

limitation that, by consent of parties, it is not to be sold until the other properties covered by the mortgage have been first sold. The appellants will get their costs both in this Court and in the Court below, which may be added to their security.

MITRA, J. I am of the same opinion.

Appeal allowed.

1905
JULY 21.
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APPELLATE
CIVIL.
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32 C. 1077 = 9
C. W. N. 868.

32 C. 1082 (= 9 C. W. N. 1021.)

[1082] APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Geidt.

CHAITANYA GOBINDA PUJARI ADHIKARI v. DAYAL GOBINDA ADHIKARI.*
[19th July, 1905.]

Probate—Of what documents granted—Document appointing successor to sebatship—Will—Probate and Administration Act (V of 1881), s. 8.

Where the mohant of an *akhra* executed a document described as a will, but purporting merely to appoint the petitioner as the next *sebat* or manager for the purpose of carrying out the *seba*, *pujas*, and other rites and ceremonies appertaining to the *akhra*, with full power to manage and supervise the properties belonging to the *akhra*:

Held that the document was not a will and could not be admitted to probate.

[Ref. 1 I. C. 216; 15 C. W. N. 1014 = 11 I. C. 152; Dist. 10 C. L. J. 644 = 3 I. C. 380; 14 C. W. N. 174; Pol. 20 C. L. J. 307 = 27 I. C. 24; 51 I. C. 884 = 23 C. W. N. 401.]

APPEAL by the petitioner Chaitanya Gobinda Pujari Adhikari.

One Dole Gobinda Adhikari was the mohant of the *akhra* of Syam Sundar and Lakshmi Narayan *Bigrahas*. He died on the 32nd Chait 1310, having on the 29th Falgun 1309 executed a document described as a will, the material provisions of which are set out in the judgment of the High Court.

The petitioner applied for probate of this document. The Subordinate Judge to whom the case was transferred by the District Judge refused the application on the ground *inter alia* that the document was not a will.

The petitioner appealed to the High Court.

Babu *Baikunta Nath Das* for the appellant. Sebatship is property; it carries with it the right to possession and management of the endowed properties; it comprises the right to institute and defend suits in respect of these properties; it is therefore property and can be disposed of by will; the document disposing of the sebatship, such disposition taking effect after [1083] the death of the person executing it, is a will and may be admitted to probate.

Babu *Dwarkanath Chakrabarti* (Babu *Gobinda Chandra Dey Roy* with him) for the respondent. The test is, does any property of the testator pass—sebatship is an office; it comes to an end with the death of the holder, who cannot therefore dispose of it by will. Position of sebat is that of guardian of a minor; he may appoint his successor, but by the appointment nothing passes, which belonged to him; his rights as sebat cease with his death. *Bhagaban Ramanuj Das v. Ram Praparna Ramanuj Das* (1).

GHOSE AND GEIDT, JJ. This appeal arises out of an application made by one Chaitanya Gobinda Pujari Adhikari for probate of a document

* Appeal from Original Decree No. 191 of 1904, against the decree of Rash Behari Bose, Subordinate Judge of Mymensingh, dated the 27th of February, 1904.

(1) (1895) I. L. R. 22 Cal. 848.

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JULY 19.
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APPELLATE
CIVIL.
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32 C. 1082 = 9
C. W. N.
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described as a will said to have been executed by one Dole Govind 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 Sundar and Lachmi Narayan *bigrakas*. 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 *sebas* and *pujas* 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 application upon two grounds, first, that the properties mentioned in the document are properties in which Dole Govind 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 that the view adopted by the Subordinate Judge is erroneous, inasmuch as the right of a *shebait* is a very substantial [1084] 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*, *puja*, 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 Mohunt, 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.

Appeal dismissed.

32 C. 1085 (= 10 C. W. N. 51=3 Cr. L. J. 138.)

[1085] CRIMINAL REVISION.

Before Mr. Justice Rampini and Mr. Justice Mookerjee.

SAT NARAIN TEWARI v. EMPEROR.*

[20th July, 1905.]

Criminal breach of trust—Charge—Misjoinder of charges—Statement by accused—Confession—Admission—Evidence, admissibility of—Criminal Procedure Code (Act V of 1898) ss. 164, 202, 222, 234, 364.

* Criminal Revision No. 644 of 1905, against the order of C. E. Pittar, Sessions Judge of Gaya, dated June 5, 1905.