

CO 2911 of 2006

In the matter of : Smt. Mala Chattopadhyay

None appears on behalf of the petitioner.

This is an application under Article 227 of Constitution of India which is awaiting disposal for last 17 years.

This application challenges the Order No. 49 dated 23.3.2005 passed by the learned Civil Judge, Junior Division, 1st Court, Bankura. By the impugned order learned Trial Court was pleased to reject the application under Order XXXIX Rule 7 of the Code of Civil Procedure.

I have perused the order impugned in a suit for declaration and permanent injunction. The plaintiff filed the application for local anticipation to ascertain whether the electric cable and rain water pipe installed by the defendant are running under the land of the plaintiff.

In other words, the allegation is that there is encroachment upon the land of the plaintiff by the defendant.

The learned Trial Court was justified in holding that by way of local anticipation element of encroachment cannot be determined. The order impugned does not suffer from any perversity and there is no jurisdictional error.

The revisional application stands dismissed.

Interim order, if any, stands vacated.

Let a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)

