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**(1920) 08 CAL CK 0046**

**Calcutta High Court**

**Case No:** None

Kamini Kumar Taluqdar

APPELLANT

Vs

Shib Sundari Devi

RESPONDENT

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**Date of Decision:** Aug. 13, 1920

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 31 Rule 3

**Citation:** 62 Ind. Cas. 770

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

**Bench:** Division Bench

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### **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 Subordinate 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.