

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.132 OF 2025

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Md. Rowshon Ali and others

.... Petitioners

-Versus-

Md. Munjur-E-Alam (Munnu) and others

.... Opposite parties

Mr. Ashikur Rahman, Advocate

.... For the petitioners.

Mr. Md. Humayun Kabir, Advocate

.... For the opposite party

Nos.1-3.

Heard on 30.06.2025 and Judgment on 01.07.2025.

This Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the impugned judgment and order dated 30.10.2024 passed by the learned Additional District Judge, 2nd Court, Bogura in Civil Revision No.09 of 2019 dismissing the revision and thereby affirming the judgment and order dated 10.02.2019 passed by the learned Senior Assistant Judge, 1st Court, Bogura in Other Class Easement Suit No.197 of 2018 should not be set aside and/or other or further order or orders as to this Court may seem fit and proper.

Facts in short are that opposite parties as plaintiffs instituted above suit for declaration of right of easement for disputed 12 feet length road. In above suit defendant filed a petitioner for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure alleging that above suit has been undervalued and the plaintiff did not pay ad-valorem Court fees. The learned Senior Assistant Judge rejected above petition.

Being aggrieved by above judgment and order of the trial Court above defendant preferred Civil Revision No.09 of 2019 to the District Judge, Bogura which was heard by the learned Additional District Judge who rejected above Civil Revision but directed the plaintiff to pay ad-valorem Court fees.

Being aggrieved by and dissatisfied with above judgment and order of the learned Additional District Judge above petitioner as petitioner moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Ashikur Rahman, learned Advocate for the petitioner submits that the learned Additional District Judge rightly directed the plaintiff to pay ad-valorem Court fees for above 12 feet road but did not ask for making proper valuation of the subject matter of above suit which is not tenable in law.

On the Other hand Mr. Md. Humayun Kabir, learned Advocate for opposite party Nos.1-3 submits that plaintiff filed above suit for mere declaration under Section 42 of the Specific Relief Act, 1877 that a right of easement has been created for disputed 12 feet road and no consequential relief was sought. As such the learned Judge of the trial Court rightly rejected above petition of the plaintiff. But the learned Additional District Judge although rightly rejected the Civil Revision but most illegally directed the plaintiff to pay ad-valorem Court fee which is not tenable in law.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

As mentioned above the petitioner defendants filed a petition under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint on the ground of under valuation of the subject matter of above suit and not paying advelerum Court fees. But for above causes a plaint cannot be rejected outright. If a Court finds that a suit has been undervalued or insufficiently stamped the Court shall direct the plaintiff for proper valuation and payment of sufficient Court fees. If the plaintiffs fails to comply with above direction of the Court only then the Court can reject the plaint.

It turns out from the plaint that the plaintiffs sought a decree that the plaintiff has acquired a right of easement for 12 feet road as described in the schedule to the plaint. Above relief was declaratory in

nature and the plaintiff did not seek any consequential relief. As such the learned Judge of the trial Court rightly rejected above petition of the defendant but the learned Additional District Judge most illegally directed the plaintiff to pay ad-valorem Court fees which is misconceived, without any lawful basis and not tenable in law.

In above view of the materials on record I find substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, this Rule is made absolute. The impugned judgment and order dated 30.10.2024 passed by the learned Additional District Judge, 2nd Court, Bogura in Civil Revision No.09 of 2019 is set aside and the judgment and order dated 10.02.2019 passed by the learned Senior Assistant Judge, 1st Court, Bogura in Other Class Easement Suit No.197 of 2018 is restored.

However, there will be no order as to costs.

MD. MASUDUR RAHMAN
BENCH OFFICER.