. A mosque can be constructed only on waqf property. There is no evidence up till now that Aurangzeb had created any waqf for construction of mosque. Therefore, the Muslim community is encroacher of the land and they have no right to use the land for performance of any religious act concerning the Muslims.

The learned counsel for the plaintiffs cited **Ramesh Gobindram through L.R.** v. **Sugra Humayun Mirza Wakf** (2010) 8 SCC 726 in which Hon'ble Supreme Court has held that Section 6 and Section 7 of Waqf Act bars jurisdiction of Civil Court only to the extent of trial of suits regarding questions specifically enumerated therein. Provision in Section 85 barring jurisdiction of Civil Courts is wider than that contained in Section 6 read with Section 7. However, its scope is not too absolute but is limited to matters required by the Act to be determined by the Tribunal. Such as the matters falling under Section 33, 35, 47, 48, 51, 54, 61, 64, 67,72 & 73. Hence, juridiction of Civil Court to entertain suit or proceedings in relation to any question not falling within four corners of Tribunal's power does not stand barred.

It has also been held by the Hon'ble Supreme Court that Section 83 of the Act does not extend exclusion of Civil Court jurisdiction beyond that

provided for in Section 6(5) & 7. In absence of provisions in the Act for any proceeding before Tribunal for determination of disputes concerning eviction of tenants in occupation of property which was admittedly Waqf property, eviction suit against such tenants is maintainable only before the Civil Court and not before the Tribunal.

The learned counsel for the plaintiffs also cited **Bhawar Lal & Anr. v. Rajasthan Board of Muslim Waqf & ors. (2014) 16 SCC 51** in which Hon'ble Supreme Court has held that disputes regarding property claimed to be Waqf property involving issues/reliefs in respect of which Waqf Tribunal concerned had exclusive jurisdiction, while raising other issues in respect of which Civil Court alone has jurisdiction and was competent to grant relief sought but the issues/reliefs were inextricably mixed up. It was held that in such a case, it is Civil Court which would have jurisdiction. Where suit for cancellation of sale of alleged Waqf property by Waqf Trustees, rent, for possession thereof, rendition of accounts and removal of Trustees was brought, it was held that it is Civil Court which gets jurisdiction to try such a matter even though some of the items come under Section 7 of the Waqf Act, as the issues were inextricably mixed up.

The learned counsel for the plaintiffs also cited **Ajodyha Prasad v. Addl. Civil Judge Moradabad** 1995 All. C.J. page 1159 in which Hon'ble Allahabad High Court has held that the provisions of the Waqf Act were not applicable to the petitioners who were admittedly Hindu and who were claiming right, title and interest in the suit property.

The learned counsel for the plaintiffs also cited **Board of Muslim Waqf Rajasthan v. Radha Kishan & Ors.** 1979(2) SCC 468, in which Hon'ble Supreme Court has held the very object of the Wakf Act is to provide for better administration and supervision of wakfs and the Board has been given powers of superintendence over all wakfs which vest in the Board. This provision seems to have been made in order to avoid prolongation of triangular disputes between the Wakf Board, the mutawalli and a person interested in the Wakf who would be a person of the same community. It could never have been intention of the legislature to cast a cloud on the right, title or interest of persons who are not Muslims. That is, if a person who is non-Muslim whether he be a Christian, a Hindu, a Sikh, a Parsi or of any other religious denomination and if he is in possession of a certain property his right, title and interest cannot be put in jeopardy simply because that property is included in the list published under sub-section (2) of Section 5. The

Legislature could not have meant that he should be driven to file a suit in a Civil Court for declaration of his title simply because the property in his possession is included in the list. Similarly, the legislature could not have meant to curtail the period of limitation available to him under the Limitation Act and to provide that he must file a suit within a year or the list would be final and conclusive against him. In our opinion, sub-section (4) makes the list final and conclusive only between the Wakf Board, the mutawalli and the person interested in the Wakf as defined in Section 3 and to no other person. It follows that where a stranger who is a non-Muslim and is in possession of a certain property his right, title and interest therein cannot be put in jeopardy merely because the property is included in the list. Such a person is not required to file a suit for a declaration of his title within a period of one year. The special rule of limitation laid down in proviso to sub-section (1) of Section 6 is not applicable to him. In other words, the list published by the Board of Wakfs under sub-section (2) of Section 5 can be challenged by him by filing a suit for declaration of title even after the expiry of the period of one year, if the necessity of filing such suit arises.

The learned counsel for the plaintiffs also cited **Siraj Ahmad @ Sirajuddin and others** v. **Sanjeev Kumar and other** 2020(1) CAR 109 (All.) in which Hon'ble Allahabad High Court has observed that where an application was filed by the defendant against the plaintiff on the ground that property in question being Waqf property, jurisdiction of Civil Courts would be barred. However, the trial court dismissed the application holding that petitioners have not been able to place any material on record that property in question, which according to them was entered in revenue record, as "kabristan" was waqf property, as per requirement under Act of 1995, by way of its inclusion in list of auqaf which is required to be published in Official Gazette or by way of its registration as a waqf before Board. Feeling aggrieved, the defendant filed a writ petition in the Hon'ble Allahabad High Court against the order of the lower court. Hon'ble Allahabad High Court held that orders passed by the court below can not be faulted with. It is setlled law that revenue records do not confer title. The Act, 1995 has been enacted to provide for better administration of auqaf for matters connected therewith or incidental thereto, and as per Section 85, bar of jurisdiction of Civil Courts is in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under Act, 1995 to be determined by Tribunal. Therefore, it is only those matters which are required

by or under Act, 1995 to be determined by Tribunal that bar under Section 85 would apply. It is also seen from scheme of Act, 1995 that jurisdiction of Civil Court is plenary in nature and unless same is ousted expressly or by necessary implication, it will have jurisdiction to try all types of suits. Order VII, Rule 11(d) being in nature of exception same must be strictly construed and embargo there under to maintainability of suit must be apparent from averments in plaint.

In the present case, the plaintiffs have claimed relief that they should be allowed to worship the deities of Maa Sringar Gauri and other Gods and Goddesses in the disputed property but such relief is not covered under Sections 33, 35, 47, 48, 51, 54, 61, 64, 67, 72, & 73 of the Waqf Act. Therefore, the jurisdiction of this court to entertain the present suit is not barred.

Therefore, I have come to the conclusion that the bar under Section 85 of the Waqf Act does not operate in the present case because the plaintiffs are non-Muslims and strangers to the alleged Waqf created at the disputed property and relief claimed in the suit is not covered under Sections 33, 35, 47, 48, 51, 54, 61, 64, 67, 72 & 73 of the Waqf Act. Hence, suit of the plaintiffs is not barred by Section 85 of the Waqf Act 1995.

C- <u>Whether the suit of the plaintiffs is barred by the Uttar Pradesh Sri Kashi Vishwanath Temple Act, 1983 (Act no.29 of 1983):-</u>

The learned counsel for the defendant no.4 argued that the suit of the plaintiffs is barred by the Uttar Pradesh Sri Kashi Vishwanath Temple Act, 1983 (Act no.29 of 1983).

In my view, the defendant no.4 failed to prove that the suit of the plaintiffs is barred by the U.P. Kashi Vishwanath Temple Act, 1983 (Act no.29 of 1983). Section 5 of the Act declares that the ownership of the temple and its endowment shall vest in the deity of Shri Kashi Vishwanath. Section 6 of the Act provides that with effect from the appointed date, the administration and governance of the Temple and its endowments shall vest in a Board to be called the Board of Trustees for Shri Kashi Vishwanath Temple.

In Section 4 (5) endowment includes all properties, movable or immovable, belonging to or given or endowed for the support or maintenance or improvement of the Temple or for the performance of any worship, service, ritual, ceremony or other religious observance in the Temple or any charity connected therewith and includes the idols installed therein, the premises of

the Temple and gifts of property made or intend to be made for the Temple or the deities installed therein to any one within the precincts of the Temple.

In Section 4 (9), "Temple" has been defined as the Temple of Adi Visheshwar, popularly known as Sri Kashi Vishwanath Temple, situated in the City of Varanasi which is used as a place of public religious worship, and dedicated to or for the benefit of or used as of right by the Hindus, as a place of public religious worship of the Jyotirlinga and includes all subordinate temple, shrines, sub-shrines and the Asthan of all other images and deities, mandaps, wells, tanks and other necessary structures and land appurtenant thereto and additions which may be made thereto after the appointed date.

From the perusal of above mentioned provisions of the Act, it is clear that no bar has been imposed by the Act regarding a suit claiming right to worship idols installed in the endowment within the premises of the temple, or outside. Therefore, defendant no.4 failed to prove that the suit of the plaintiffs is barred by the U.P. Sri Kashi Vishwanth Temple Act, 1983.

In view of the above discussions and analysis, I have come to the conclusion that the suit of the plaintiffs is not barred by the Places of Worship (Special Provisions) Act, 1991 (Act no.42 of 1991), The Waqf Act 1995 (Act no.43 of 1995) and the U.P. Shri Kashi Vishwanath Temple Act, 1983 (Act no.29 of 1983) and the application 35C filed by the defendant no.4 is liable to be dismissed.

Order

The application 35C filed by the defendant no.4 under Order 7 Rule 11 C.P.C. is hereby dismissed.

Fix 22.09.2022 for filing written statement and framing of issues. The applications pending under Order 1 Rule 10 C.P.C. by different applicants shall also be disposed of on this day.

(**Dr. Ajay Krishna Vishvesha**)
District Judge, Varanasi.
J.O. Code- U.P. 5329

rohit shukla_steno