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**(1931) 05 AHC CK 0024**  
**In the Allahabad High Court**

Ram Lochan Naik and Others

APPELLANT

Vs

(Sri Thakurji) Asthapat Thakurdwara

RESPONDENT

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**Date of Decision :** 13-05-1931

**Acts Referred:**

Agra Tenancy Act, 1926 — Section 4

**Citation :** AIR 1932 All 163 : 136 Ind. Cas. 157

**Hon'ble Judges :** Pullan, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Pullan, J.—The plaintiff-respondent and the defendants-appellants are co-sharers in a certain zamindari. There are six plots of land which were up to the year 1924, but for how long it has not been ascertained, entered in the name of a certain Jhakri who was the pujari of the plaintiff-respondent. This Jhakri was dismissed from service and surrendered these holdings to the defendants-appellants. These had their own names entered in the revenue papers as khudkasht holders in the year 1924 (1332 Fasli). When the new Agra Tenancy Act came into force on 7th September 1926 these persons became under the definition of sir in Section 4 of that Act sir-holders being cosharers, who were recorded as being in possession of these plots as khudkasht in the year previous to the passing of the Act. The plaintiff Sri Thakurji Asthapat brought this suit for possession of the plots and for mesne profits claiming that he, and not the defendants, was the sir holder. The suit was partially decreed by the first Court. The plaintiff was given a decree for joint possession over the plots, but not for exclusive possession, and his suit for mesne profits was dismissed. He appealed against this decision, and a cross-objection was preferred by the defendants. In the cross-objection the defendants claimed that the land was their sir and the plaintiff was not entitled to joint possession.

2. The lower appellate Court however took the view that although the defendants' names were entered as khudkasht-holders the entry was not bona

fide and that the land, although it became sir became the sir not of the defendants, but of the plaintiff who was, in the opinion of the Court, the real khudkasht-holder at least up to the year 1924. The finding of the Court below that Jhakri represented Sri Thakurji and held the khudkasht land on his behalf can perhaps not be challenged in second appeal, but the effect of this finding is only this : that in the year 1924 one of the cosharers was occupying some of the joint land as khudkasht. Under the law which was then in force, no sir rights were acquired by a cosharer in respect of land which he was occupying as khudkasht after the passing of Act 3 of 1901, and there is no question of good faith in this matter. All that can be held is that after the year 1924 the other cosharers were in possession. How they obtained possession is immaterial, but they certainly occupied the land and cultivated it as their khudkasht for the two years which elapsed before the passing of the new Tenancy Act.

3. There is nothing in that Act which enables a Court to go back to the manner in which possession was obtained by a cosharer. The Court has merely to decide that the cosharer was in possession of certain land as khudkasht previous to the passing of the Act and is bound on that finding to hold the land to be sir of that cosharer. It would be unreasonable for the Court to say that such and such land is certainly cultivated as khudkasht by A, but he took it from B, and so B ought to be recorded as sir holder, and not A. This in effect is what the lower Court has done, and I cannot uphold this finding. In my opinion the defendants-appellants were properly recorded as sir holders in these plots. The plaintiff-respondent is their cosharer, but he is not entitled to have any decree given him for joint possession in the plots which his cosharers hold as sir. The suit therefore should be dismissed entirely. I allow this appeal with costs throughout, set aside the decree of the Courts below and order the suit to be dismissed with costs.