

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**RSA No. 2096 of 2013 (O&M)**

Date of decision : 19.3.2015

Sunder

.. Appellant

versus

Smt. Suman @ Phula and another

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal**

**Present: Mr. Gorakh Nath, Advocate, for the appellant.**

**Rajesh Bindal, J.**

The plaintiff having failed in both the courts below has filed the present appeal whereby his suit for permanent injunction restraining the defendants from alienating any specific portion of land and from taking possession of any specific portion thereof, was dismissed.

It is not in dispute that the parties to the litigation are co-sharers in a joint khewat. The parties are related to each other. They are in possession of their share as per the family settlement. The appellant-plaintiff failed to establish his possession on any specific portion of the suit land. Both the Courts below opined that the co-owner, who is not in possession of any part of land is not entitled to seek injunction against the other co-owner in exclusive possession of the common property unless any act of the party in possession of the property amounts to ouster or adverse to the interest of the co-owner not in possession. The remedy of the co-sharer is to seek partition and not injunction. Nothing was produced on record to establish that the respondents-defendants were alienating any specific portion of land, even if so done, the same is to be treated as sale of share in a joint khewat. If any of the party wants possession of specific portion of land, the remedy is to file a suit for partition.

Assailing the aforesaid concurrent findings of fact recorded by both the Courts below, the learned counsel for the appellant was not able to

raise any fruitful arguments as the fact remains that the property is still jointly owned and possessed by the parties. No substantial question of law arises. The appeal is accordingly dismissed.

19.3.2015  
vs

( Rajesh Bindal )  
Judge