

## Fazlur Rahman Vs Md. Raizuddin and Others

**Court:** Gauhati High Court

**Date of Decision:** Jan. 22, 2004

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 145

**Citation:** (2004) CriLJ 3670 : (2004) 2 GLR 335

**Hon'ble Judges:** P.G. Agarwal, J

**Bench:** Single Bench

**Advocate:** A.M. Bujarbaruah and K.L. Salo, for the Appellant; Abu Sharif, S.B. Choudhury and Nazib Ali, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

P.G. Agarwal, J.

Head Mr. A.M. Bujarbaruah, learned Counsel for the petitioner and Mr. A. Sharif, learned counsel for the respondents.

2. The petitioner/1st party Faziur Rahman filed an application before the Executive Magistrate apprehending breach of peace in respect of the land

measuring 2 bighas situated at Katlijhar village under Ghilajari Mouza covered by dag No. 37/38 under K P Patta No.

83. The proceeding was

contested by the respondent/2nd party and thereafter vide order dated 18.9.2001, the learned Additional District Magistrate, Barpeta declared

possession of the petitioner/1st party over the DL.

3. Feeling aggrieved, the respondent approached the Sessions Judge, Barpeta in Criminal Motion No. 45/2001 and vide impugned order, the

learned Sessions Judge set aside the said order of the learned Additional District Magistrate and hence the present revision by the petitioner/1st

party.

4. During the course of arguments, Mr. A.M. Bujarbaruah was fair enough to submit that this is a case of co-ownership and there was no partition

in-between the parties and as a matter of fact, at present a partition suit has also been filed in respect of the DL and the same is pending before the

civil court.

5. Mr. Bujarbaruah further submits that the revisional court failed to appreciate the dictum of law laid down by the Apex Court in the Ram Sumer

Puri Mahant Vs. State of U.P. and Others, The law laid down in Ram Sumer Puri Mahant (supra) was clarified/explained by the Apex court in a

later case of Jhummal alias Devandas Vs. State of Madhya Pradesh and Others,

6. In the present case, there is no dispute at the Bar that the partition suit was filed after conclusion of the proceeding u/s 145 Cr.PC.

7. Mr. Sharif on the other hand has submitted that although the proceeding u/s 145 Cr.PC was filed earlier in the year 1996, it was disposed of

vide order dated 18.9.2001 whereas the partition suit was filed in the year 1998.

8. The learned counsel for the petitioner has also placed reliance on a subsequent decision of the Apex Court in the case of Prakash Chand

Sachdeva Vs. The State and another,

9. However, on perusal of the records, we find that the facts of the present case are on a different footing. In his application filed in the year 1986

for drawal of proceeding u/s 145 Cr.PC the petitioner categorically admitted about his dispossession from the DL. The law is very specific and the

proviso to clause 4 of Section 145 Cr.PC provides :

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse

the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks

necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under Sub-section (1), in

possession of the subject of dispute.

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date

on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order

under Subsection (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under Sub-section

(1).

10. The burden was on the petitioner/1st party to establish that he has been forcibly dispossessed within a period of two months from the date of

the order or information. In the application, the words used by the petitioner are "some days ago" in spite of the admission of dispossession. The

trial court proceeded on the presumption that the petitioner/1st party was all along in possession, i.e., since 1986 when they claim to come into

possession and as the 2nd party had failed to substantiate as to how they came into possession they were ousted.

11. The learned counsel for the petitioner had gone through the evidence on record and do not find any evidence on behalf of the petitioner's to

establish as to from which date the petitioner was dispossessed. Hence in view of the above the petitioner was not entitled to any relief u/s 145

Cr.PC and the impugned order passed by the Additional District Magistrate on 18.9.2001 need to be quashed and it was rightly quashed,

although for different reasons by the Sessions Judge, Barpeta.

12. Mr. Bajarbaruah has submitted that the matter be remanded back for fresh disposal by the Additional District Magistrate, Barpeta.

13. In view of the pendency of the civil proceeding regarding partition etc., between the parties, the proceeding u/s 145 Cr.PC cannot be allowed

to continue and the parties will be at liberty to approach the civil court for interim relief, if any.