accepted, the order of the learned Single Judge is reversed, and the impugned order, dated May 16, 1967, of respondent 1, the Deputy Commissioner of Ferozepore, is thus quashed. In this appeal, respondent I will bear the costs of the appellant, counsel's fee being Rs. 100.

R. S. NARULA, J.—I agree.

K.S.K.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

BASANT SINGH,—Appellant

versus

GRAM PANCHAYAT, HABOLI, AND OTHERS,—*Respondents*

R.S.A. No. 799 of 1959

January 11, 1968

Punjab Land Revenue Act (XVII of 1887)—S. 44—Land recorded as Shamilat Deh in Revenue Records— Presumption as to its correctness—Whether arises—Decree of partition passed—Whether by itself rebuts the presumption—Such decree—Whether can be presumed to have been given effect to even when not executed.

Held that, if in the revenue records, a land has continued to be recorded as *Shamilat Deh*, presumption of correctenss attaches to such entries and it is for the person challenging them to prove that the entries are erroneous. Even if there has been a decree of partition, that will make no difference. The dercee by itself, unless given effect to, will not alter the existing state of affairs. The mere fact that there is a decree will not lead to the conclusion that what the decree decided was finally given effect to, and the subsequent state of affairs must be presumed to accord with that decree. It will, in each case, depend whether the decree has been executed or not and it cannot be held as a matter of law that a decree must be presumed to have been given effect to.

Second appeal from the decree of the Court of Shri A. N. Bhanot, Additional District Judge, Ambala Camp at Hoshiarpur, dated the 13th day of February, 1959, affirming with costs that of Shri K. L. Wason, Sub-Judge, 4th Class, Hoshiarpur, dated the 31st March, 1958 dismissing the plaintiffs suit with costs, to be paid to defendant No. 1.

M. K. MAHAJAN AND K. N. TEWARI, for the Appellant.

D. N. AWASTHI, ADVOCATE, for the Respondents.

JUDGMENT

MAHAJAN, J.—This second appeal is directed against the concurrent decisions of the Courts below dismissing the plaintiff's suit.

The plaintiff filed a suit for a declaration that he and defendants 2 to 8 were the owners in possession of the land in dispute measuring 318 Kanals, 18 Marlas. A permanent injunction was also claimed restraining defendant 1, the Panchayat, Haboli, from interfering with their rights. So far as the identity of the land is concerned, there seems to be no dispute because in either Court, it was no body's case that the land in dispute was not the same land which was the subject-matter of partition between 1911—1915. The trial as well as the appellate Court have proceeded on the common ground that the land was *Shamilat* prior to 1915. The only divergence in the respective stands of the plaintiff and the contesting defendants has been that according to the plaintiff, the land ceased to be shamilat by reason of a partition effected in the year 1915 and the plaintiff and defendants 2 to 8 became its exclusive owners and have continued in possession of the same as such, whereas the stand of defendant 1 is that the land continued to be *Shamilat*. The partition of 1915 was not given effect to at all and remained, more or less, a paper transaction. The precise question, that fell for determination in the Courts below, was whether the land ceased to be *Shamilat* after partition of 1915 or it still continues to be *Shamilat*. Both the Courts have come to a concurrent decision that the land continues to be Shamilat and that the partition of 1915 was not given effect to. The result, therefore, has been that the plaintiff's suit has failed in both the Courts below. The plaintiff is dissatisfied with the decision of the Courts below and has come up in second appeal to this Court.

Before proceeding to deal with the arguments of the learned counsel, it will be proper to set out the findings that have been arrived at by the lower appellate Court. The lower appellate Court has come to the conclusion that the land in dispute was not partitioned between the years 1911 and 1916; that the possession of the parties remained in the same fashion in which it was before 1911 and after 1916 that though there was a partition *Sanad*, Exhibit P. 4, wherein it was mentioned that the partition had been effected in view of the order of Shri Raghunath Dass, dated 10th of May, 1915, the said order was not produced; and in any case even if the partition had taken place it was ignored for many years and the proprietors of the

village did not deal with the land on the basis that any previous partition had taken place. Three principle reasons, which prevailed with the lower appellate Court in coming to this conclusion were—

(1) that in three litigations, which are evidenced by orders, Exhibits P. 1, P. 2 and P. 3 and which took place long after 1916, the parties to the proceedings were the proprietors of the village and not the individual owners and that these suits continued upto 1931;

(2) that there are series of documents, Exhibits D. 3 to D. 6, which show that the proprietors of the village were dealing with the *Shamilat* land as such and were dividing its profit according to ancestral shares; and

(3) that in the year 1949 an application was made for partition of the *shamilat* land to which the plaintiff was a party.

According to the learned Judge, all these three facts militated against an accomplished partition in or prior to the year 1916. So far as the second and the third reasons are concerned, no fault can be found with the same. So far as the first reason is concerned, it is doubtful whether the suits, to which documents, Exhibits P. 1 and P. 3 relate, were filed in a representative capacity or the land in dispute was *Shamilat* land. It is quite possible that the land was *Shamilat* land; but there was no indications that the suits proceeded on the basis that the land was *Shamilat* and was owned by all the proprietors of the village. But this cannot be said about Exhibit P. 2. In Exhibit P. 2, there is a clear mention that the land was *Shamilat* and thus the ownership of the village proprietors. However, the mere fact, that the first circumstance is not even established, will not make any difference so far as the decision of the lower appellate Court is concerned. The fact still remains that this land has been treated as *Shamilat* long after the partition of 1916; and in the year 1949, an application was made for its partition to which the plaintiff was a party. No evidence has been led by the plaintiff to show that his stand in the partition application was that the land had already been partitioned. On the contrary, in the witness box, the plaintiff admitted, in cross-examination, that the proprietors of the village had been receiving the profits of the *Shamilat Deh* from the Co-operative Society which had been formed, as I have already said, if there had been a partition in 1916 and the land had been divided and taken

exclusive possession of by the respective co-sharers, it would not have been recorded in the revenue papers as *Shamilat Deh.* Its nature would have altered by the fact of partition. But in the revenue records, it has continued to be recorded as *Shamilat Deh.* Presumption of correctness attaches to the later revenue entries; and it was for the plaintiff to prove that the latter revenue entries were erroneous. Barring Exhibit P. 4, the *Sanad,* and other papers connected with it no other evidence has been led to establish that the land was partitioned in the year 1916 or before that. The State of affairs before partition was that certain proprietors were in exclusive possession of certain parts of the *Shamilat*; and after 1916, they have so continued in possession. No attempt has been made to show that by reason of the partition of 1916, the possession of any of the proprietors has increased as a result of the so-called partition of 1916 or of another one has diminished. Even if I come to the conclusion that the lower appellate Court was wrong in holding that there was no decree for partition, it will make no difference. The decree by itself unless given effect to, will not alter the existing state of affairs. But if the decree had been executed, the position would have been different. There is no evidence that the decree was executed. In a similar situation it was held in *Fateh Singh, etc.* v. *Ajit Singh, etc.* Letters Patent Appeal No. 100 of 1962, decided on 23rd September, 1965, by Falshaw, Chief Justice, and Mehar Singh, J. (as he then was), that the mere fact, that there is a decree will not lead to the conclusion that what the decree decided was finally given effect to, and the subsequent state of affairs must be presumed to accord with that decree. It will in each case, depend whether the decree has been executed or not and it cannot be held as a matter of law that a decree must be presumed to have been given effect to.

From whatever angle, this matter is examined, there is no manner of doubt that the decision of the Courts below is based on evidence and is immune from attack in second appeal. There is no error of law that has been committed by any of the two Courts below.

For the reasons recorded above, this appeal fails and is dismissed with costs.

K.S.K.