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# RECTIFICATION OF INSTRUMENTS- WITH A CASE STUDY

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## ABSTRACT

*This paper attempts to understand what specific relief act of 1963 is. This paper will broadly focus on the section 26 of the act, which is rectification of instruments. In this section of the paper we are discussing, what does rectification of instruments mean the essentials of rectification of contracts, grounds for rectification of contracts/instruments, who can ask for rectification of contract, when court can refuse rectification of instrument and some important facts about rectification of contracts. All these sub-sections are explained with help of a case study and few case laws. The general attempt of writing this paper is to have a core understanding and comprehend the law based analogy on rectification of instruments.*

KEYWORDS: 1. Rectification 2. Instruments. 3. Contracts. 4. Specific relief act. 5. Case study  
6. Case Laws

## INTRODUCTION

In 1877, specific relief act was passed. It was originally drafted along the lines of the New York Civil Code of 1862, and its principal clauses contained English equity court doctrine. The specific relief act of 1963 is the result of the federal government's approval of the law commission of India's recommendations. In the Lok Sabha, a bill to repeal the Act of 1877 was introduced, which was passed by both houses of parliament and approved by the president on December 13, 1963. After which an amended act called the specific relief act of 1963 came into existence. This specific relief statute establishes a number of different types of relief. Specific relief refers to relief for a specific species, which is defined as an exact or specific, named, fixed, or decided relief. Rather than generic relief, damages, or compensation, the phrase is meant to provide specific relief.

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## WHAT IS RECTIFICATION OF INSTRUMENTS

Rectification of instruments is defined under **section 26<sup>2</sup>** of the **specific relief act of 1963**.

It states:

When instrument may be rectified.—

**(1)** When, through **fraud or a mutual mistake of the parties**, a contract or other instrument **in writing** [not being the articles of association of a company to which the Companies Act, 1956 (1 of 1956) applies] does not express their real intention, then—

**(a)** **Either party or his representative in interest** may institute a suit to have the instrument rectified; or

**(b)** The plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

**(c)** a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

**(2)** If, in any suit in which a contract or other instrument is sought to be rectified under subsection (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

**(3)** A contract in writing may **first be rectified**, and then if the party claiming rectification has so prayed in his pleading and the **court thinks fit, may be specifically enforced**.

**(4)** No relief for the rectification of an instrument shall be granted to any party under this section **unless it has been specifically claimed**: Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.

- ❖ So now, when we break the term rectification of instruments, here rectification means to correct something and instruments mean any document where certain rights or liabilities transfer from one person to another. This (instruments) has been defined under section 2

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<sup>2</sup> “47 of 1963 THE SPECIFIC RELIEF ACT, 1963 (The Gazette of India ) (1963)”

clause 14 of the Indian Stamp Act (II of 1899)<sup>3</sup>. For example: a contract, a sale deed, a mortgage deed, a will and so on. Here if we look carefully, in the sale deed a right of property is transferred from one party to another similar is the case of a mortgage deed, a will and even a simple contract. Henceforth the definition of rectification of instrument derived from here is that, correction of written instruments is called rectification of instruments.

❖ **Essentials of rectification of instruments:**

1. It should be a written document.
2. Through fraud and mutual mistake, it is not expressing the real intention of the contract.

**For example:**

A offered B to sell his farm house for sum of 3, 00,000 rupees. B agreed to it and eventually they formed a written agreement, but in the written agreement the amount written was 4, 00,000 rupees. So now B can file a suit against A for rectification of contract and it will be valid as firstly, it is a written contract and secondly it is not expressing the real intention of the contract because of a mistake committed on the part of A.

**CASE LAW:**

**In Subhadra & Ors. v. Thankam, AIR 2010 SC 3031<sup>4</sup>**, this Court while deciding upon whether the agreement suffers from any ambiguity and whether rectification is needed, held that when the description of the property is clearly given without any ambiguity then the point of rectification would not arise. Section 26 which talks about rectification of contracts, attracts very less cases and it does not have general application. This provision can only come under consideration, when it satisfies its elements, that is when through fraud or mutual mistake the written instrument does not express the real intention of the parties.

❖ **Grounds for rectification of instruments:**

1. **Mutual Mistake:** It basically means that both the parties misunderstand each other. They agree on the same thing but not in the same sense. For rectification of contracts this

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<sup>3</sup> “2 of 1899 THE INDIAN STAMP ACT 1899 (The Gazette of India ) (1899)”

<sup>4</sup> “Subhadra and ors vs Thankam”, India, Available at: <https://indiankanoon.org/doc/1764840/> (visited on April 15,2002)”

mutual mistake shall be only of non-essential facts, like for example mistake of name of the parties or the name of the property. It is important to note that according to **section 20 of the Indian contract Act 1872**, when parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void, henceforth it is very clear that a void contract cannot be rectified, thus mutual mistake of non-essential facts can only be rectified.

2. **Fraud:** if one party deceives another party, then also the aggrieved party can file a suit against the other party for rectification of contract.

**For example:** if A sell his property to two brothers B and C but only mentions B in the written sale deed as he is his close friend and also B gives more money illegally to A then C can file a suit against A for rectification of the contract.

**Case laws:**

**In Joseph Johan peter sandy vs. veronica Thomas rajkumar<sup>5</sup>, (2013) 3 SCC 801**, it was held section 26 has a limited application and it is applicable only where it is specifically pleaded and it is proved that through fraud or mutual mistake the real intention of the parties is not expressed through the written instrument and such rectification is permissible only by parties to the instrument and no one else.

**In state of Karnataka vs. k.k.Mohandas<sup>6</sup> (2007) 6 SCC 844**, the court opined that rectification of written instruments in the absence of plea of mutual mistake or fraud is not permissible and hence such a relief cannot be granted in such cases.

❖ **Who can ask for rectification of contracts:**

1. **Section 26 (1) (A):** parties to the suit and representatives in interest.
2. **Section 26(1) (B):** plaintiff claiming any right under instrument. This means that when there is a right involved of the plaintiff in an instrument which is in issue, so to decide that the plaintiff can file a suit for rectification of instruments.

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<sup>5</sup> “joseph Johan peter sandy vs veronica Thomas rajkumar”, India, available at: <https://indiankanoon.org/doc/156545202/> (last visited on April 17, 2022)

<sup>6</sup> “state of Karnataka vs k.k.Mohandas”, India, available at: <https://indiankanoon.org/doc/499395/> (last visited on April 18,2022)

3. **Section 26(1) (C):** defendant in a case under which instrument is in issue. This means that when there is a right involved of the defendant in an instrument which is in issue, so to decide that the defendant can file a suit for rectification of instruments.

**For example:** A offered B to sell his farm house for sum of 3, 00,000 rupees. B agreed to it and eventually they formed a written agreement, but in the written agreement the amount written was 4, 00,000 rupees. So now B can file a suit against A for rectification of contract, so here B is one of the parties suing for rectification, here any representative in interest like his successor could have also filed a suit and also if there would have been any other dispute relating to this contract, and any of the parties right was violating then that party could have pleaded specifically for rectification of contract.

- ❖ **When the court can refuse rectification of instrument, even though the conditions of section 26(1) is complete?**

**Section 26 (2):** According to **section 26(2)** the court can refuse rectification of instrument when there is **third party involved** and that party **in good faith and for some consideration** has acquired rights on the subject matter, so then on rectification the subsequent transfer will get affected and this third party will suffer loss. So in such a situation the court will refuse rectification of instrument. Henceforth court will grant rectification of instrument after looking at such a circumstance and if such a circumstance arises then the court can refuse rectification of such a contract.

**For example:**

If A has sold his house and garage to B, but in sales deed only the house is mentioned. So now B will file a suit against A for rectification of contract, so now if the court gets to know that A has rented his garage to C and C has duly paid his rent, rented the garage in good faith and has no knowledge of sale between A and B so in such a case the court can refuse rectification of instrument as this would affect the subsequent transfer that is rent of garage to C and also C will suffer loss and his rights will be infringed.

❖ **Section 26(3):**

(3) A contract in writing may **first be rectified**, and then if the party claiming rectification has so prayed in his pleading and the **court thinks fit, may be specifically enforced**.

**Meaning:** It states that the rectified contract can also be specifically enforced only and until it fulfills the conditions of section 10 and 14(3)<sup>7</sup> of the specific relief act 1963.

**Objective:** The main objective of this section is to prevent multiplicity of suits, this means that for the same contract rather than filing two suits for two reliefs, in a single suit two reliefs could be granted.

**Note:** Here section 10 of the specific relief act talks about cases in which specific performance is enforceable. And Section 14 of the specific relief act talks about the contracts not specifically enforceable.

➤ **Section 26(4):**

(4) No relief for the rectification of an instrument shall be granted to any party under this section **unless it has been specifically claimed**: Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.

**Meaning:** It states that for rectification of any instrument, it needs to be pleaded specifically in the court. If there is a situation where the party fails to plead specifically for rectification of contract then the court allows for specifically pleading through amendment of the pleading at any stage of the trial.

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<sup>7</sup> “47 of 1963 THE SPECIFIC RELIEF ACT, 1963 (The Gazette of India ) (1963)”

**CASE STUDY OF**  
**SHAMBHU NATH DALAL AND ANR. VS RADHARAMAN**  
**MIDDAY&ORS. (2003)1CALLT301HC**

This case is an appeal and it stems out partition suit filed by the assistant district judge of the **district of Bankura** on **August 10 1994**<sup>8</sup>.

❖ **FACTS OF THE CASE:**

Man Kumari through a gift deed in favour of Parulbala gave his plot named 114 to him, and he gave the title to the claimant. Here the property which was talked about no. 314 but in the deed it was mentioned as 114. Parulbala sold the land to the claimants. The inaccuracy in the description of the plot number was mentioned in Parulbala's deed. However, in the partition suit, the plaintiffs did not request for rectification of the aforementioned mistake in the deed, nor did they acquire any rectification document from Parulbala or Man Kumari, as the case may be. No specific prayer for declaration of title was asked for in the suit.

❖ **CHALLENGE BY APPELLANTS:**

Mr. Roychowdhury (Legal representative of the appellants) claims that the plaintiffs do not have title to the land since the deed did not pass it to them due to a mistake in the description. No title may be claimed by the plaintiffs until there is some sort of correction.

❖ **SUBMISSION OF RESPONDENTS:**

The defendants had also purchased three annas portion of the same property from Parulbala. As a result, they are barred from contesting the title of Parulbala, claimed Mr. Mullick (legal counsel for the respondents).

❖ **REPLY OF APPELLANTS:**

It was noted that the defendants/appellants had purchased a three-annas part in the property in Plot No. 314 through a document in which both Parulbala and Man Kumari were vendors. In the case of Man Kumari, there was no disagreement about the plot because the plot number was appropriately stated in the deed by which Man Kumari acquired title. In light of the fact that Man Kumari was a party to the document through which the defendants obtained title, the mistake in the deed completed by Man Kumari in favour of Parulbala cannot be used to prohibit the defendants from raising the issue or from acquiring title.

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<sup>8</sup> “Shambhu nath dalal and anr. Vs radharaman midday and ors “, India, available at: <https://indiankanoon.org/doc/1439807/?type=print> ( last visited on 19 April 2022)



**❖ ACQUIRING TITLE BY THE PARTIES:**

It is indicated that the learned trial Court determined that both the plaintiffs and defendants had acquired title to the same plot from Parulbala, in respect of five annas and three annas shares, respectively. The plaintiffs, however, had gained title from Parulbala, who had got it from Man Kumari through a deed that contained an incorrect description of the site. The defendants, on the other hand, had obtained title through a document to which both Man Kumari and Parulbala had signed. There is no doubt that the plot number was appropriately stated in the paperwork through which Man Kumari obtained title. If we disregard the defendants' derivation of title through Parulbala, the defendants can still be deemed to have gained title from Man Kumari because Man Kumari was a party to the deed. As a result, the defendants' title is unassailable on those grounds.

A registered document is used to transfer the title. If the details of a plot are incorrectly recorded, even if it may be deduced from other relevant information, it is still a mistake that requires rectification of the deed under the Registration Act<sup>9</sup> or a suit under Section 26 of the Specific Relief Act. In the instant case, there was no case brought out in the pleadings trying to claim rectification of the deed's mistake, and no such motion was made during the course of the suit. Even before this Court, no request for such rectification of the error by way of amendment or otherwise is made.

**❖ THE COURT OPINED:**

- According to a straightforward reading of section 26 of the specific relief act of 1963, such rectification may be made or requested by either of the parties or the representative in interest, who may file a suit to rectify the instrument. As specified in Clauses (b) and (c) of Section 26 of Subsection (1) of the Specific Relief Act, such preference may be exercised in any other matter in which such a question may arise incidentally, whether by the plaintiff or the defendant.
- Section (4) states that no party can be awarded relief for rectification of an instrument unless it is specifically requested. Although Mr. Mullick's client, the plaintiff, had neither pleaded in the plaint nor specifically claimed for rectification, the situation is saved by the proviso to Section 26's Subsection (4), which allows the Court to allow the party to amend the pleading at any point during the proceeding to include such claim. Mr. Mullick now asks for leave to alter the plaintiff's pleading to include the claim for rectification of the deed.
- Section 26 is a clause that allows others to do something. It allows a transferee to seek correction for redress. However, such rectification is not the sole solution. Without seeking correction, he can sue for a declaration that the property is his. In

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<sup>9</sup> "16 of 1908 REGISTRATION ACT 1908 (The Gazette of India ) (1908)"

this situation, he can use the provisions of Sections 95 to 97<sup>10</sup> of the Evidence Act to his advantage. Failure to use Section 26 will not deprive the purchaser of the rights granted by the selling deed. A suit for declaration can be filed without the khasra number in the sale deed being corrected. If the plaintiff can show that he owns the property, he can get an order for declaration of title instead of rectification of the title document. It is open to the Court under Section 26 to give effect to the parties' genuine intention, which was discussed and arrived at by agreement between them before it was put to paper.

- The scope:  
Section 26 makes it clear that (1) it can be pleaded in the pleadings; or (2) such pleadings can be brought about at any stage of the suit by way of amendment; (3) the relief can be sought by either of the parties; (4) the relief can be had at any stage of the suit; and (5) even if it is not asked for, the Court is not precluded from granting such relief after allowing the parties leave to ask for such relief).
- Representative in interest: The parties to the instrument are not the only ones who can benefit from the relief provided by Section 26. The 'representative in interest' is likewise eligible for such relief. This term encompasses transferees as well as heirs, executors, administrators, and assignees. The Court can intervene in a dispute involving not only the parties to the document, but also anyone claiming in privacy under it. All personal representatives are included in the definition. It does, however, limit the operation to the parties or their representatives in interest and not to anybody else.
- The limitation on relief is tied to the individual who has approached the Court. Article 113<sup>11</sup> of the Limitation Act of 1963 governs the limitation period, which is three years from the date of execution of the instrument or the date of notification or knowledge of the mistake. The clock would start ticking from the moment the error was discovered. There is no such thing as a time restriction for discovering a mistake. The limitation period begins on the date the cause of action originates and ends on the date the cause of action ceases to exist. Only when the person suing discovers a mutual mistake in the document, such that it does not convey the parties' true intentions, can a cause of action to exist.

#### ❖ JUDGMENT OF THE COURT:

In these circumstances, this appeal is allowed in part only with respect to the finding that the Court did not deal with the question of the defendants' acquisition of title from both Man Kumari and Parulbala, which is a distinguishable feature on the basis of which the

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<sup>10</sup> "1 of 1872 INDIAN EVIDENCE ACT, 1872 (The Gazette of India ) (1872)"

<sup>11</sup> "36 of 1963 LIMITATION ACT, 1963 (The Gazette of India ) (1963)"

finding that was reached could not be supported in the absence of any prayer for declaration of title, and the rectification is required to be carried out with liberty to the plaintiff to amend the pleading. If such an application is submitted, the Court will grant it, incorporating the claim for rectification into the deed, and deciding the question after permitting rectification in accordance with Section 26 of the Specific Relief Act. Given the facts and circumstances of this case, where the only discrepancy is in the description of the plot number, the Court should deal with it solely on the basis that the other descriptions in both deeds tally, and shall issue a new decision on the above-mentioned finding, which is hereby set aside. The balance of the judgment, which has not been challenged subsequently, has been upheld and is hereby affirmed.

### **CONCLUSION**

There can be no doubt in understanding the fact that rectification of instruments means nothing but correction of any contract. It can be pleaded by any of the parties to the contract or even by their legal representatives. It is important to note that it needs to be specifically pleaded, or if in a suit, it is required the pleading can be amended, but after judge's permission. It is very important to understand that the court can also refuse rectification on the ground that if rectification happens it would violate third party's rights. It is very essential to understand the fact that a contract needs to be first ratified and then only it could be specifically enforced, that too if it fits under section 10 and 14(3) of the act and off course on the judge's discretion. One of the main objectives of this act is to bring out the real intention of the contract and to ensure that none of the party's rights are harmed.

It is essential to understand about this act as this act speaks about correction of contracts but it also states that it is not the only solution, the parties can sue for declaration of property (if it is a sale deed), also if there is failure of section 26 then also the rights given to the party via the contract be it a sale deed or a will, will not be deprived of him. The scope of this section extends to the representatives of the parties (e.g. Heirs of the parties) as well; also if the parties had not pleaded specifically for ratification of contract, then they can do so at any stage of trial by amending the pleadings. This act also has some limitations, which includes that any person could approach the court for rectification of instruments, within three years of the execution of contract or from the date of knowledge/notice of mistake. Here the knowledge of mistake can be known at any point of time. This means that there is no specific time boundation for discovery of mistake; hence mistake can be discoverable at any point in time.

Hence it is very important to understand about this section26 of the specific relief as it provides for remedies available to the parties whose contractual rights have been obligated or hampered. It gives a way to correct a mistake done for the betterment of both the parties. It is kind of a protective measure for the parties as well.