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Modes of Rectification/Cancellation of Instruments – When and How?

1. There are seven (7) types of Specific Reliefs which are dealt with in the Specific Relief Act, 1963.

1. Recovery of possession of property [Sections 5 to 8]
2. Specific performance of contracts [Sections 9 to 25]
3. Rectification of instruments [Section 26]
4. Rescission of contracts [Sections 27 to 30]
5. Cancellation of Instruments [Sections 31 to 33]
6. Declaratory decrees [Sections 34 and 35]
7. Preventive reliefs in the form of injunctions [Sections 36 to 44]

2. Meaning of rectification:

Rectification means correction of an error.

3. What is rectification deed:

A rectification deed is a supplementary document executed between the buyer and seller to rectify the mistakes made in the original/principal deed with respect to factual and typographical errors. This is also known as the confirmation deed or correction deed.

Rectification or Confirmation deeds are also known as correction deeds. They are entered between two parties to rectify any errors made in a previous deed. These errors may include typing error, misspelt name, error in the property description, or any other error in the execution of the documents. These mistakes can be later corrected through a deed of confirmation.

4. Law Governing the Rectification Deed:

The Indian Registration Act recognizes confirmation deeds. According to

Section 17 of the Act, any deed confirming any interest in an immovable property needs to be registered. The confirmation may be given either by acquiescence, by limitation, or by deeds. A confirmation deed attracts stamp duty. In case the main document is registered or to be registered, the corresponding confirmation deed also requires registration.

5. What is Instrument:

Under Section 2(14) of stamp Act, Instrument includes document by which any right or liability is created, transferred, limited, extended, extinguished or recorded.

Basis of this Doctrine:

The doctrine of rectification of instrument is based on the maxim of equity, which is equity looks to the intent rather than the form.

6. Documents which can be rectified:

- i.** Contracts
- ii.** Deeds of transfer
- iii.** Decree of court
- iv.** Negotiable instruments
- v.** Insurance policies
- vi.** Acknowledgement and
- vii.** Settlement.

Rectification as contemplated Under Section 26 of specific relief Act, 1963, cannot be permitted as a matter of right or in a casual manner.

7. When Rectification deed is Required ?

Generally the Rectification deed is required in the following circumstances.

- i.** Incorrect description of the property such as its area and dimensions.
- ii.** Incorrect description of the parties such as their names and addresses.
- iii.** Incorrect location, address and survey number of the property.
- iv.** Incorrect description of revenue records.
- v.** Incorrect information about prior title deeds.
- vi.** Incorrect details about ownership or power of attorney.
- vii.** Typographical errors.

Any errors in sale deed, however minute or unintentional it may be, can lead to litigation and may result in the cancellation of the transaction.

8. How Rectification can be claimed and defended?

In case where parties to the agreement do not agree to such an amendment or rectification of the executed documents, the other party has to file a suit before the Court under Section 26 of Specific Relief Act, 1963.

As plaintiff a person entitled to relief under Section 31 can sue to recover the right property. He can bring a suit for a declaration that he is in possession of the suit property bearing a certain survey number though in his document of title it is described by a different survey number. As defendant he can protect himself against dispossession.

Section 26 of Specific Relief Act reads as follows.

SECTION 26:

(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 sub-section (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 and this can be done without prejudice to the 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.

Thus section 26 of the Specific Relief Act 1963 provides for rectification of instruments, where through fraud or a mutual mistake of the parties, an instrument in writing does not express the real intention, then the parties may apply for rectification. However, clause 4 thereof, provides that such a relief cannot be granted by the court, unless it is specifically claimed.

Absence of prayer for rectification:

When the mistake is alleged by way of a defence, evidence can be given to prove mistake although no rectification is sought. (**Rangaswamy v. Souri, AIR 1916 Mad 519**). Under the provisions of Sections 95 and 97 of the Evidence Act oral evidence may be let in to prove a mistake even without claiming rectification. (**Karuppa Goundan v. Perlatambi, ILR 30 Mad 397**). Under the first proviso to Section 92 oral evidence may be let in to prove a mistake when the mistake is such that relief can be claimed under Sec.26 of Specific Relief Act. Even if the relief of rectification is not claimed by the plaintiff, if what is claimed is something more than what the unreformed deed gives him, then the claim should be scrutinized on the footing that the relief of rectification is also sought. Section 26 is an enabling Section and so the fact that plaintiff did not choose to avail himself of that Section in time cannot deprive him the rights obtained under the document. Thus in a suit for possession he can show that the property was referred to in this sale deed by a wrong survey number. In a suit for redemption he can show that certain clauses of the document are not binding upon him though the

document was not rectified by the suit previously. Where a plaintiff alleges a mutual mistake of fact extrinsic evidence of such mistake is admissible although no rectification thereof is prayed for. In a suit for specific performance it can be proved that owing to a mutual mistake an item was omitted but was intended to be included in the agreement of sale.

When a property is wrongly described in the sale deed on account of defendant's fraud, the plaintiff can sue for a declaration of his title to the property and for possession and such relief may be granted to him without putting him to the necessity of filing a separate suit for rectification. The co-parceners in a joint family may sue for possession ignoring an invalid gift made by the Kartha.

Effect of rectification:-

A deed rectified by the Court so as to conform to the true intention of the executing party at the moment of execution must be taken to be his deed and to have been his deed in the rectified form as from the date of execution. After the rectification the written agreement does not continue to exist with a parole variation; it is to be read as if it had been originally drawn in its rectified form.

Whether a third party can take action for rectification?:-

Either parties to a contract or their legal representatives alone can maintain an action for rectification under this Section and not a third person. A stranger to the instrument has no locus standi to maintain a suit for its rectification.

When a suit is brought for rectification of a sale deed other parties who would be affected by such rectification are proper parties. They can apply to be impleaded as defendants. **(Ram Suchit v. Ist Additional Judge, Gorakhpur, AIR 1986 All.149)**

Limitation:

There is no specific Article relating to rectification under the present Limitation Act and hence such suits are governed by Article 113 but under 1908 Act Articles 95 and 96 were provided for suits for rectification.

- In **PARIKH ATMARAM Vs. BAI HIRA (A.I.R. (35) 1948 PRIVY COUNCIL 111)**, it was held that when the ground for setting

aside the instrument is that the plaintiff did not appreciate its true nature and legal consequences, the limitation begins to run from the date when the plaintiff became aware of the true nature and legal consequences of the instrument.

- In **NOORUDIN Vs. MAHOMED UMAR (A.I.R.1940 BOMBAY 321)**, it was held that mere laches is not a bar to a suit for rectification of deed on ground of mutual mistake if the rights of third parties have not intervened. The date of the notice of the mistake is the date from which time runs.
- In **BALASUNDARA PANDIAM PILLAI Vs. AUTHIMULAM CHETTIAR (A.I.R.1919 MADRAS 679 (1))**, it was held that in a suit for cancellation of a document time will begin to run from the time when plaintiff becomes aware of facts which create in him a reasonable apprehension that he will suffer injury if the document be left outstanding.
- In **TETALI SOORAMMA Vs. KOVVURI VENKAYYA (A.I.R.1938 MADRAS 589)**, it was held that where the plaintiff suing for sale of certain property on the basis of a mortgage executed in his favour, alleges that the property is wrongly described and incidentally prays for rectification of the mistake, he is entitled on proof of his title to the relief for sale of the property which was agreed to be mortgaged, even though his right to sue for rectification of the mortgage deed is barred by limitation. Art.96, of the Limitation Act has no application to such a case. No question of limitation arises as the substantial relief prayed for by the plaintiff is not rectification of the deed, but some other relief which the plaintiff is entitled to claim under the law on the basis of the transaction which he seeks to enforce.

Time for rectification:-

Section 26 does not fix any time limit for the discovery of mistake or fraud. It is the discovery of the mistake or fraud that furnishes the starting point of limitation.

Burden of proof:-

The burden of proof lies heavily on the person seeking rectification.

In a suit for rectification of deed, it is not necessary to have evidence of a binding contract antecedent to the instrument which is sought to be rectified and it is enough if the plaintiff proves; beyond reasonable doubt the concurrent intention of the parties at the moment of executing the instrument and the instrument fails to give effect to that concurrent intention. The rectification of instrument always involves the real prior agreement between the parties and the absence of such real agreement in fact in the document as a result of fraud or mutual mistake and hence the Court has to find out whether there has been fraud or mistake in framing the instrument and further the Court has to also ascertain the real intention of parties.

For the purpose of rectifying a contract in writing, the court must be satisfied that all the parties thereto intended to make an equitable agreement. In rectifying a written instrument the court may enquire what the instrument was intended to mean and what were intended to be its legal consequences and is not confined to enquire and what the language of instrument was intended to be.

Whether revenue Courts are competent to try; Powers of Civil Court:

The exercise of jurisdiction under this section is discretionary. A suit for cancellation of sale deeds and other ancillary reliefs of restoration of possession and permanent injunction is triable by Civil Court and not revenue courts.

Discretionary Power:

The powers of the court under this section are discretionary. The plaintiff's conduct or even delay on his part may disentitle him to the discretionary relief under the section.

Case Laws on Rectification of Instruments:-

1). Whether rectification of an instrument can be asked by stranger to instrument?

In **Joseph John Peter Sandy Versus. Veronica Thomas Rajkumar & Anr., reported in AIR 2013 SC2028**, wherein Hon'ble Apex Court held that Sec. 26 is attracted in limited cases - It is applicable only where it is pleaded and proved that through fraud or mutual mistake of the parties, the real intention of the parties is not expressed in instrument - Such rectification is permissible only by parties to instrument and none else.

2). In **SIDDIQUE & CO. Vs. UTOOMAL & ASSUDAMAL CO (A.I.R.(33) 1946 PRIVY COUNCIL 42)**, it was held that in order to obtain rectification of an instrument under Section 31 it must be proved that it was through a mutual mistake of the parties that the instrument in question did not truly express the intention of the parties; and the duty of the Court, before it can rectify, is to find it clearly proved that there has been mistake in framing the instrument, and it must ascertain the real intention of the parties in executing the instrument. On being satisfied of those two elements, it is in the discretion of the Court to grant rectification.

3). In **VERONICA THOMAS RAJKUMAR Vs. JOSEPH JOHN PETER SANDY ((2004) 1 M.L.J.301)**, it was held that the principles underlying the rectification of instruments are governed by Section 26 of the Specific Relief Act. Generally a party to a written instrument is not allowed to contradict the instrument, but where it is contended that the instrument does not reflect the real intention because of fraud or mutual mistake, party may get the instrument rectified under Section of the Specific Relief Act. This is the relief in equity.

4). Rectification deed is very important in cases where the act does not bind the principal on whose behalf the act was made. In **Sri Hanumanarasaiah vs Muniswamaiah on (27 August, 2014)** court granted a decree for rectification of sub-survey number in the sale deed and directed the defendant to

execute the rectification deed in favour of plaintiff.

5). In **MARAPPUREDDIGARI SAYAMMA AND ANOTHER Vs. R.VENKATA REDDI AND OTHERS (LXI MLJ 437)**, it was held that "one test which equity applies in a suit for rectification is "Is the proof of error clear and conclusive?" One defence equity allows is laches. Equity will not relieve him who tarries on the way. One bias equity always shows in such matters, viz., a bias in favour of the evidence given by the other party to the instrument; that is to say, the burden of proof lies heavily on the person seeking rectification."

6). In **RAJARAM Vs. MANIK (A.I.R.(39) 1952 NAGPUR 90)**, it was held that the power which the Court possesses of reforming written agreements where there has been an omission or insertion of stipulations contrary to the intention of the parties and under a mutual mistake, should be used with extreme care and caution. To substitute a new agreement for one which the parties have deliberately subscribed ought only to be permitted upon evidence of a different intention of the clearest and most satisfactory description. A person who seeks to rectify a deed upon the ground of mistake must be required to establish, in the clearest and most satisfactory manner, that the alleged intention to which he desires it to be made conformable continued concurrently in the minds of all parties down to the time of its execution, and also must be able to show exactly and precisely the form to which the deed ought to be brought. There is a material difference between setting aside an instrument and rectifying it on the ground of mistake. In the latter case you can only act upon the mutual and concurrent intention of all parties for whom the Court is virtually making a new written agreement.

7. In **CHENCHULAKSHMI Vs. JANARDAN SINGH (2000 (I) MLJ.349)**, it was held that it is simply not enough to employ the general expression 'fraud and collusion', for, they are insufficient even to amount to an averment of fraud of which the court can take notice of. When a plaintiff seeks relief on the ground of fraud without giving particulars of fraud, he cannot hope to succeed in the case.

8. AIR 2008 SC 1906 = 2008 (1) SCC 382 (SC)

**Puran Ram ---- Appellant
Vs**

Bhaguram and another ---- Respondents

(Tarun Chattarjee and Harjit Singh Bedi, JJ)

In the said decision, the Honourable Supreme Court is Pleased to hold as follows:

“After closely examining the provisions made Under Section 26 of the Specific Relief Act, 1963, we do not find any difficulty to hold that in a suit for specific performance of contract for sale, it is permissible to amend a part of the description of the suit property not only in the plaint but also in the agreement. Section 26 clearly says as to when a contract or other instrument can be rectified and provides that when through fraud or mutual mistake of the parties, the agreement in writing does not express their real intention, it is open to the parties to apply for amendment of the instrument. It provides that when such a situation arises, 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. A reading of these two conditions made Under Section 26 of the Act would amply show that either party may institute a suit to have the instrument rectified or a party who has already filed a suit in which any right arising under the instrument is in issue may claim in his pleading that the instrument be rectified”.

9. In **Madras High Court, between T.C.Subramanian Vs. The Sub Registrar, Tiruvanamalai in Writ Petition No.2 of 2011**, decided dated 10.01.2017.

In that case the petitioner purchased a plot to an extent of 1800 sq.ft from one Boominathan in T.S.No.155/3, Thendral Nagar,

Vengikal Panchayat, Thiruvannamalai Taluk and the same was registered under Document No.3760, dated 29.12.1989.

At the time of preparing the sale deed, the schedule of property has been mistakenly mentioned as 30 feet West to East and 60 feet North to South, instead of 60 feet West to East and 30 feet North to South and the petitioner and his vendor were unaware of the same. When the petitioner made an attempt to construct a house in the said plot, he recognised that the schedule of property has been wrongly mentioned in the sale deed. Hence, the petitioner presented the errata sale deed before the respondent for correcting the measurement of the schedule of property, but, the same was returned stating that the vendor who signed in the errata sale deed.

It is contended by the Government Pleader that, if any need of cancellation of rectification, he execute the vendor of principal deed should also execute the deed of rectification along with the purchaser as per the Circular issued by the Inspector General of Registration.

In that case, the decision in *M/s.Latif Estate Line India Ltd., vs. Mrs.Hadeeja Ammal and others (2011-1-LW 673)* was gone through, it is seen that any novation, rescission and alteration of contract can be made only bilaterally and a deed of cancellation will amount to rescission of contract and the same shall be done only bilaterally. The writ petition is dismissed directing the party to file suit before proper Civil Court to workout his remedy.

10. In N.Bhojan Vs. S.B.Raju in S.A.No.205 of 2009, dated 22.02.2010. In that case, the plaintiff filed suit in O.S.No.04/2004 for rectification of the sale deed to be executed by defendant subsisting the S. No. 447/15 in the place of S. No. 447/6A in the schedule of property and for permanent injunction. The trial Court dismissed the suit in 2007. Plaintiff filed A.S.No.21/2008 before Subordinate Judge who allowed the appeal and decreed as prayed for. The 2nd appeal was filed. Substantiate the questions in the 2nd appeal are;

1. Whether the suit is barred by limitation?
2. Whether the suit for plain injunction and rectification is maintainable under law?

The plaintiff argued that, he came to know that the sub-division was wrongly stated in the sale deed and approached the defendant to execute rectification deed as he was not inclined suit for mandatory injunction was filed. It is held that the suit is not barred by limitation merely on the ground that, it was executed 17 years back in the absence of plea of defendant that some other property having the same number was sold by him through the plaintiff. It is held that the defendant is not entitle to claim adverse possession after the sale merely on the ground of stating a wrong sub division number in the sale deed executed by him in favour of respondent. Finally, it is held that, 2nd appeal was dismissed.

11. In Mr.P.A.Jihas Vs. The District Registrar, dated 15.12.2010 of High Court of Kerala at Ernakulam in W.P.No.31431 of 2010 (D).

In that case, the petitioner is the Vebndor of Ex.P.1 sale deed. He conveyed the Flat No.1-11 of the apartment, but flat number indicated in the document is I-1. There was also mistake in the flat number of the vendor, for correcting the above two mistakes the parties to Ex.P.1 executed Ex.P.2 rectification deed. According to the petitioner, Ex.P.2 was presented for adjudication before the 1st respondent in terms of Section 31 of the Kerala Stamp Act. On adjudication Respondent No.1 issued Ex.P.3 taking the view that Ex.P.2 for all purposes should be treated as a sale deed. Writ petition is filed challenging Ex.P.3. View taken in Ex.P.3 is that, since Ex.P.1 property was sold as Flat No.I-1 and what is now conveyed in Flat No.I-11, in the process of rectification it is taken place extinguishment of right in respect of one and creation of right in respect of another. It is therefore that, the 1st respondent has held that sale deed should be executed. It is true, there is an extinguishment of right in respect of one apartment and creation of right in respect of another, but they occurred due to a mistake that had crept in

Ex.P.1 sale deed and that mistake is sought to be corrected by Ex.P.2. Even if, there is an extinguishment of right and creation of right that will not alter the nature; of the rectification deed and for all purposes including stamp duty, the document has to be treated as rectification deed. The petitioner cannot be saddled with the liability to execute a fresh sale deed and Ex.P.3 was set-aside.

12. In Virendra Kumar Markande... Vs. Tarseem Chand Jain Deceased, Delhi High Court, decided on 25.09.2013. The seller and buyer of immovable property are not prohibited by any Law from executing rectification deed after any length of time.

13. On Balaprasad Asaram Charkha Vs. Asmabi, 1954 AIR(Nag) 328 laying down that a suit for possession of immovable property can be maintained even without getting the document rectified by filing a suit under Section 31 of the Specific Relief Act, 1963.

CANCELLATION OF INSTRUMENTS:-

*Sec.31 of the present Act corresponds to Sec.39 of the old Act. Sec.31 of Specific Relief Act, 1963 provides as to **when cancellation may be ordered** and reads as under: -*

Sec.31. When cancellation may be ordered:- (1) Any person against whom a written instrument is void or voidable and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Principle:

The relief as to cancellation of an instrument is founded upon the administration of the protective justice for fear that the instrument may be

vexatious or injurious used by the defendant against the plaintiff when the evidence is impeach it may be lost or that it may throw a cloud or suspicion over his title or interest. This principle applies equally to void and voidable instruments.

Any person:- Any person against whom a written instrument is void or voidable and who has reasonable apprehension that such instrument of if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable Under this section not only parties to the instrument but also persons affected by such instrument can maintain an action. A person against whom the instrument is void or voidable or where it may cause injury such a person, alone can maintain an action under this section. A plaintiff having some interest in land affected by a document which he contends to be a forged one, can institute a suit under this section. Where a member of a joint family executes a sale deed the other members though not parties to such an instrument can bring a suit for cancellation of the sale deed. This section applied to instruments executed by plaintiff as well as to other instruments which he seeks to have adjudged void or voidable. The relief of cancellation of sale deed cannot be sought for on the basis of possessory title. A creditor even without obtaining a decree can sue to set aside a deed executed by his debtor with a view to defraud, defeat or delay the recovery of his debt. A creditor cannot sue for cancellation of a document transferring movable property by the debtor since such person will not come within the purview of this section.

What is Void or voidable?

An agreement not enforceable by law is said to be void. An agreement which is enforceable by law at the option of one or more of the parties thereto but at the option of the other or others is a voidable contract.

What is Reasonable apprehension that such instrument may cause him serious injury?

Whether in a particular case “reasonable apprehension of serious injury” exists or not depends upon the facts and circumstances of each case. Mere speculation or vague complication cannot be ground to maintain an action under this section and even in the absence of reasonable apprehension of serious injury

a suit under this section is not maintainable. Reasonable apprehension exists in a case where a document is registered though the execution is denied or where a person in possession of the property finds, that a document is registered with a view to affect his title.

May sue:- The words “May sue” in sec.31 of the present Act clearly show that it is not obligatory on the part of a person to sue for cancellation. A void document need not be set aside or cancelled since such document can be ignored. If a person is induced to execute a document which he never undertook to execute such a document is void and need not be cancelled.

Nature of the relief:- Plaintiff can claim the relief to have the document adjudged void or voidable and to get the document delivered up and cancelled. The relief must be based on solid grounds and not on speculations.

*Sec.32 of the present Act corresponds to Sec.40 of the old Act. Sec.32 of Specific Relief Act, 1963 provides as to **what instruments may be partially cancelled** and reads as under: -*

Sec.32. What instruments may be partially cancelled: -

Where an instrument is evidence of different rights of different obligations the Court may, in a proper case, cancel it in part and allow it stand for the residue.

Secs.31 and 32 of the present Act are based on the principle of protective and preventive justice. Sec.31 deals with the cancellation of a document whereas Sec.32 deals with the cancellation of a document in part leaving the residue to stand. An instrument can be cancelled in part under this section only in a case where that part sought to be cancelled is separable and distinct from other parts of the instrument.

Where an instrument is evidence of different rights or different obligations:-

The plaintiff has a right to get the specific portion of a contract cancelled only where the deed is evidenced by different obligations and such rights or obligations are separable from one another.

Section 32 of Specific Relief Act:

The words “the Court may, in a proper case” in Sec.32 clearly indicate that the existence of the power of cancellation is discretionary and if the Court is satisfied that in the circumstances of a given case an instrument can be cancelled in part, then the court may do so under this section leaving the residue to stand as it is in the instrument.

Case Law on Cancellation of Instruments:-

1. In ***Vellayya Konar and another vs. Ramaswami Konar and another reported in AIR 1939 Madras 894***, his lordship Wordsworth, J. Explained the difference between a cancellation of an instrument and a declaration that the instrument is not binding on the plaintiff as follows:-

“When the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable obstruction such as a decree to which he has, been a party or a deed to which he has been a party, then quite clearly he must get that decree or deed cancelled or declared void in toto and his suit is in substance a suit for the cancellation of the decree or deed even though it be framed as a suit for a declaration. But when he is seeking to establish a title and finds himself threatened by a decree or a transaction between third parties, he is not in a position to get that decree or that deed cancelled in toto. That is a thing which can only be done by parties to the decree or deed or their representatives. His proper remedy therefore, in order to clear the way with a view to establish his title is to get a declaration that the decree or deed is invalid so far as he himself is concerned and he must therefore sue for such a declaration and not for the cancellation of the decree or deed. This distinction was made clear in **Unni v. Kunchi Amma (1890) I.L.R. 14 Mad. 26**, which is followed in **Chathu Kutty Nair v. Chathu Kutty Nair (1923) 19 L.W. 249**, and the distinction is clearly observed in the cases quoted by the Court below, except that there is some obscurity arising from a decision of Ramesam, J., in **Balakrishna Nair v. Vishnu Nambudiri (1930) M.W.N. 509**, where though the learned Judge quite clearly has this distinction in mind, he frames his formula in rather more

general terms than were perhaps desirable and on those grounds has been criticised by the Bench which decided the case of **Venkatasiva Rao v. Satyanarayanamurthi (1932) 62 M.L.J. 764 : I.L.R. 56 Mad. 212.**”

2. In **Jeka Dula v. Bai Jivi AIR 1938 Bom. 37**, it was held that the relief as to cancellation of an instrument is founded upon the administration of the protective justice for fear that the instrument may be vexatiously or injuriously used by the defendant against the plaintiff when the evidence to impeach it may be lost or that it may throw a cloud or suspicion over his title or interest. Section 39 is based upon the same principle. Mere speculation as to unknown and vague complication arising in future is no ground to take action under Section 39 of the Specific Relief Act, 1877.

3. **Cancellation of gift deed** – Donor is only entitled to cancel a registered gift deed by executing another registered document and it is for him to file a suit for cancellation of gift deed as provided under Sec.31 of Specific Relief Act. **(Sudhakar Reddy v. Lakshamma reported in 2014 (4) ALT 404 (D.B) = 2011 (4) ALD 325 (D.B).**

4. **Cancellation of registered document** – A registered document can be invalidated only by a competent Court of law under Sec.31 of Specific Relief Act, 1963 and can be cancelled only by following the procedure prescribed under Rule 26(k) (I) of Rules framed by State of A.P., under Registration Act, 1908 – No person or authority has a right to unilaterally invalidate such a document on any ground. (Hayagreeva Farms and Developers, Visakhapatnam, rep.by its Managing Partner, **Ch.Jagadeeshwarudu v. Govt. of A.P., Revenue (Assignment-I) Dept., rep.by its Principal Secretary and others reported in 2014 (3) ALT 3 = 2014 (2) ALD 250**)

5. Cancellation of sale deed – Cancellation of deed can be sought in a court, only by a person who executed the document. **(Yanala Malleswari and others v. Ananthula Sayamma and others reported in 2006 (6) ALT 523 (F.B).**

Case law (section 31):

**2015 (2) ALD 481
Kakunuti Venkata Subbamma and others**

Vs

**Official Receiver, District Court Buildings, Ongole and another
(M.Satyanarayana Murthy, J)**

His Lordship is pleased to hold that “suit under section 31 of Specific Relief Act cannot be maintained by a person other than the party to written instrument. Thus, the remedy of person who is not party to such instrument is to seek relief under section 34 to declare that such instrument is void against him.”

His Lordship, in the said decision has placed reliance on the rulings of Honourable Apex Court in 2010 (5) ALD 94 (SC) and a full bench decision of Honourable AP High Court in 2006(6) ALT 523 (FB).

Amongst the said two decisions relied upon by his Lordship in 2006 (6) ALT 523(FB), it was held in para 26 as follows:

“It is a misconception that in every situation, a person who suffers injury by reason of a document can file a suit for cancellation of such written instrument. Two conditions must exist before one invokes Section 31 of Specific Relief Act. These are: the written instrument is void or voidable against such person; and such person must have reasonable apprehension that such instrument if left outstanding may cause him serious injury. Insofar as Section 34 of the Specific Relief Act is concerned, it is no doubt true that a person entitled to any right as to any property can seek declaration that he is so entitled to such right. Here again, the person who claims the right to property can institute a declaration suit only when the defendant denies or interested to deny the title of the plaintiff. The difference between the two situations is glaring. In one case, cancellation of deed can be sought in a Court only by a person who executed document and who perceives that such document is void or voidable. In the other case, even if a person is not party to the document, he can maintain a suit for declaration.”

Cancellation and Rectification – Distinction:

Where the instrument in which a contract is expressed does not embody the intention of the parties because of a mistake made by one of them, the party who has signed the document under the mistake in question is on general principles

entitled to have the contract cancelled, on the ground that if the contract is satisfied that the true intention of one of the parties was to do one thing, and he by mistake has signed an agreement to do another, the agreement will not be enforced against him, but the parties will be restored to their original position and the agreement will be treated as if it had never been entered into.

Where, however, both parties are under a mistake common to them both, the court will rectify the instrument as to make it express the real contract which the parties intended to make. **The principle upon which the court acts is that they do not rectify contracts, but they do rectify instruments purporting to have been made in pursuance of the terms of contracts where instruments do not express the terms actually agreed upon by the parties.**

Sections 31(Cancellation) and 34(Declaration) Distinction:

A relief under section 31 may be distinguished from a relief for declaration under section 34. The right to come to court to have a document cancelled is indeed a right to a consequential relief sufficient to sustain a declaratory decree. But the relief given by the court in pursuance of that right is a substantial relief independent of the declaration.

Power to require benefit to be restored or compensation to be made when instrument is cancelled or is successfully resisted as being void or voidable (Section 33):

- (1) On adjudging the cancellation of an instrument, the court may require the party to whom such relief is granted, to restore, so far as may be, any benefit which he may have received from the other party and to make any compensation to him which justice may require.
- (2) Where a defendant successfully resists any suit on the ground—
 - (a) that the instrument sought to be enforced against him in the suit is voidable, the court may, if the defendant has received any benefit under the instrument from the other party, require him to restore so far as may be, such benefit to that party or to make compensation for it;
 - (b) that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract under section 11 of the Indian Contract Act, 1872, the court may, if the

defendant has received any benefit under the agreement from the other party, require him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby.

Conclusion:

In order to establish its right to rectification of a document, it is essential to show that there has been either fraud or mutual mistake, and oral evidence is admissible, to prove fraud or mistake. It is open to the court in its equitable jurisdiction, Under Section 26 of Specific Relief Act, to give effect to the real intention of the parties or the arrangement arrived at by agreement between them, before it is reduced into writing.