

85. Public documents.--The following documents are public documents :--

- (a) documents forming the acts or records of the acts--
 - (i) of the sovereign authority;
 - (ii) of official bodies and Tribunals; and
 - (iii) of public officers, legislative, judicial and executive, of any part of Pakistan, or of a foreign country;
- (b) public records kept in Pakistan of private documents;
- (c) documents forming part of the records of judicial proceedings;
- (d) documents required to be maintained by a public servant under any law; and
- (e) registered documents to the execution whereof is not disputed.

COMMENTS

Scope.--Articles 85--89 deal with (a) the nature of public documents, and (b) the proof which is to be given of them. Article 85 defines their nature; and Article 87--89 deal with the exceptional mode of proof applicable in their case. The proof of private documents is subject to the general provisions of the Act relating to the proof of documentary evidence contained in Articles 82--85.

Public document. Certified copy of Nikahnama. Nature of. When Nikah form has been drawn up. It is to be signed by bride, bridegroom or on their behalf by witnesses to the marriage. Therefore it is registered. Registrar who is to be licensed by U.C. under Rule 7 of said rules. One copy is given to bride, one to bridegroom and one is kept with Registrar while fourth is forwarded to U.C. under Section 5(6) of Ordinance. Certified copy can be issued by Registrar or by secretary of U.C. and said certified copy is to be admissible in evidence. *Held:* For all purposes Nikahnama is public document.¹

Public document. Admissibility of certified copies in evidence. Document which was inadmissible in evidence, even if exhibited without any objection, could not be legally read into evidence. Certified copies of only such documents were admissible in evidence as were public documents as defined in Art 85, Qanun-e-Shahadat, 1984 and only such registered documents were public documents, execution whereof was not disputed.²

Public document.--If a public officer maintains a record then the same would become the public record.³

1. PLJ 2002 Lah. 273.
2. 2001 MLD 725.
3. PLD 2007 Kar. 429.

of the transfer of property in lieu of dower. No misreading or non-reading of evidence of both the Courts below while recording their respective judgments was found. Constitutional petition was dismissed in circumstances.¹

Intra-Court Appeal. Issuance of "Copy of a Copy".--Appellant had not brought anything on record to show that Punjab Copying Agencies Manual which contained Rules relating to supply of copies of records under the Control of Deputy Commissioners, Commissioners and Financial Commissioners, were adopted by High Court and were applicable to Copying Agencies under the Control of District Courts. Said Manual would not apply *ipso facto* to Copying Agencies unless those Rules/Instructions were adopted by High Court. Para. 1.27 of Punjab Copying Agencies Manual had depicted that person applying for copy of copy should be in possession of copy of the documents applied and must detail its object of calling in question the correctness of copy already in his possession, but appellant's case was not covered by it. Copying Agency under Control of District Courts was not in custody of original Memos, copies of which were applied by appellant whereas originals of those were with the Establishment Division of Government of Pakistan. Appellant, in circumstances could not call upon Copying Agency under Control of District Courts, to issue certified copies of those documents, which were not in their custody control. 'Copy of Copy' could not be issued and appellant must get those copies from the offices with whom original documents were or should be available. Intra-Court Appeal being devoid of any merits, was dismissed.²

86. Private documents.--All other documents are private.

87. Certified copies of public documents.--Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation : Any officer, who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this Article.

COMMENTS

Scope.--This Article provides the means of proof of public documents which any person has a right to inspect. There is a common law right of a person to take inspection of a document in which that person is interested for the protection of such interest.

1. PLD 2000 Lah. 236.

2. PLD 2006 Lah. 731.

Copy of judgment/decree when to be treated ready for delivery to parties. Unless and until typed copy was not attested by Officer authorised under Article 87, Qanun-e-Shahadat, 1984, same could not be treated ready for delivery.¹

Certified copies of documents.--Burden of proof. Onus.--Onus to prove issues regarding limitation and cause of action always lies on plaintiff but in the present case onus probandi was wrongly placed upon the defendant that its why no convincing evidence on either side was brought on record. Issue of limitation being an issue of mixed question of law and facts, could not have been decided unless sufficient material was available on the file. Copies of public documents produced by plaintiff having been attested by Magistrate 1st Class who apparently did not have the custody of original documents nor had the authority to attest the same, did not fulfil the qualifications enumerated in Article 87 of Qanun-e-Shahadat, 1984. Such documents hence were not admissible in evidence. Even verification of plaint was not proper and in conformability of O. VI, R. 15, C.P.C. Courts below failed to appreciate the points involved and to adopt proper procedure nor counsel for parties assisted the Courts below properly. Case in circumstances was remanded to Civil Judge for *de novo* trial.²

Non-impleading of one of several vendees. Competency of suit.--Omission to implead such vendee was due to copy of sale-deed supplied to plaintiff which tallied with the Register Behi wherein sale-deed in question had been entered and such Register Behi did not contain the name of omitted vendee. Omitted vendee's name was however, included in the original sale-deed which was in possession of vendees. Plaintiff's suit for pre-emption was decreed by Trial Court. First Appellate Court, however, dismissed plaintiff's suit on account of same being for partial pre-emption. Validity. Pre-emptor was deemed not to be at fault and was entitled to derive legal benefit out of recitals in Register Behi on basis of which certified copy of sale-deed had been issued. Original sale-deed on that account would stand eclipsed for the purpose of factual controversy in question. Pre-emptor could not be deemed to be at fault and she was willing to pay whole of the amount pertaining to whole of the property and vendees were liable to pay proportionate share of price to omitted vendee after receiving the same from Trial Court. Plaintiff, therefore, could not be non-suited on such technical ground especially when she was illiterate female living in a village to whom cloak of protection through law was available. Plaintiff's case was, thus, neither a case of partial pre-emption nor a case of non-joinder of necessary parties, especially when whole of the land in question was incorporated in the plaint. Finding of First Appellate Court, non-suiting plaintiff were set aside and that of Trial Court were restored.³

88. Proof of documents by production of certified copies.--Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

1. 1998 CLC 590.
 2. 2007 CLC 984.
 3. AIR 1925 Lah. 343 and PLD 1963 (Azad J&K) 44 *ref.* 1996 MLD 1701.

Art. 89]

applicant for the copy is entitled to inspect the public document copy of which is asked for. The Article allows a certified copy of a public document only to a person who has a right to inspect the document. It does not authorize the issue of a certified copy of a document which a person has no right to inspect, and a certified copy of any such document unlawfully issued, is inadmissible in evidence.¹ The right of inspection of a public document, however, automatically gives rise to right of demanding a certified copy of it. An application under Article 87 for a certified copy of a document pre-supposes that the document of which copy is asked for is a public document which the applicant has a right to inspect. A copy of a general power-of-attorney, executed before, and authenticated by, a Sub-Registrar under Section 33 (1) of the Registration Act cannot be obtained by a person who is not a party to the deed.²

Copy of registered document more than thirty years old.--Appellate Court discarding such document on erroneous assumption that it did not bear signatures of executant or witnesses, without realizing that same was copy of registered document. Document in question, being more than thirty years old deserved to be accepted as correct.³

89. Proof of other public documents.--The following public documents may be proved as follows:-

- (a) Acts, orders or notifications of the Federal Government in any of its departments, or of any Provincial Government or any department of any Provincial Government-by the records of the departments, certified by the heads of those departments respectively, or by any document purporting to be printed by order of any such Government;
- (b) the proceeding of the legislatures, by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of the Government concerned;
- (c) the Acts of the Executive or the proceedings of the Legislature of a foreign country, by journals published by their authority, or commonly received in that country as such or by a copy certified under the seal of a country or sovereign, or by a recognition thereof in some Federal Act;
- (d) the proceedings of a municipal body in Pakistan, by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body; and

1. AIR 1940 M. 308.

2. AIR 1931 A. 649.

3. 1997 CLC 1691.

- (e) public documents of any other class in a foreign country, by the original, or by a copy certified by the legal keeper thereof with a certificate under the seal of a notary public, or of a Pakistan Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

COMMENTS

Scope.--This Article specifies the various ways in which the contents of a public document can be proved.

The word 'may' is used only as denoting a mode of proof other than the ordinary one, namely, the production of the original. For, when the original in a public document within the meaning of Article 85 a certified copy of the document, but no other kind of secondary evidence, is admissible.

The contents of some other documents are proved the way mentioned in Article 89, e.g., public documents in a foreign country should be proved by the legal keeper with a certificate under the seal of a notary public, of a Pakistan Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country. Thus, in the case of,⁴ refusal to take into consideration pedigree-table duly authenticated by Pakistan Embassy to India, was held illegal and without lawful authority. Again, in the case of,⁵ photostat copy of a birth certificate purportedly issued by a Municipality in India but not containing a certificate of Notary Public or Pakistan Consul or diplomatic agent as being duly certified by officer having legal custody of the original was held not in accordance with law, hence could not be admitted in proof of age.

Presumption of law.--Contention of Provincial Government that the initial order promoting the appellants passed by Inspector-General of Police as well as regularization of their services by subsequent order were both invalid in law for the reason that during the relevant period the Chief Minister and not the I.G.P. was the competent authority in respect of promotion of Deputy Superintendents of Police. Similar contention raised before it already rejected by Service Tribunal. Supreme Court, while disposing of petitions for leave to appeal, agreeing with view of Service Tribunal that a presumption in law attached to notifications issued by Provincial Government to the effect that same were issued after observing necessary formalities under the law and pointing out that such legal presumption was not rebutted by Government by producing relevant Departmental file. Such argument having already been rejected at stage of leave granting order, Provincial Government could not be permitted to re-urge the same point at the appeal stage. Question whether necessary formalities of submitting cases of promotion before competent authorities were observed was question of fact on which a finding had been given by Service Tribunal. Parties, *held*, could not be allowed to reopen

4. Law Notes 1982 Lah. 1550.

5. 1982 CLC 318.