

## Nilima Kerketta Vs Merry Alexia Minj

**Court:** Jharkhand High Court

**Date of Decision:** Jan. 15, 2025

**Acts Referred:** Specific Relief Act, 1963 â€” Section 31  
Limitation Act, 1963 â€” Article 56, 59

**Hon'ble Judges:** Anubha Rawat Choudhary, J

**Bench:** Single Bench

**Advocate:** Sandeep Verma, Arun Kumar, Zaid Ahmad

**Final Decision:** Dismissed

### Judgement

Anubha Rawat Choudhary, J

1. Heard the learned counsel appearing on behalf of the parties.

2. This appeal arises out of judgment dated 02.06.2017 passed by the learned District Judge, Simdega whereby Title Appeal No. 7 of 2016 has been

dismissed and the judgment and decree dated 30.06.2016 passed by the learned Sub Judge-I (Civil Judge Senior Division-I) Simdega in Title Suit No.

09 of 2012 has been affirmed.

3. The learned counsel for the appellant submits that there are concurrent findings recorded by both the Courts and the defendant no. 1 of the suit is

the appellant before this court. Defendant No. 2 was the Deputy Commissioner who did not participate in the proceedings and the suit was admitted

ex-parte with respect to defendant no. 2. The defendant no. 2 did not appear before the appellate court and before this court also the defendant no. 2

who is respondent no. 2 in the present case is not appearing.

4. The appeal was admitted on 31.08.2018 on the following substantial question of law:-

Ã¢â‚¬Å“Whether element of fraud are required to be pleaded and proved by cogent evidence, the findings of the learned court below otherwise in this regard are

wholly perverse and against the mandate of law.Ã¢â‚¬Å“

5. Further substantial question of law which has been framed vide order dated 06.01.2025 is as follows:-

Ã¢â‚¬Å“Whether the sale deed executed through impersonation of the vendor was at all required to be specifically challenged in order to hold the same as

nullity/void-ab-initio.Ã¢â‚¬Å“

Argument of the appellant ( defendant no.1)

6. Learned counsel appearing on behalf of the appellant has submitted that in the plaint there was an allegation of impersonation of the plaintiffs while

seeking permission from the Deputy Commissioner u/s 46 of the Chhotangpur Tenancy Act for sale of the property in favour of defendant no. 1 and

the sale deed was also executed through impersonation but the impersonation cannot be said to have been proved through cogent evidence. He has

further submitted that no relief was prayed for seeking declaration of the sale deed as null and void or void-ab-initio.

7. The learned counsel while referring Trial Court's judgment has referred to the issue framed in paragraph no. 4 and has submitted that issue

nos. 1,2,3,4 and 6 were dealt with together in paragraph 10. He has submitted that specimen thumb impression of the plaintiff was not taken in the

court and the thumb impression of the vendor of the sale deed as per the sale deed was marked as Exhibit-A. The handwriting expert deposed that

exhibit-A did not match with exhibit-X and exhibit-Y. He has submitted that handwriting expert's report was marked as exhibit-2. The learned

counsel has submitted that the report of handwriting expert is not conclusive proof and for this he has relied upon the judgement passed by

Hon'ble Supreme Court reported in AIR, 1963, SC, 1728p paragraph 26. The learned counsel has submitted that the approach of the learned

courts with respect to reliance on handwriting expert was misplaced and they have treated the report of the handwriting expert as conclusive proof.

8. The learned counsel has further submitted that even if finding with regard to impersonation is taken as correct for a moment, then also no relief

could have been granted to the plaintiff as the plaintiff never challenged the sale deed in the suit, rather the plaintiff only sought a declaration of right,

title, interest and possession, although as per the sale deed, the vendor was the plaintiff. The learned counsel has referred to Section 31 of the Specific

Relief Act and has relied upon the judgment passed by the Hon'ble Supreme Court reported in AIR, 2000, SC, 211p paragraph 19 to submit

that when the plaintiff seeks to establish his title to the property which cannot be established without avoiding the instrument that stands as an

insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that

instrument cancelled or set aside or rescinded and he is bound to lay the suit within three years from the date when the facts entitling the plaintiff to

have the instrument set aside first became known to him. The learned counsel has submitted that in the present case, the sale deed duly registered

created a serious obstruction in the right of the plaintiff which was otherwise binding on him and in absence of any relief seeking cancellation of the

instrument, no relief could have been granted to the plaintiff. The learned counsel has also relied upon the judgment passed by the Hon'ble

Supreme Court reported in (2021) 4 SCC 786 paragraph 19 to submit that the earlier section 39 of Specific Relief Act, 1877 corresponding to section

31 of Specific Relief Act, 1963 has been considered in paragraph 19 of the report while referring to earlier judgment reported in 1959 SCC ONLINE

MADRAS 314 wherein it was clarified that three conditions are required for exercise of jurisdiction to cancel an instrument, (1) The instrument is void

or voidable against the plaintiff; (2) plaintiff may reasonably apprehend serious injury by the instrument being left standing and (3) in the circumstances

of the case, the court considers it proper to grant his relief of preventive justice.

Argument of the respondent no.1 (plaintiff)

9. Learned counsel appearing on behalf of the respondent no. 1, the plaintiff, has opposed the prayer and has submitted that the substantial questions

of law are fit to be answered in favour of the plaintiff. He has relied upon the judgment passed by the Hon'ble Supreme Court reported in (2024)

SCC ONLINE, SC 2456 paragraph 23 and has submitted that the Hon'ble Supreme Court has held that the relief under Section 31 of the

Specific Relief Act, 1963 to be granted by the Court is accompanied with the word 'may' and therefore it is the discretion of the Court. He has

submitted that in case of fraud/impersonation as in the present case, the impersonation having been proved, the sale deed is void-ab-initio and nullity

and therefore there was no need to seek such a declaration by making a specific prayer for such relief. The learned counsel has submitted that the

learned courts have referred to Article 59 of the Limitation Act but section 59 has no role to play, rather it is Article 56.

10. The learned counsel has further submitted that so far as evidence of handwriting expert is concerned, the other evidences were also placed on

record and at no point of time there was any objection with regard to taking of sample of finger print, that is, exhibit X and Y particularly the manner in

which it was taken and the expert also appeared and was cross examined. He submits that it is not a case that the courts have only relied upon the

report of the expert to give a finding, rather the appellant is trying to make out a new case by objecting to the manner the sample of thumb impression

was taken. The learned counsel has submitted that there are concurrent findings in connection with impersonation and it has been admitted by the

learned counsel for the appellant that there was foundational pleading in the plaint itself regarding impersonation/fraud and accordingly the first

question of law is also required to be answered in favour of the plaintiff. He has submitted that the questions of law be answered in favour of the

plaintiff and the appeal be dismissed.

11. Arguments concluded.

12. Post this case for judgment on 03.03.2025.