

Chapter V

OF DOCUMENTARY EVIDENCE

72. Proof of contents of documents.--The contents of document may be proved either by primary or by secondary evidence.

COMMENTS

Scope.--Documentary evidence means all documents produced for the inspection of the Court. Documents are of two kinds: public and private. Article 85 gives a list of documents which are regarded as public documents. All other documents are private. The production of documents in Courts is regulated by the Civil Procedure Code and the Criminal Procedure Code.

Principle.--The contents of documents must be proved either by the production of the document which is called primary evidence, or by copies or oral accounts of the contents, which are called secondary evidence. The Article lays down that the contents of the document may be proved either by primary or secondary evidence and the rule means that there is no other method allowed by law for proving the contents of documents.

Objection to mode of proof of document not raised at proper time such objection, could not be reserved to be taken subsequently.¹

Proving of a document in evidence, no proof of its execution.²

Only simple copy of document could not be considered as official document of which judicial notice could be taken.³

Photostat copy of original document not proved either by producing original document or by tendering certified copy thereof before the Court could not be received in evidence. Where opposing party himself admitted contents of such photostat copy as correct while appearing in the Court, objection regarding modes of document by such party was to longer tenable.⁴

Author of receipt, not summoned to prove contents and genuineness of document. Effect. Although document was not proved in strict legal sense same, held, should be taken to be proved for failure of objection to its admissibility by adversary or his counsel. Document objected to, at time of production, whoever, renders same unproved it that was not proved in accordance with requirements of law.⁵

1. 1985 CLC 1513.

2. 1985 CLC 1385.

3. 1989 PLC 561.

4. 1987 CLC 1159.

5. PLD 1969 SC 136; PLD 1973 SC 160 and PLD 1969 SC 477 *ref.* 1986 CLC 288.

proper boundaries of the property and their statements were in consonance with the contents of the plaint.¹

73. Primary evidence.--"Primary evidence" means the document itself produced for the inspection of the Court.

Explanation 1 : Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2 : Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

COMMENTS

Scope.--This Article defines the meaning of primary evidence which means the document itself produced for the inspection of Court. Where a document is executed in several parts, each part is primary evidence of the document. Where a document is executed in counter part, each counterpart is primary evidence, as against the party executing it. Where a number of documents are made by printing, lithography, or photography, each is primary evidence of the contents of the rest. Where there are copies of a common original they are not primary evidence of the contents of the original.

Primary evidence is the evidence which the law requires to be given first.

Where objection to admissibility of document was not taken by opposite party when such document was admitted into evidence and was duly exhibited, parties, *held*, would not be permitted to raise such objection at later stage.²

Ordinarily it is necessary that documents if tendered in evidence, should be in original rather than in the shape of true photostat copies.³

Primary evidence.--Birth Certificate regarding birth in year 1979 registered in 1992. Admissibility as evidence. Birth Certificate issued by Municipal Corporation was a

1. 1998 CLC 1842.

2. PLD 1972 Pesh. 175; PLD 1968 SC 140 and PLD 1969 SC 136 *ref.* 1987 CLC 1103.

3. 1991 MLD 1631.

existence thereof. No evidence in rebuttal was produced by prosecution to prove that letters in fact were received by the concerned person. Unless loss of original was categorically proved, secondary evidence could not be led. Entire evidence relating to such letter was based on hearsay which could not be relied upon. Accused Ministers to whom such letters were attributed, thus, could not be convicted when neither original letters were placed on record nor secondary evidence relating thereto was led/produced, therefore, they were acquitted.¹

Admission of loss of original documents.--The special forum adjudicating upon claim of parties could not take notice of copies of original documents and rightly kept them out of consideration especially when genuineness of such documents was not admitted by executant.²

Appreciation of evidence.--Receipts on which conviction was based were never put to accused while recording his statement under Section 342, Cr.P.C. Despite said receipts having been handed over to Investigating Officer in original, photocopies of the same had been exhibited on the file in contravention of the provisions of Articles 73, 75 and 76 of Qanun-e-Shahadat Order, 1984. Offence of forgery for the purpose of cheating and using as genuine a forged document and offence of criminal breach of trust were admittedly not proved on record by prosecution. Accused was acquitted in circumstances.³

Evidence. Appreciation of evidence.--Where evidence was led by filing affidavit-in-evidence, the documents filed alongwith such affidavit, were always exhibited in the affidavit by the person filing such affidavit-in-evidence. Primarily, it was for the Court to examine the witnesses producing such documents and to exhibit the documents so produced and/or to refuse production of those documents which otherwise could not be produced in accordance with law. If such an exercise was not carried out by the Court, then it was for the adversary to challenge veracity of any document during cross-examination; or ask for production of its original; and if no such objection was raised then it would lead to conclusion that production and/or genuineness of the document or its contents were not disputed.⁴

74. Secondary evidence.--"Secondary evidence" means and includes--

- (1) certified copies given under the provisions hereinafter contained;
- (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy and copies compared with such copies;

1. 1995 SCMR 1237; 1986 MLD 1500; 1991 MLD 148; 1991 MLD 1631 and 1989 SCMR 1001 *ref.* PLD 1998 Kar. 86.

2. 1992 SCMR 1741.

3. PLD 1952 FC 63; 1969 SCMR 777; 1974 PCr. LJ 516; PLD 1967 Kar. 186 and PLD 1967 Dacca 503 *ref.* 1991 PCr. LJ Note 353 at p. 239.

4. PLD 2006 Kar. 294 (b).

- (3) copies made from or compared with the original;
- (4) counterparts of documents as against the parties who did not execute them; and
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy, compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

COMMENTS

Scope.--Where existence of original document was not in issue and same was not available, the only course available for Trial Court was to allow secondary evidence.⁵

Definition and admissibility of secondary evidence.--This Article describes what constitutes 'secondary evidence.' 'Secondary evidence' is evidence which may be given under certain circumstances in the absence of that better evidence which the law requires to be given first.

"Secondary evidence" means and includes--

- (1) certified copies;
- (2) copies made from the original by mechanical processes, and copies compared with such copies;
- (3) copies made from or compared with the original;
- (4) counterparts of documents as against the parties who did not execute them; and
- (5) oral accounts of the contents of a document by a person who has seen it.

5. PLD 1999 Lah. 465.

Arbitration award.--Photocopy of award filed in the Court. Admissibility as evidence.¹

Value of evidence, determination of.--Articles 61 and 74 deal with only admissibility of a variety of opinion evidence and mode of proof and not with value of such evidence. Value of evidence has to be judged from attending facts and circumstances.²

Photostat of original document--Evidentiary value of.--The photostat of a document could not be accepted as a legal document because it was neither the original nor a certified copy thereof, capable of being brought on the record as secondary evidence. Such document not bearing any exhibit mark would not fulfil even requirement of production of document under Order XIII, Rule 1, C.P.C.³

The photostat copies of the original deposit receipts produced. Photostats made neither because originals were bulky nor voluminous but because account holder not agreeing to surrender originals. Existence and contents of said deposit receipts allegedly admitted by the accused in written extra-judicial confession. Extra-judicial confession itself a photostat copy. Existence of the original not indicated by record. No evidence showing, photostat made from the original. Photostat copy of such confession would not be admissible as secondary evidence nor photostats of deposit receipts would likely be read in evidence as secondary evidence of the original receipts.⁴

Bail application--Photo copies--Admissibility of.--Photocopies of affidavits stating process-server never going to residence of accused for service of warrants or proclamation produced. Nothing on record showing copies having been made from the originals. The originals not bulky and voluminous. Photocopies could not constitute secondary evidence of contents of the originals nor could they be admitted as secondary evidence and read as such in bail application in circumstances.⁵

Talb-i-Ishhad, notice of. Proof. Production of Postman.--Non-examination of clerk through whom scribe alleged to have dispatched such notice. Original notice neither required to be produced through process of Court nor available for its confrontation to its scribe and witnesses. Production of such photocopy without seeking permission of Court to lead secondary evidence. Notice of *Talab-i-Ishhad* was not proved in circumstances.⁶

75. Proof of documents by primary evidence.--Documents must be proved by primary evidence except in the cases hereinafter mentioned.

1. 1988 CLC 1583.
2. 1989 MLD 2002.
3. PLD 1987 Lah. 208.
4. 1987 MLD 1136.
5. 1988 MLD 2327.
6. 2006 YLR 1981.

primary evidence except in the cases therein mentioned. Evidence could be given of the existence, condition or contents of a document in the cases mentioned in clauses (a) to (f) of Article 76, Qanun-e-Shahadat. Case, therefore, did not fall within clauses (a) to (f) of Article 76. Respondent-vendee having produced copies of originals, objection to their admissibility was duly raised. Respondent-vendor had denied execution of documents in favour of respondent/vendee. Except for respondent/vendee's statement, there was not a speck of evidence in support of execution of those documents. Scribes of these deeds and persons alleged to have witnessed execution of such documents were not called as witnesses. Respondent-vendee's loan statement could hardly be relied upon, or considered sufficient proof of execution of deed by respondent-vendor. Such documents were, thus, not proved in circumstances.¹

Talb-i-Ishhad, notice of. Denial of receipt of such notice by vendee. Proof of service.--Original notice remitted to vendee was not produced, but only Photostat copy thereof was produced without confronting same to witnesses thereof. Notice was not given to vendee for production of original notice of *Talab-i-Ishhad*. Held, without bringing on record original notice and without seeking permission to lead secondary evidence, notice of *Talab-i-Ishhad* would not be assumed to have been proved. Suit was dismissed in circumstances.²

76. Cases in which secondary evidence relating to document may be given.--Secondary evidence may be given of the existence, condition or contents of a document in the following cases :--

- (a) when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court; or of any person legally bound to produce it; and when, after the notice mentioned in Article 77 such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative-in-interest ;
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
- (d) when, due to the volume or bulk of the original, copies thereof have been made by means of microfilming or other modern devices;
- (e) when the original is of such a nature as not to be easily movable;

1. PLD 1991 Lah. 400.

2. PLD 2006 Lah. 267 (c).

- Art. 76]
- (f) when the original is a public document within the meaning of Article 85;
 - (g) when the original is a document of which a certified copy is permitted by this Order, or by any other law in force in Pakistan, to be given in evidence;
 - (h) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection; and
 - (i) when an original document forming part of a judicial record is not available and only a certified copy thereof is available, certified copy of that certified copy shall also be admissible as a secondary evidence.

In case (a), (c), (d) and (e), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (f) or (g), certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (h), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such document.

COMMENTS

This Article enumerates the seven exceptional cases in which secondary evidence is admissible. Under it secondary evidence may be given of the contents of a document in civil as well as in criminal proceedings.

Secondary evidence of the contents of a document cannot be admitted without the non-production of the original being first accounted for in such manner as to bring it within one or other of the cases provided for in the Article. It is incumbent on the person who tenders secondary evidence to show that it is admissible; the question of admissibility is ordinarily for the Court of first instance.

Original document was executed by, and was in possession of returned candidate. Returned candidate's inability was to produce original document but admitted execution of same and photostat copy to be correct copy of the original. Such photostat copy of original was admitted to be true by the executant could be received in evidence and relied upon in circumstances.³

3. PLD 1986 Pesh. 86.

themselves public documents. A registered document, therefore, does not fall under either clause (e) or (f). The entry in the register book is a public document, but the original is a private document. A certified copy of the original cannot be given in evidence.

Clause (f) : The Register of Firms being a public document, its entries could be proved only through certified copy of such entries. No other secondary evidence including mere photostat copy thereof would be admissible.¹

The certified copy of statement of accounts found corroboration from evidence on record and assertion of witnesses. The contention of borrower that mere production of certified copy of statement of the account was not by itself sufficient to charge borrower with liability would not prevail in circumstances.²

According to the case of³ when original document happened to be public document, same could be proved only through a certified copy thereof, and by no other kind of the secondary evidence under Article 90 of the Qanun-e-Shahadat Order, 1984.

Clause (g) : This provision is meant for saving public time. Where the fact to be proved is the general result of the examination of numerous documents and not the contents of each particular documents and the documents are such as cannot be conveniently examined in the Court, evidence may be given, under this Article, as to the general result of the documents by a person, who has examined them and who is skilled in the examination of those documents, although they may be public within the meaning of this Article and Article 85.⁴

Objection to reception of secondary evidence in Appeal Court.--If a copy of a document is admitted in evidence in the first Court without any objection, no objection can be allowed to be taken in the Appeal Court as to its admissibility. The object of the rule is obvious, for, if objection is taken in the first Court, the party producing the copy can ask for an adjournment in order to get the original or else to give evidence justifying the admission of secondary evidence.

Proof of documents.--The documents produced did not contain identity or authority of signatory. Documents had to be proved by examining executant, author and witness. The petitioner having made no effort to prove documents, these were thus rightly not exhibited by the Rent Controller and as such could not be deemed as part of evidence.⁵

77. Rules as to notice to produce.--Secondary evidence of the contents of the documents referred to in Article 76, paragraph (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power

1. 1987 MLD 19.
2. 1987 CLC 1103.
3. 1987 MLD 408.
4. (1907) 34 Cal. 293.
5. 1990 ALD 457 (2).

the document is, or to his advocate, such notice to produce it as is prescribed by law; and, if no notice is prescribed by law then such notice as the Court considers reasonable under the circumstances of the case :

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :--

- (1) when the document to be proved is itself a notice;
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it;
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;
- (4) when the adverse party or his agent has the original in Court;
- (5) when the adverse party or his agent has admitted the loss of the document; and
- (6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

COMMENTS

Scope.--This Article lays down that a notice must be given before secondary evidence can be received under Article 76(a). Notice to produce a document must be in writing. Order XI, Rule 15 of the Civil Procedure Code, prescribes the kind of notice to produce a document.

Secondary evidence--Notice proof of. Where document sought to be proved through secondary evidence is itself a notice, then there is no requirement to follow the procedure provided in Art. 77 of Qanun-e-Shahadat, 1984.⁶

Secondary evidence--Notice, proof of. Where document sought to be proved through secondary evidence is itself a notice, then there is no requirement to follow the procedure provided in Art. 77 of Qanun-e-Shahadat, 1984.⁷

Object and scope.--The only purpose of a notice under Article 77 is to give a party an opportunity, by producing the original, to secure the best evidence of its contents.⁸ The effect of a notice to produce is that the party serving it may give secondary evidence of the document if it is not produced. If he does not think proper to do so, there is no further result.⁹

⁶ 2008 YLR 296.

⁷ 2008 YLR 296.

⁸ AIR 1936 PC 15 + AIR 1937 Cal. 99 = 38 Cr. LJ 818 (3B).

⁹ 29 Cal. 749 (PC).

Original document. Admissibility.--Admissibility. Plaintiff as well as two witnesses stated that the notice was issued and that the said witnesses had attested the same. Copy of the notice. Postal and A.D. receipt were produced in evidence. Apparently documents in question were itself a notice. Article 77 of Qanun-e-Shahadat, 1984 exempted such a document from the rigours of the said provisions of law. Copy of the notice was admissible as secondary evidence and there was no need for the permission of the Court for the same. Document could have been referred to in the statement of the witnesses to prove its execution, attestation and ultimately its despatch case remanded.¹

78. Proof of signature and handwriting of person alleged to have signed or written document produced.--If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

COMMENTS

Scope.--This Article merely requires proof of signature and handwriting of the person alleged to have signed or written the document produced.² Mere admission of execution of a document is not sufficient. Proof that the signature of the executant is in his handwriting is necessary.³

Object.--The Qanun-e-Shahadat Order permits secondary evidence to be given with regard to the attestation of an attesting witness who is either dead or cannot be brought to Court. The signature of the attesting witness when proved in evidence is proof of every thing on the face of the document and that he saw the executant make his mark.

Provision of Article 78, Qanun-e-Shahadat is mandatory in nature and unless the accused had complied with the said provision, the receipts and the register relied upon by accused were mere waste paper. No explanation had been offered by the accused in his defence as to why he could not tender his Officer on the Special Duty and executants of the receipts particularly those to whom huge amounts were paid. No presumption thus could legally be drawn in support of the execution of the receipts and payments allegedly made to different persons by the accused and in the absence of any proof on behalf of the accused regarding proper appropriation of the Public Funds, the prosecution could not be blamed for non-production of any evidence in support of misappropriation. Inevitable conclusion, therefore, would be that if the Officer on Special Duty and the executants of the receipts had been produced, their evidence would have been unfavourable to the accused and from the consideration of the material available on record the only inference that could be drawn was that the accused dishonestly and fraudulently misappropriated the public funds.⁴

1. 2003 YLR 1899.
2. (1954) 56 Bom. LR 147.
3. (1953) 4 Raj. 145.
4. PLD 1991 Pesh. 143.