

Kamini Kumar Taluqdar Vs Shib Sundari Devi

Court: Calcutta High Court

Date of Decision: Aug. 13, 1920

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 31 Rule 3

Citation: 62 Ind. Cas. 770

Hon'ble Judges: Newbould, J; Ghose, J

Bench: Division Bench

Judgement

1. This Rule was directed against an order appointing a guardian ad litem of the petitioner, who is defendant No. 2, in a suit in which his wife is the

plaintiff. The guardian ad litem has been appointed on the allegation of the plaintiff that the defendant No. 2 is of unsound mind, but before such a

guardian ad litem is appointed, it is necessary that the provisions of Rule 3, Order XXXI, (which are made applicable to the case of a person of

unsound mind by Rule 15) should be complied with. No affidavit has been filed in support of the application, verifying the fact that the proposed

guardian has no interest adverse to the defendant, nor has any notice been served on the defendant, But what is more important is that before the

defendant can be treated as of unsound mind under Rule 15, the provisions of that rule must be complied with. We understand that this defendant

has never been adjudged to be of unsound mind. It is, therefore, necessary that there should be a finding by the Court after an enquiry that he, by

reason of unsoundness of mind or mental infirmity, is incapable to protect his own interest in the suit.

2. We accordingly make this Rule absolute, set aside the order of the lower Court appointing Sailendra Nath Sen guardian ad litem of defendant

No. 2. The Sub. ordinate Judge is directed to hold an enquiry and come to a definite finding as to whether by reason of unsoundness of mind or

mental infirmity the defendant No. 2 is incapable of protecting his own interest in the suit. If the Judge finds that he is so incapable, then the

provisions of Rule 3 must be complied with before a guardian ad litem is appointed.

3. We make no order as to costs of this Rule as it is unopposed.