

Rectification of Instrument under Pakistani Legal Regime

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Farqaleet Khokhar (2022) Rectification of Instrument under Pakistani Legal Regime, *Global Journal of Politics and Law Research*, Vol.10, No.8, pp.81-89

ABSTRACT: *Rectification is a relief that thrives in the Specific Relief Act of 1877. This relief is obtained when any instrument is polluted with fraud or mutual mistake. This article utilises qualitative research methodology to describe the evolving trends of Pakistan courts while granting relief of rectification. With this purpose, the article describes the concept, scope, and significance of relief of rectification. This article critically inspects the effect of fraud and mistakes on the instrument and how an instrument is rectified when it is polluted with mistakes or fraud. This article also investigates the methods of pleading for relief of rectification under section 31 of the Specific Relief Act of 1877 and distinguishes typographical errors that are rectified under 152 of the Code of Civil Procedure. The article describes how the limitation period for this relief is calculated.*

KEYWORDS: rectification, mistake, fraud, relief

INTRODUCTION

The rectification of documents is a remedy that was granted by courts of equity for many centuries. It may be obtained in association with other remedies such as specific performance, it is an independent relief. This article unearths the canons of Pakistani Courts' decisions to describe the concept, scope, and relief of rectification. This article critically inspects the requirements for relief of rectification and pinpoints when and how this relief can be granted by courts. Then, this article describes the effect of fraud and mutual mistake in an instrument to highlight how the existence of fraud and the mistake can be rectified by courts. Additionally, this article describes how the courts interpret the Contract Act 1872 concepts of fraud and mutual mistake in Specific Relief Act 1877 (hereinafter 1877 Act). This article further investigates various methods evolved by Pakistani courts for pleading the relief of rectification. Additionally, this article describes the limitation period for getting the relief of rectification where there is fraud or mutual mistake in the instrument. In the end, there is a reasonable conclusion.

Relief of Rectification

Rectification is the power of the court to correct the mutual mistake or fraud, where the real intention of parties would be unable to be expressed in an instrument.¹ An instrument can be a formal written document, transaction, or agreement such as a contract, deed, lease, or any kind of bond except the articles of association of a company. Relief of rectification can be granted to any aggrieved party or to the legitimate representative in the interest of the aggrieved party which could be the party of the contract or deed.² The legitimate representative in interest should have the same position as the party of the instrument may have and any impediment in way of relief made by that representative may become the cause of setting aside the relief.

The instrument can be considered *void ab initio* if it is executed by a person who had no authority under the law to do so. Similarly, a person who is a minor or suffering from any mental disability would be unable to execute an instrument.³ Relief of rectification would be granted when the case of rectification will be instituted by either the aggrieved party or his legitimate representative in interest without prejudice to the rights of a third person in good faith. Moreover, in such an instrument there must be presence of any kind of mutual mistake or fraud or the instrument would be unable to express the actual intention of any party in it and it is a prerequisite to pray the relief specifically as the instrument might be rectified then it is enforced specifically.⁴ Rectification of the instrument is done according to the intention of the parties⁵ and it is difficult to ascertain the real intention of the parties when the instrument has any mistake or has been constructed fraudulently.⁶ However, after listening to the stance of the parties of the instrument, the court usually rectifies the instrument and it is necessary to mention while praying for rectification of the instrument that the disputed instrument is not expressing the intention of the parties correctly.

In *Muhammad Akram v Mst. Muqadas Bibi*, the claimant prayed for the rectification of the instrument as the claimant asserted to rectify the mutation number and location of its 6 Kanals land. The court allowed the rectification of the instrument because it was not expressing the intention of the parties correctly.⁷ However, In *Habib-Ur-Rehman v Sardar Adnan Khurshid*,⁸ the claimants filed a suit for rectification of a deed and they asserted that the Patwari and Tehsildar had committed a mistake. In the deed, the claimants were given a share of land measuring 19 Kanal 7 marlas. It was asserted that in the deed there was wrongful addition of more members as co-

¹ Stamp Act, 1899, s. 2 (14), defines “instrument as Instrument is defined as every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.”

² Haji Ghulam Habib V Tariq Siddique and others 2016 CLC Note 57; Muhammad Akram v Mst. Muqadas Bibi and 7 Others 2016 YLR Note 125

³ Mst. Sahib Noor v Haji Ahmad 1988 S C M R 1703

⁴ Haji Ghulam Habib V Tariq Siddique and others 2016 CLC Note 57; Muhammad Akram v Mst. Muqadas Bibi and 7 Others 2016 YLR Note 125

⁵ Muhammad Akram v Mst. Muqadas Bibi and 7 Others 2016 YLR Note 125

⁶ Haji Ghulam Habib V Tariq Siddique and others 2016 CLC Note 57

⁷ Muhammad Akram v Mst. Muqadas Bibi and 7 Others 2016 YLR Note 125

⁸ Habib-Ur-Rehman v Sardar Adnan Khurshid, Collector District Bhimber and 4 others, 2016 Y L R 1073

sharers. So, the claimants pleaded to rectify the additional co-sharers. The court took a stance that the deed was giving the true intention as well as the deed was sanctioned by the Revenue Authorities. This incomprehensive decision remained unsuccessful in highlighting that for rectification of the instrument what the actual essential is whether or not the satisfaction of the parties to the instrument is necessary.

In *Yaqoob v. Sawali*, the claimant instituted a suit for the rectification of the revenue record. In the record there was a mistake as the claimant's land having Khasra⁹ No.79 measuring 29 acres, 3 rods 25 polts situated at Mouza Kandala Gharbi was wrongly transferred to the defendant while the defendant asserted that land was his ancestral property. However, one of the witnesses, who was the brother of the defendant stated that the disputed land was not their ancestral property and the same mistake in record had been committed with his property that was also wrongly transferred to anyone else. The court after perusal of the record and evidence decreed to rectify the record and re-transferred the property to the claimant.¹⁰

Rectification of any instrument is done where there is the presence of a mistake in the instrument which is common to both the parties and that instrument would be unable to express the joint intention of both parties, however, in *Province of Sindh v. Mian Gul*, the claimant asserted for the rectification of the survey numbers¹¹ of land in the registered sale deed. He asserted that the land bearing U.A. No.140 should be rectified and instead of U.A. No.140 Survey No.204/1 to 4 should be inserted into the instrument. Moreover, he prayed that this error arose due to the mutual mistake of the parties. For that, the claimant produced a photocopy of the original sale deed accompanied by the photocopy certificate issued by Assistant Mukhtiarkar.¹² The defendant argued that the claimant has no right over such land and that this sale deed was a sham instrument. He further asserted that a corrigendum was required to be registered for any kind of correction or mistake in the registered sale deed. Despite inquiring about the matter the court ignored the stance of the defendant and allowed the rectification of the instrument by considering the certificate issued by Assistant Mukhtiarkar as a valid document. However, this certificate was not even attested. Additionally, the court ignored the fact that Assistant Mukhtiarkar was not a relevant authority to issue such certificates. The defendant, in this case, was not responsible for the mistake in the sale deed so how the mistake was mutual and he was explicitly denying it and contesting his right over the property that was also fully ignored by the court.¹³

⁹ The Khasra number is simply a plot number given to a specific land located in the villages or towns

¹⁰ *Yaqoob and 3 others v Sawali and another* 2012 C L C 1002

¹¹ Survey number of land is basically the number that defines the location, size, shape and ownership of a land. According to s.4(25) Sindh Land Revenue Act, 1967 means "a portion of land of which the area is separately entered under an indicative number in the record-of-rights;"

¹² Mukhtiarkar is the Assistant Collector of second grade

¹³ *Province of Sindh through Secretary to Government of Sindh Revenue Department, Karachi and 3 others v. Mian Gul and others* 2018 CLC Note 93

Rectification of the instrument is only possible if it will not prejudice the right of the third party in good faith.¹⁴ The claimant can seek the rectification of a mutual mistake made in the description of a place of land in a registered mortgage deed and the court can grant the relief of rectification under section 31 of the Specific Relief Act 1877 after assuring that the rights of third persons are not prejudiced.¹⁵ It is true that the relief of rectification is granted when there is a difference in the instrument when it is compared with any prior agreement but when another contract took place over the prior contract then the correction of the previous contract cannot be done.¹⁶

It is obvious that the party having documented instrument should not produce oral evidence in denial of the documented instrument, albeit it does not depict his intention¹⁷ because the registered documented evidence is always stronger¹⁸ as compared to the oral evidence even oral evidence cannot exclude the documentary evidence.¹⁹ In *Mst. Sahib Noor v Haji Ahmad*, when a husband transferred property in a dower to his wife through a registered deed as a document by which the transfer could be verified. The such deed was produced in the court. In such case, the oral evidence was not considered by the court and the court held that only one defence can be made that what was sold is different from what is written or mentioned in the sale deed as it is the combined effect of section 31 of the 1877 Act and section 92 clause (a) of the Evidence Act 1872²⁰ and Section 31 provides relief when there wrong description made in the instrument regarding the property.²¹

However, Section 92(1) of the Evidence Act 1872 permits the acceptance of oral evidence to prove the mutual mistake²² as for knowing the original nature of the instrument one can rely on the oral evidence but it is only possible when the instrument cannot clearly speak.²³ For example when rectification is needed in the registered mortgage deed due to a mutual mistake of both parties then in such case on basis of oral evidence the court performed rectification of the instrument.²⁴

Fraud or Mistake

For the rectification of any instrument or a contract, it is requisite there must be the presence of fraud or mutual mistake instrument. The presence of fraud or mistake in the instrument

¹⁴ Haji Ghulam Habib V Tariq Siddique and others 2016 CLC Note 57; Muhammad Akram v Mst. Muqadas Bibi and 7 Others 2016 YLR Note 125

¹⁵ Ghulam Sarwar and others v Naji Muhammad Ali and others 1984 CLC 172

¹⁶ Dr. Syed Tariq Sohail and others v Defence Housing Authority 2001 Y L R 1193

¹⁷ Evidence Act, 1872, ss. 91 and 92

¹⁸ Muhammad Bashir and 6 others V Muhammad Ashraf and 26 other 2004 CLC 1180

¹⁹ Raja Muhammad Saeed Khan v. Sardar Khani Zaman Khan and 11 others PLD 2007 SC (AJ&K) 63; Saleem Akhtar v. Nisar Ahmed PLD 2000 Lahore 385; Arif Baig v. Mubarrak Ali PLD 1992 Lahore 366

²⁰ Mst. Sahib Noor v Haji Ahmad 1988 SCMR 1703

²¹ Ghulam Sarwar and others v Naji Muhammad Ali and others 1984 CLC 172 relied on Rangasawami Aiyangar and another v. Sowri Aiyangar (29 I C 588)

²² Ghulam Sarwar and others v Naji Muhammad Ali and others 1984 CLC 172 relied on Kollachina Mellayya v. Kannekanti Veeriah and others (31 I C 671)

²³ Muhammad Karim And 3 Others V. Kala And 4 Others 2014 YLR 353 Relied on Fazal Muhammad v. Ghulam Haider AIR 1944 Peshawar 15

²⁴ Ghulam Sarwar and others v Naji Muhammad Ali and others 1984 CLC 172 relied on Kollachina Mellayya v. Kannekanti Veeriah and others (31 I C 671)

should necessarily be proved in court as well.²⁵ It is necessary that the rectification is specifically pleaded in plaint²⁶ under Order VI, Rule 4 of the Code of Civil Procedure. Rule 4 requires that the particulars of misrepresentation or fraud should be pleaded²⁷ and the description of the term fraud and mistake would be identical as mentioned in sections 17²⁸ and 20²⁹ of Contract Act 1872. If the party is intended to take charge of fraud against anyone then he should mention such in the plaint.³⁰ However, nonfactual allegations made by any of the parties would not prove the presence of fraud in the instrument.³¹

In *Mst. Sahib Noor v Haji Ahmad*, the claimant during the pendency of the case alleged that fraud in the instrument has been committed by the defendant. When the claimant stayed unable to prove the claims made by him in case of property he asserted that sale deed showed by the defendant was fake. The defendant produced an original deed that was also submitted to the revenue office the court held that in the plaint the claimant did not mention such a claim of fraud as well as the instrument would be called fraudulent if there would be a mistake of facts or any kind of misrepresentation was made in an instrument that was unknown to the person against whom such misrepresentation is made.³² An act done would fall in the ambit of fraud if it rests well with section 17 of the Contract Act 1872 which says that fraud is any act to deceive anyone.³³ The instrument would be considered voidable which was executed in order to defraud the other party.³⁴

Usually, rectification is granted when there is the presence of a mistake in the instrument which is common to both parties and that instrument would be unable in mentioning the joint intention of both parties.³⁵ The mistake seeking rectification should be common to both parties as well as there must be the same intentions of both parties for rectification of inaccuracy present in the instrument. The terminology of mutual mistake spell out from the section states the common error that came out where both the parties of the instrument are ad idem; it is usually an error owned alike by both or all the persons or objects in question.³⁶ One of the parties under mistake contended that the

²⁵ Haji Ghulam Habib V Tariq Siddique and others 2016 CLC Note 57; Muhammad Akram v Mst. Muqadas Bibi and 7 Others 2016 YLR Note 125

²⁶ Muhammad Akram v Mst. Muqadas Bibi and 7 Others 2016 YLR Note 125

²⁷ Mst. Sahib Noor v Haji Ahmad 1988 S C M R 1703

²⁸ for more explanation see s 17 "Fraud" defined, of Contract Act, 1872

²⁹ for more explanation see s 20 "Agreement Void where both parties are under mistake as matter of fact," Contract Act, 1872

³⁰ Mst. Sahib Noor v Haji Ahmad 1988 S C M R 1703

³¹ Ghulam Shabbir v. Nur Begum and others PLD 1977 S C 75

³² Mst. Sahib Noor v Haji Ahmad 1988 S C M R 1703

³³ For more explanation see s 17 "Fraud" defined, of Contract Act, 1872.

³⁴ Mst. Sahib Noor v Haji Ahmad 1988 S C M R 1703

³⁵ Haji Ghulam Habib v Tariq Siddique and others 2016 C L C Note 57

³⁶ for further detail see s. 20 of Contract Act, 1872,

agreement was void but where both the parties were not under a mistake but only one party was under the misconception of facts, the agreement was not void.³⁷

The mistake or any kind of error in the deed is mutually pointed out by both parties and then the court after getting the consent of both parties would rectify the compromise deed.³⁸ Where there is a wrong description of the property and such property had been sold due to a mistake. The mistake has been committed regarding the description of the wrong khewat or khasra number, in such circumstances, the vendee can claim the rectification of the sale-deed.³⁹

Various Methods for Pleading Relief of Rectification

Relief of rectification of the instrument is usually granted when a case is particularly instituted under section 31 of the 1877 Act. Moreover, the correction and rectification of typographical errors are sought under section 152 of C.P.C. as well. During the pendency of the suit, the error can be rectified merely by specifically pleading it in the plaint rather than separately instituting a case under section 31 of the 1877 Act.

The suit for the rectification of an instrument is filed under Section 31 of the 1877 Act.⁴⁰ When there is any kind of fraud or mistake present in any compromise deed then this instrument would be considered for rectification under section 31 of the 1877 Act. The mutual error or mistake in such instrument or compromise deed should be pointed out mutually by the parties to the instrument. Moreover, legal representatives in the interest of the parties will also be considered competent to plea for rectification under section 31 of the 1877 Act. The rectification of that compromise deed or instrument would be done by the court after getting the consent of both parties.⁴¹ In *Muhammad Karim v Kala*,⁴² the claimant sought relief of rectification in revenue records under section 31 of the 1877 Act. He contended that the disputed land was gifted to him by someone. The gift deed was produced in the courtroom that lacked the survey number of the land however, the khewat and khata numbers were mentioned in the deed. So, he prayed that the survey number should be rectified according to mentioned khewat and khata numbers. His plea was rejected by the court on the ground that the actual owner of the land had not transferred the possession of land to him so rectification of the deed is impossible as still, the subjected land did not belong to the claimant.

The decree of the court can also be rectified if any error has been spotted in it. In such circumstances, however, it is not clear under which law rectification of the decree will possibly

³⁷ MLJIIAMMAD AMEER OASMI V Ch. H1lthammad AZHAR 1990 CLC 1514; Agricultural Development Bank of Pakistan through Manager v Malik Iftikhar Ahmed 2002 CLD 1280

³⁸ Haji Ghulam Habib v Tariq Siddique and others 2016 C L C Note 57

³⁹ Ghulam Sarwar and others v Naji Muhammad Ali and others 1984 CLC 172

⁴⁰ Sahib Noor v. Ahmad (1988 SCMR 1703); Yaqoob v. Sawali (2012 CLC 1002); Suleman v. Ataulah (2010 CLC 116); Muhammad Afzal through L.Rs. v. Muhammad Din (2007 CLC 1626); and Ghulam Sarwar v. Muhammad Ali (1984 CLC 172)

⁴¹ Haji Ghulam Habib v Tariq Siddique and others 2016 C L C Note 57 relied on Krishnaswamy Asari and another v. Methulakshmi Ammal (AIR 1928 Madras 1097)

⁴² Muhammad Karim and 3 others v Kala and 4 others 2014 Y L R 353

be done. In *Faqir Muhammad v. Ferhat Hussain and others*,⁴³ the plaintiff pleaded for the rectification of a court decree under section 12(2) of the C.P.C. the plea was set aside by the court on a ground that section 12(2) of the C.P.C provides remedy “Where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit.” However, the court did not direct where and under which law an aggrieved party can avail of the relief of rectification in his case.

In *Haji Ghulam Habib v Tariq Siddique*,⁴⁴ while contesting the suit of declaration, the claimant forwarded an application for correction/rectification of a typographical error in the agreement deed under section 151. The application of the claimant was rejected on the basis that any kind of typographical or clerical error in any document is corrected under section 152 of C.P.C.⁴⁵ while section 151 of C.P.C. describes the inherent jurisdiction which can be exercised during the pendency of a case by the court. The court stated that:

“Provisions of inherent jurisdiction can only be exercised by the Court during pendency of a suit, when no other appropriate and specific provision relating to the matter in question is there in the C.P.C. and this is why the jurisdiction under section 151 C.P.C. is termed as an inherent jurisdiction of a Court. There is yet another distinction of inherent jurisdiction provided under section 151 of Civil Procedure Code, 1908. The Civil Court in its original jurisdiction, appellate Court or the High Court can exercise such powers under section 151 of C.P.C.”⁴⁶

The court further stated that the relief would be granted to the claimant if he might institute a case under section 31 of the 1877 Act and it is a requirement of Section 31 that a specific and separate case should be instituted for rectification of any instrument.⁴⁷ Moreover, the court stated that

“Not a single case came forward wherein a compromise deed acted upon through decree of Court was questioned. The query of this Court was that how a compromise deed acted upon by way of decree of competent Court of law could be corrected by a separate suit under section 31 of Specific Relief Act of 1877. If such permission is granted in the given circumstances then in that case many legal problems and issues would crop up.”

⁴³ *Faqir Muhammad and 6 others v. Ferhat Hussain and others* 2016 Y L R 2355

⁴⁴ *Haji Ghulam Habib v Tariq Siddique and others* 2016 C L C Note 57

⁴⁵ section 152 of C.P.C. reads as “Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”

⁴⁶ Section 151 of CPC reads as: “Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

⁴⁷ See Section 31 of the 1877 Act

The court stated that there are many examples of cases⁴⁸ in which relief of rectification was granted when the case was instituted under section 31 of the 1877 Act. According to sections 151 and 152 of C.P.C., even a review cannot be raised in this case.⁴⁹

However, the relief of rectification can also be granted when it is specifically pleaded⁵⁰ and the separate suit should not be filed if during the pendency of the suit any mistake arises the court should rectify it if the Court thinks fit.⁵¹ In *Muhammad Akram v Mst. Muqadas Bibi*,⁵² the mistakes in the plaint were rectified when the claimant filed an application under Order VI, Rule 17 along with section 151, C.P.C. coupled with sections 31 and 34, of the 1877 Act, during the pendency of the case for recovery of possession. The rectification of the instrument should be prayed specifically in the plaint otherwise the relief of rectification will not be granted.⁵³

Limitation period

The cases based on fraud, the limitation period usually starts when the plaintiff came to know about the presence of fraud or with reasonable diligence he came to discover fraud of the defendant⁵⁴ than any parties or legitimate representative in the interest of instrument institutes case of rectification when he came to know about the presence of fraud or mistake in the instrument.⁵⁵ However, in *Faqir Muhammad and others v. Ferhat Hussain and others*, the court considered the suit of rectification of the sale deed as time-barred for which the sale deed and compromise decree was made on March 15, 1979, while the present suit was instituted on November 16, 1983. The court stated that under section 3 of the Limitation Act 1908 it is obligatory for the court to check whether the case is time-barred or not as for lodging the case of declaration the limitation under Article 120 of Schedule-II of the Limitation Act is three years from the date of accrual of the cause of action.⁵⁶ This was a specific decision rather than general as in the case where fraud has been committed then the limitation time will be started when the commission of a fraud will come in the knowledge of the aggrieved while in other cases the limitation period for rectification of instrument will be three years after accrual of the cause of action.

⁴⁸ The court relied on following cases while giving example *Sahib Noor v. Ahmad* (1988 SCMR 1703); *Yaqoob v. Sawali* (2012 CLC 1002); *Suleman v. Ataulah* (2010 CLC 116); *Muhammad Afzal through L.Rs. v. Muhammad Din* (2007 CLC 1626); and *Ghulam Sarwar v. Muhammad Ali* (1984 CLC 172) although petition while contesting suit of injunction, was accepted when it was filed under section 115 of C.P.C in *Yaqoob v. Sawali* (2012 CLC 1002) which didn't specifically filed suit of rectification

⁴⁹ *Haji Ghulam Habib v Tariq Siddique and others* 2016 C L C Note 57

⁵⁰ *Muhammad Akram v Mst. Muqadas Bibi and 7 Others* 2016 YLR Note 125

⁵¹ s. 34, illustration, Specific Relief Act, 1877 says that "A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties."

⁵² *Muhammad Akram v Mst. Muqadas Bibi and 7 Others* 2016 YLR Note 125

⁵³ *Muhammad Akram v Mst. Muqadas Bibi and 7 Others* 2016 YLR Note 125

⁵⁴ Limitation Act, 1908, see s.18

⁵⁵ *Haji Ghulam Habib V Tariq Siddique and others* 2016 CLC Note 57; *Muhammad Akram v Mst. Muqadas Bibi and 7 Others* 2016 YLR Note 125

⁵⁶ *Faqir Muhammad and 6 others v. Ferhat Hussain and others* 2016 Y L R 2355

CONCLUSION

The relief of rectification can easily be obtained where any error in an instrument occurred due to a mutual mistake or fraud. The relief of rectification can be obtained by invoking the relevant provisions of the 1877 Act. Relief of rectification can be obtained by the parties to the instrument or by their representatives. The instrument that is going to be rectified must be executed by the person who has the capacity of executing it. The minor or a person with a mental disability cannot execute it. The relief of rectification will be granted in a case where granting of such relief will not affect the rights of third parties. Relief of rectification is granted particularly in the case instituted under section 31 of the 1877 Act. Additionally, claims for rectification of typographical errors are filed under section 152 of C.P.C. where the case is pending then the error will be rectified by specifically pleading it in the plaint rather than separately instituting a case under section 31 of the 1877 Act. The limitation period for rectification is three years but in case of fraud, it starts when the aggrieved party came to know about it.