

**(1905) 07 CAL CK 0007**

**In the Calcutta High Court**

**Case No :** Appeal from Original Decree No. 191 of 1904

Chaitanya Gobinda Pujari Adhicari

APPELLANT

Vs

Dayal Gobinda Adhicari

RESPONDENT

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**Date of Decision :** 19-07-1905

**Acts Referred:**

**Citation :** (1905) 07 CAL CK 0007

**Final Decision :** Dismissed

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## **Judgement**

1. This appeal arises out of an application made by one Chaitanya Gobinda Pujari Adhikari for probate of a document described as a Will said to have been executed by one Dole Gobind Adhikari. This individual was the shebait of a certain endowment, and the properties referred to in the document in question are properties belonging to the sripatbari, otherwise described as the akhra of Syam Sander and Luchmi Narain Vighrahas. The document purports, in the first instance, to declare that all the properties in the possession of the testator are properties belonging to the said sripatbari and, in the next place, it purports to appoint a manager (adhyakha) for the due performance of the shebas and pujahs and other rites and ceremonies appertaining to the akhra in question, and it appoints the Petitioner as the next shebait with full power and authority to manage, protect and supervise the properties As already mentioned, it is this document, of which probate was applied for by the Petitioner. The Subordinate Judge has dismissed the applications upon two grounds; first, that the properties mentioned in the document are properties in which Dole Gobind Adhikari had no personal right in himself, and, secondly, that the document purports simply to appoint the Petitioner as shebait or manager (adhyakha) for the purposes mentioned therein. It has been contended by the learned vakil for the Appellant (Petitioner in the Court below) that the view adopted by the Subordinate Judge is erroneous, inasmuch as the right of a shebait is a very substantial right, which can be disposed of by a Will, and, that, therefore, probate may be applied for, and obtained of such a document as the one before us. We are not, however, inclined to agree with the learned vakil in this contention. The word "Will" has

been defined in the Probate and Administration Act. It means "the legal declaration of the intentions of the testator with respect to his property which he desires to be carried into effect after his death." Now, upon the statement of the declarant himself, the alleged testator, in the document in question, it is not his property, but the property of the thakurs. But however that may be, it is quite clear that all that he does or purports to do by the document in question is to appoint the Petitioner as a shebait or manager for the purpose of carrying out the sheba and other rites and ceremonies appertaining to the akhra of which he was the head. There was no testamentary disposition of the properties belonging to the akhra and indeed he could not make any such disposition. If it was simply an appointment of a manager made by the late mohant, it is obvious that there was no disposition of any property. We think that the Court below is right in the view that it has expressed, and that probate of a document like this cannot be applied for under the Probate and Administration Act. We accordingly affirm the order of the Court below and dismiss this appeal with costs, five gold mohurs.