

keeper of the document, by Notary Public and Pakistani Diplomatic "Agent in that country under Art. 89 of Qanun-e-Shahadat, 1984 and presumption of genuineness and accuracy of foreign record would be attached to such document under art. 96 of Qanun-e-Shahadat, 1984.<sup>1</sup>

## PRESUMPTIONS AS TO DOCUMENTS

### 90. Presumptions as to genuineness of certified copies.--

(1) The Court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the Federal Government or a Provincial Government to be genuine:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf;

(2) The Court shall also presume that any officer by whom any such document purports to be signed or certified, *held*, when he signed it, the official character which he claims in such document.

### COMMENTS

**Scope.--**Articles 90 to 100 deal with certain presumption as to documents. Before a presumption can be drawn under the Article these are four basic facts to be proved:

- (1) it should purport to be a certificate;
- (2) it is by law declared to be admissible as evidence of any particular fact;
- (3) it purports to be duly certified by any officer of the Federal or Provincial Government to be genuine; and
- (4) it is in the form and purports to be executed in the manner directed by law.

Once the four basic facts are proved the Court shall presume the genuineness of the certified copies. The Court shall also presume the official character of the officer who signed or certified it. The presumption is also attached to the copy of a registered document, but it goes merely to the extent of the document having been registered and not to its having been executed by a particular person when execution thereof is denied.<sup>2</sup>

This Article proceeds upon the maxim *omnia prasumuntur rite esse a tecta* (all acts are presumed to be rightly done). In fact all the following Article down to Article 100 inclusive, are illustrations of, and founded upon, this principle. But though the Courts are directed to draw a presumption in favour of official certificate, it is not a conclusive presumption; it is rebuttable. It is but a *prima facie* presumption, and if the certificate,

1. PLD 1999 Lah. 535.

2. PLD 1979 BJ 31.

not examined.<sup>1</sup> A certified copy of a registered sale-deed is admissible in evidence without examining the vendors or vendees as witnesses.<sup>2</sup>

**Certified copy of document.--Admissibility.** Certified copy of death entry was admissible in evidence. When such copy was tendered in evidence and exhibited, no objection as to its genuineness was raised or recorded. Document in question, could not have been ruled out of consideration on belated objection.<sup>3</sup>

**Suit for declaration and possession.--Revisional jurisdiction, exercise of.** Petitioners claimed to be owners and landlords of plot in dispute and on basis of entry in record of rights made in their favour, filed suit for declaration and possession, but Courts below concurrently dismissed their suit without taking such entry in consideration. Entries in Revenue Record *prima facie* were good evidence of title unless rebutted by some better evidence by other side. Opponents had produced only oral evidence against documentary evidence coming from public record produced by petitioners. Entries in Revenue Records made since long in favour of petitioner, which remained un rebutted, could not be ignored. Both Courts below having exercised their jurisdiction illegally and with material irregularity by not taking into consideration documentary evidence, like Revenue Record concurrent judgments of Courts below were set aside by High Court in exercise of revisional jurisdiction and case was remanded to be decided afresh after hearing parties in accordance with law.<sup>4</sup>

Where a letter purporting to be issued from the Chief Secretary to the Government of Bengal was signed by a Deputy Secretary, not in his official capacity, but "for the Chief Secretary, it was held that there was no legal proof that the Local Government had ordered or authorized a prosecution under Section 196 of the Criminal Procedure Code. The presumption under this Article would have arisen if the letter had been signed by the Chief Secretary himself.

**Letter signed by the Chief Secretary ordering the prosecution of a person is sufficient proof of the order of prosecution.--**A letter, issued from the office of the Chief Secretary to the Government, and signed by the Chief Secretary, directing the prosecution of a person is sufficient proof of the order of prosecution by the State Government but not if the letter has been signed by some other officer for the Chief Secretary.<sup>5</sup>

**91. Presumption as to documents produced as record of evidence.--**Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance

1. AIR 1995 MP 134.

2. AIR 1994 All. 66 *disting.* AIR 1973 Gau 114.

3. 1985 SCMR 301 *ref.* 1995 CLC 331.

4. 1987 SCMR 1845 and PLD 1976 Kar. 316 *ref.* 1995 MLD 1458.

5. 1988 SCMR 620.

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with law, and purporting to be signed by any Judge or Magistrate or by any such officer as aforesaid, the Court shall presume:--

that the document is genuine; that any statement as to the circumstances under which it was taken, purporting to be made by the person signing it, or true, and that such evidence, statement or confession was duly taken.

### COMMENTS

**Presumptions.**--The presumptions to be raised under this Article are considerably wider than those under Article 90. They embrace not only the genuineness of the document, but that it was duly taken and given under the circumstances recorded in the document. The presumptions under this Article are not conclusive; they may be rebutted.

The Article is applicable:

- (a) to a document which purports to be record or memorandum of the evidence given by a witness in judicial proceeding or before any official authorised by law to take such evidence; and
- (b) to a statement or confession by an accused person, taken in accordance with law, and signed by any Judge or Magistrate.

According to case of,<sup>6</sup> presumption which attaches to judicial proceedings though very strong, is rebuttable. Party is entitled to rebut the same by leading cogent evidence.

Before presumption about the confession is drawn under Article 91 it is for the prosecution to show that the same had been recorded in accordance with the legal provisions. No complaint by the husband. Confession cannot be recorded in connection with the offence under Section 14 of the Criminal Law Special Provisions Ordinance, 1969.<sup>7</sup>

Presumption which attaches to judicial proceedings though very strong, is rebuttable. Party is entitled to rebut same by leading cogent evidence.<sup>8</sup>

**Appreciation of evidence.** Confessional statements of accused persons had shown that accused had fired shot each at deceased which hit him and he died at the spot. Said statement had been fully supported and corroborated by medical evidence. Revolver and empty bullets recovered from the accused were sent to the Chemical Analyser for examination. Report of Chemical Analyser had revealed that bullet was fired from revolver recovered from the accused. Defence taken by accused proved to be an afterthought and was of no help to the accused. Accused had alleged that investigation having been completed before lodging of F.I.R., case of prosecution was not reliable. Part

6. 1989 MLD 124.

7. PLD 1983 FSC 497.

8. 1985 CLC 1063 and 1986 CLC 1441 *rel.* 1989 MLD 124.

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**Maxim. "Omnia praesumuntur rite esse acta".**--Arts. 91 and 129 of Qanun-e-Shahadat, 1984 were based on the maxim, "*Omnia praesumuntur rite esse acta*" which meant that "all things are presumed to have been done rightly".<sup>1</sup>

**Proof of execution of document required by law to be attested.**--  
**Exception.** Documents required by law to be attested would not be used as evidence until two attesting witnesses, who if alive were amenable to jurisdiction of Court and capable of giving evidence were produced. Not necessary to call attesting witnesses to prove execution of a document, which was (not a will) registered in accordance with Registration Act, 1908, unless execution thereof, was specifically denied by the person who allegedly executed the document. Document in question, being registered one, and its existence having not been denied, its execution could be proved by certified copy thereof.<sup>2</sup>

**Proceedings before Revenue Officer.**--Presumption of truth was not attached to proceedings before Revenue Officer nor they could be accepted as substantive evidence.<sup>3</sup>

**Proof of execution of document. Marginal witnesses.**--Absence of other three witnesses was material. Was not credible that agreement was drafted by a person who was neither a stamp vendor nor a deed writer. Nothing was on record to show that scribe was not available. Was important to note that defendant herself applied for comparison of her thumb-impression. Report of Finger Print Expert was to the effect that thumb-impressions on sale-deed in question were different from that of the lady. No attempt was made by plaintiff to challenge the report. Plaintiff's own testimony was self-contradictory and it was unbelievable that plaintiff after making payment of entire consideration to defendant did not obtain conveyance of title through registration of sale-deed.<sup>4</sup>

**92. Presumption as to genuineness of documents kept under any law.**--The Court shall presume the genuineness of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

### COMMENTS

**Scope.**--*Omnia praesumuntur rite esse acta* is a well-established principle as regards official acts. Courts repose great confidence on the fidelity and accuracy of official document kept in due course of business and properly and regularly kept.<sup>5</sup> A sanction for prosecution is a public document and when a certified copy of such a document is admissible without further evidence, there is no reason why the original should not be

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1. PLD 2007 Kar. 1 (d).  
 2. 1995 CLC 1173.  
 3. 2005 YLR 2170 (f).  
 4. 2006 YLR 1476 (a).  
 5. AIR 1947 Cal. 1283.

importance of such a document which appears *de facto* to have settled the bounds of the possession of certain plots for a period of thirty-five years (that is to say, from 1876 to 1910).<sup>1</sup> A certified copy of *fard hissa kashi baghat*, a document drawn up at the first Regular Settlement, is admissible in evidence to prove matters contained in it.<sup>2</sup>

**Revenue records.**--There is a presumption of correctness of revenue records, therefore where an entry in the record of rights shows the suit lands in the name of the plaintiff, the onus is on the defendant to prove that the said entry in favour of the plaintiff is not correct.<sup>3</sup> Similarly a *wajib-ul-arz* which is prepared after due publicity and as per directions prescribed by law is *prima facie* evidence of the customs recorded therein. A record of existence of right of pre-emption is evidence of a contract binding all the parties to it and their representatives. The burden of rebutting such presumption shall be on the party repudiating the contract.<sup>4</sup>

**Official Gazette. Status.**--Official Gazette falls within the category of public documents and its status as such in terms of Art. 85 of Qanun-e-Shahadat, 1984, has to be accepted. Gazette is one of the documents covered by Art. 92 of Qanun-e-Shahadat, 1984, and it is enough if it is before the Court even if not formally tendered in evidence.<sup>5</sup>

**Sanctity. Contents of such record.**--Presumption of truth. Record of rights which also included the Settlement Record was being followed with more or less exactness by the Settlement Officers, which included *wajib-ul-arz*, Jamabandi and the portion of Shajra-Nasb or general logical tree of the proprietors. Presumption of truth is attached to record of rights geneological but to the first ever Settlement Record in particular. Very strong evidence is required to rebut the presumption of correctness attached to the first Settlement of an area. Where no evidence of any consequence had been adduced in rebuttal of the entries of the Settlement Record, interference with the authenticity of the record was declined by Supreme Court.<sup>6</sup>

**Registered document. Oral evidence to deny its contents.**--Presumption of truth was attached to such document. Contents of such document could not be controverted through oral evidence. Thirty years old document having legal backing could not be ignored easily.<sup>7</sup>

**Public documents.**--Presumption regarding validity of public documents would carry weight unless it has been effectively rebutted.<sup>8</sup>

**93. Presumption as to maps or plans made by authority of Government.**--The Court shall presume that maps or plans purporting to be made by the authority of the Federal Government or

1. AIR 1922 PC 325.
2. AIR 1917 Oudh 14.
3. AIR 1963 Orissa 29.
4. 2 All. 876 (FB) + AIR 1917 Oudh 14.
5. 2005 SCMR 1967 (a).
6. 1985 SCMR 301 *disting.* 1997 SCMR 1840.
7. 2005 MLD 98 (c).
8. 1996 CLJ 775.

any Provincial Government were so made, and are accurate, but maps or plans made for the purposes of any cause must be proved to be accurate.

### COMMENTS

The presumption as to accuracy is limited only to maps or plans made under the authority of the Federal Government or any Provincial Government. Such maps or plans contain the results of inquiries made under competent public authority. In all other cases proof of accuracy is needed. This Article must be read with Article 50 which deals with statements in maps, charts and plans. These are provable under Articles 88 and 90 by the production of certified copies.

**Maps are not evidence of title.**--The settlement maps, however important they may be, and whatever be their evidentiary value, cannot take the place of documents of title.<sup>9</sup>

**Report based on maps.**--Where a certain Revenue Survey map was referred to in the report of a Commissioner, but the map was not produced, their Lordships of the Privy Council received the report of the Commissioner as admissible inasmuch as no objection was taken to the report, and the Commissioner himself was neither examined nor cross-examined.<sup>10</sup>

**Maps not generally available.**--Maps which are not generally available and are therefore produced in Court by the Government and are kept open for inspection by the opposite party, are as good as other official maps and may be relied upon.<sup>11</sup>

**Maps prepared for private purpose.**--A map prepared by a public servant for a private purpose and not in performance of his duties is not a map to which a presumption of accuracy is attached under this Article. Thus, where the map produced by the Government to show the area of supply of electricity was not prepared under the authority of the Government, no question of presumption arose under Articles 50 and 93.<sup>12</sup>

**Reanell's map.**--A Reanell's map has a presumption of accuracy especially in river and road surveys under Article 93.<sup>13</sup>

**'Kistwari' map.**--In the case of a *kistwari* map, there is presumption both as to physical features and statements as to possession made therein.<sup>14</sup>

**'Diara' maps.**--*Diara* maps are presumed to be correct and the presumption will in no sense be rebutted by the mere absence of the location of a particular trijunction.<sup>15</sup>

9. AIR 1948 Oudh 139.

10. AIR 1923 PC 1.

11. AIR 1965 Cal. 282.

12. AIR 1958 Cal. 85.

13. 4 DLR 222 (DB) + AIR 1921 Cal. 661 (DB).

14. AIR 1922 Pat. 51 (DB).

15. AIR 1937 Cal. 574 (DB).

**City maps.**--Printed maps (Commissioner's maps) of different wards in a city are admissible under Article 93 and also under Arts. 50 and 97.<sup>1</sup>

**Maps and plans made for the purpose of any cause.**--Maps made for the purposes of any cause prepared neither under the authority of the Government nor published for general sale must be proved to be accurate.<sup>2</sup> The onus of proving that such a map is accurate lies on the party who produces it.<sup>3</sup> Such maps and plans must be proved by the persons who made them. They are *post litem motam* and lack the necessary trustworthiness. Where maps are made for the purposes of a suit, there is, even apart from fraud, which may exist, a tendency to colour, exaggerate, and favour, which can only be counteracted by swearing the maker to the truth of his plan.<sup>4</sup>

**No objection to plan by any party.**--Where both the parties rely upon a plan without taking objection as to its accuracy, the plan is not inadmissible on the ground that its accuracy had not been proved according to the provisions of Article 93.<sup>5</sup>

**94. Presumptions as to collections of laws and reports of decision.**--The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

#### COMMENTS

This Article should be read along with Article 52 which makes relevant statements as to any law and rulings contained in officially printed books of any country. It dispenses with the proof of the genuineness of authorized books of any country containing laws and reports of decisions of Courts. Article 112 authorizes the Courts to take judicial notice of the existence of all laws and statutes in the country. Article 85 recognizes statutory records to be public records. Article 89 lays down the method of proving the statute passed by the Legislature.

**Value of foreign publication on law.**--The only effect of Articles 52 and 94 read together is that the Court may take judicial notice of a publication containing foreign law, if it issued under the authority of the foreign government concerned and may accept the law as set out in the publication as the law in force in the particular foreign country at the relevant time. But such a publication cannot be evidence of the fact that what is contained in it is the whole law. What the whole law of a foreign country at a particular point of time is, cannot, therefore, be proved except by calling in an expert as provided for in Article 59.<sup>6</sup>

1. AIR 1942 Bom. 161 (DB).
2. PLD 1959 Dacca 26 = 16 DLR 424 (DB) + AIR 1937 PC 689 + 14 Cal. LJ 578 (DB) (Map prepared for one case--No presumption as to accuracy in another case) + AIR 1965 Cal. 282.
3. AIR 1965 Cal. 282.
4. AIR 1959 Ker. 358.
5. AIR 1940 Lah. 309.
6. AIR 1956 Cal. 48 (DB).

**95. Presumptions as to powers-of-attorney.**--The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by a Notary public, or any Court, Judge, Magistrate, Pakistan Consul or Vice-Consul, or representative of the Federal Government, was so executed and authenticated.

### COMMENTS

**Principle.**--The Court shall presume the due execution and authentication of a power-of-attorney when executed before and authenticated by a Notary public, or any Court, Judge, Magistrate, Pakistan Consul or Vice-Consul, etc. The Article does not exclude other legal modes of proving the execution of a power-of-attorney.

The provisions of Article 95 of the Qanun-e-Shahadat Order, 1984 were not mandatory.<sup>7</sup>

**Filing of power of attorney attested by Notary Public.** Validity. Notary Public before the attestation and authentication of the power of attorney had satisfied himself that the persons who were executing the power of attorney were authorized officers of the company. Presumption was of regularity of official acts regarding execution and authentication of the power of attorney, which took the same as valid and effective under the provisions of Art. 95 of Qanun-e-Shahadat, 1984.<sup>8</sup>

**Presumption as to general power of attorney.** Burden of proof. Claim of the Appellants was that power of attorney allegedly executed by their late father in respect of plot in dispute in favour of respondent on basis of which the respondent had sold the plot to other respondents was forged and fictitious and sale made on basis of said power of attorney was illegal and liable to be set aside. Appellants by producing sufficient documentary evidence on record had rebutted the presumption of truth attached to said power of attorney and proved that their late father had never executed the same in favour of respondent authorizing him to sell plot in dispose and that said power of attorney was procured by the respondent through deceitful means. Where a document was repudiated by its executant or any one claiming under him as a forged document, the party claiming under said document must prove that document was genuine. Onus in such a case was on the respondent to prove that said document was executed in his favour and was genuine which he failed to discharge. Presumption of truth attached to a registered document was rebuttable. Trial Court, in circumstances, was not justified to dismiss the suit holding that the appellants had failed to prove general power of attorney was fraudulent and fictitious.<sup>9</sup>

**Cogent evidence.**--If the party challenged the authority of his counsel, party was at liberty to prove the same by producing evidence. Petitioner having specifically asserted that she never authorized her counsel to withdraw the suit, unless she failed to prove such a plea by way of dislodging such presumption through cogent evidence, she

7. PLD 1986 Quetta 107.

8. PLD 2001 Kar. 143.

9. 2002 MLD 205.