

decision upon it. That being so the decision cannot be challenged in second appeal. We, therefore, dismiss this appeal with costs; but we wish to say that we do not record any finding on the controversial matter raised in the appeal, namely, as to whether Kasaundhan Baniyas practise marriage by Dharauwa, we do not wish to go into the question of custom at all as it is not necessary for the decision of the appeal.

*Appeal dismissed.*

1929

RAM ANAND  
v.  
MURTAZA.

Pullan and  
Raza, JJ.

### REVISIONAL CIVIL.

*Before Mr. Justice Muhammad Raza and Mr. Justice  
A. G. P. Pullan.*

LACHHMAN PRASAD (PLAINTIFF-APPLICANT) v. RAGHUBAR DAYAL AND OTHERS (DEFENDANTS-OPPOSITE PARTY).\*

1929

February, 7

*Suit for profits for the period in which plaintiff was recorded as co-sharer is cognizable by revenue courts—Jurisdiction of civil and revenue courts—Oudh Rent Act (XXII of 1886), section 124(c)—Appeal to District Judge—District Judge, whether could dispose of the appeal on merits where there was no decision by the Munsif on the merits.*

A suit for profits is cognizable by a revenue court where the plaintiffs are recorded co-sharers during the whole period to which the suit relates.

Where the suit for profits was brought in the Munsif's court who held that he had no jurisdiction to try the suit and returned the plaint for presentation to the revenue court and the plaintiff preferred an appeal in the Court of the District Judge who transferred the appeal to the Subordinate Judge, *held*, that if the Subordinate Judge was of opinion that the Munsif was right in holding that the case could be heard only by the revenue court the only course open to him was

\*Section 115 Application No. 50 of 1928, against the order of Mohamad Munim Bakhth, Subordinate Judge of Malihabad, Lucknow, dated the 3rd of September, 1928, upholding the decree of Babu Sital Sahae, Munsif (South) Unao, dated the 28th of May, 1927.

1929

LACHMAN  
PRASAD  
v.  
RAGHUBAR  
DAYAL.

to dismiss the appeal as there was no decision of the case and no finding on the facts by the Munsif and it was impossible for the Subordinate Judge to dispose of the appeal himself on its merits as though the suit had been instituted in the right court under section 124(c) of the Oudh Rent Act. *Balgobind v. Gajadhar* (1), and *Bisheshar Prasad Pandey v. Raghubir* (2), relied on.

Messrs. *Hakimuddin* and *Naziruddin*, for the applicant.

Mr. *Ram Bharose Lal*, for the opposite party.

RAZA and PULLAN, JJ. :—This is an application in revision of an order of the Additional Subordinate Judge of Lucknow upholding the order of the Munsif (South) Unao returning the plaint for presentation to the proper court, that is the revenue court. The suit was one for profits, but the plaintiffs alleged that it fell within the jurisdiction of the civil court because they had not been co-sharers during the whole period for which they claimed profits. They sued as the heirs of their father, who was a co-sharer until the year 1332 *Fasli*. This question was decided long ago in *Balgobind v. Gajadhar* (1) and it was decided against the plaintiff. The plaintiff need not be recorded as a co-sharer during the whole period to which the suit relates. It is sufficient that the name was recorded at the time when the suit was brought. The plaintiffs were recorded as co-sharers when the suit was brought and they were therefore bound to sue for profits in a revenue court. The Subordinate Judge who heard the case in appeal, agreed with the Munsif and dismissed the appeal. In our opinion he could do no more. There was no decision of the case and no finding on the facts. Consequently it was impossible for him to dispose of the appeal himself on its merits as though the suit had been instituted in the right court, under section 124(c) of the Oudh Rent Act.

(1) (1908) 12 O. C., 13.

(2) (1925) 24 A. L. J., 83.

If he held that the Munsif was right and that the case could not be heard by the Munsif but only by the revenue court, the only course open to the Subordinate Judge was to dismiss the appeal. It certainly cannot be said that the Subordinate Judge to whom the appeal had been transferred by the District Judge failed to exercise his jurisdiction rightly when he passed the order dismissing the appeal. This was the view taken by the Allahabad High Court in a similar matter in the case of *Bisheshar Prasad Pandey v. Raghubir* (1). In our opinion the order of the court below was correct and the order of the Munsif was also correct. The case was clearly cognizable in the revenue court and could not be tried by the Munsif. We reject this application with costs.

1929

LACHMAN  
PRASAD  
v.  
RAGHUBAR  
DAYAL.

*Raza, and  
Pullan, JJ.*

*Application rejected.*

## APPELLATE CIVIL.

*Before Mr. Justice Gokaran Nath Misra.*

SAKTAY SAH AND OTHERS (PLAINTIFFS-APPELLANTS)

1929

v. MAHADIN AND OTHERS (DEFENDANTS-RESPONDENTS).\*

February 13.

*Contract Act (IX of 1872), section 23—Settlement to stifle criminal prosecution—Contracts against public policy, what are—Compounding of an offence which is compoundable under the law, validity of—Illegal contracts, enforcement of—Money paid under an illegal contract, whether can be recovered back in a court of law—Declaratory relief, whether can be obtained in respect of an illegal contract.*

It is a settled rule of law that where the offence charged is non-compoundable the settlement of that offence must be deemed to be invalid, but where the offence charged is compoundable, the settlement cannot be deemed to be invalid because the Legislature itself allows a settlement of such cases and it cannot, therefore, be said that the object of

\*Second Civil Appeal No. 321 of 1928, against the decree of Saiyid Khurshed Husain, Subordinate Judge of Hardoi, dated the 6th of August, 1928, confirming the decree of Syed Abid Raza, Munsif of Bilgram, dated the 29th of February, 1928, dismissing the plaintiffs' claim.

(1) (1925) 24 A. L. J., 83 (85).