

Proof as a Condition for Admissibility of a Claim of Property Ownership in Algerian Law

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Abstract

The issue of proof in property ownership claims is of critical importance, particularly in the context of Algerian law where it directly affects the admissibility of such claims. This paper examines the divergent positions within the Algerian judiciary regarding whether proof of ownership should be a prerequisite for considering a property claim. The first position, upheld by the Civil Chamber of the Supreme Court, allows claims to be admitted even in the absence of concrete evidence or legal documentation—especially in areas not yet subject to cadastral surveying. In contrast, the second position, represented by the Council of State, strictly requires legal documentation as a condition for admissibility. This division reflects deeper legal and procedural challenges related to land ownership in Algeria, where incomplete land registration processes often leave claimants without formal proof of title.

Keywords: *Property ownership, proof of ownership, admissibility, Algerian law.*

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Introduction

Real estate plays a crucial role in wealth creation and is considered a fundamental driver of economic development, both for individuals and nations. It is widely recognized that the desire to own property is an innate human instinct placed in mankind from the moment of creation. For this reason, both Islamic law and civil legal systems, including Algerian law, have recognized the right to property ownership and have surrounded it with a framework of legal protections.

Given human nature — characterized by selfishness, greed, and a tendency to encroach on others' rights — it is essential to have well-established means of protecting property rights. One of the key legal mechanisms for doing so is the property ownership claim (action en revendication), whereby a property owner seeks judicial intervention to reclaim property taken by force or deceit, provided that they submit proof of ownership.

Proof, in any legal case, is the fundamental tool judges use to issue rulings independently of personal emotions or biases toward the parties involved. However, in property ownership claims, proof plays a dual role: it is not only the basis for judgment but also a condition for the claim's admissibility. Due to the incomplete cadastral surveying process in Algeria and the negligence of many occupants in regularizing their property holdings, the effort to sanitize real estate ownership has suffered. This has led to a persistent absence of ownership documents.

This article aims to highlight the importance of proof of property ownership as a condition for hearing a property ownership claim, rather than merely a basis for judgment.

The following questions will be addressed:

1. What is the position of the Algerian judiciary on the necessity of proving property ownership in ownership claims as a condition for admissibility, both in theory and in practice?

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2. What are the justifications for each judicial approach, and which is preferred by legal scholars?
3. What are the means by which property ownership can be proven?

To answer these questions, the article is structured as follows:

First Section: General Concepts

- **First Topic:** The Concept of Proof
- **Second Topic:** The Concept of Property Ownership Claims

Second Section: Proof in Property Ownership Claims

- **First Topic:** Proof in Ownership Claims Between Civil and Administrative Courts
- **Second Topic:** Evaluation of the Two Approaches

Third Section: Specific Means of Proving Property Ownership

- **First Topic:** The Land Title (Property Register)
- **Second Topic:** Official Documents Registered at the Land Registry
- **Third Topic:** Private Documents
- **Fourth Topic:** Possession

First Section: General Concepts

First Topic: The Concept of Proof

First Subsection: Definition of Proof

Legal scholars agree that proof is “the presentation of evidence before a court, through legally established means, to demonstrate the existence of a legal fact with corresponding consequences”

From this definition, it becomes clear that the type of proof considered in this study is judicial proof — which involves presenting evidence and arguments before a court. This differs from general types of proof that do not occur in court, such as scientific or historical proof, which aim to establish objective truths by any means.

Judicial proof must pertain to a legal fact upon which the judgment will be based. If this fact is proven, the corresponding legal consequences follow. This fact can be a legal action (such as signing a sale contract) or a material fact (such as committing an unlawful act that requires compensation).

Proof is only accepted according to the methods prescribed by law. The legislator has defined the means of proof and the procedures for presenting them, thereby binding both the parties in dispute and the judge himself. This highlights the fundamental difference between judicial proof and scientific proof. The latter seeks the truth by any possible means without regard to constraints or costs, and scientific truth remains valid even if it cannot be proven. Judicial proof, however, does not necessarily aim to reach absolute truth, but rather legal truth—derived from facts established through legal means. This truth may differ from scientific truth, yet it remains the sole basis upon which judicial rulings are made. Once judicial truth is established through a final court decision, it becomes binding on the judge and may not be disregarded.

Section Two: The Importance of Proof

Proof is the cornerstone of legal relations and the foundation of justice. A right has no practical value if its holder cannot prove its existence. Proof is the tool by which a right is transformed from a mere theoretical concept into an enforceable legal reality. In this regard, the German jurist Rudolf von Ihering famously stated: "*A right without proof is a nonexistent right.*" This affirms that even if a right exists in theory, its practical value is null if it cannot be proven in court.

Section Three: Systems of Proof

There are three main schools of thought concerning the regulation of proof:

1. The Free or Absolute System

The free (or absolute) system is defined as the model that grants judges complete freedom in accepting evidence and forming their convictions without being restricted by predefined methods of proof. It allows the judge to supplement any deficiencies in the evidence and uncover the legal truth based on personal conviction and private knowledge. It also grants disputing parties the freedom to choose any evidence they believe will convince the judge of their rightsⁱⁱ.

Second: The Restricted or Legal Doctrine

This doctrine requires litigants to adhere strictly to the means and methods of proof specified by law. They are not allowed to prove their rights using any means other than those prescribed, and the judge must also comply with those legally defined methods and their evidentiary valueⁱⁱⁱ.

Third: The Mixed Doctrine

This doctrine combines the advantages of both the free and restricted doctrines while aiming to avoid the shortcomings of each. Under this system, the legislation specifies certain methods of proof and the legal weight of some of them, while also granting judges discretionary power to evaluate other types of evidence based on fair criteria. In this approach, the judge is committed to the principle of neutrality, assuming a passive role that prevents reliance on personal knowledge to fill evidentiary gaps, as is the case in the restricted doctrine. However, the judge retains a limited active role, allowing them to request additional evidence or seek expert opinions when necessary^{iv}.

Second Requirement: The Concept of Property Ownership Claims

Section One: Definition of Real Property

The Algerian legislator defines real property in the first paragraph of Article 683 of the Civil Code as follows^v :

"Anything that is fixed in its place and cannot be moved without damage is considered real property; all other things are considered movable."

From this paragraph, it is clear that the legislator provides a direct definition of real property as anything that is stable in its location and cannot be moved without causing damage. This refers to items that are inherently immobile and cannot be relocated without demolition or uprooting, such as land, buildings, trees, and everything fixed to the land that cannot be moved without being damaged.

Meanwhile, movable property is defined indirectly by stating: "all other things are considered movable." By contrast, this implies that movable property includes anything that can be transferred or moved from one location to another while maintaining its form and shape—i.e., without damage—such as money, animals, goods, measured or weighed items, machinery, vehicles, and other objects that can be moved without harm.

Based on the above, the criterion adopted by the legislator to distinguish between real property and movable property lies in the nature of the object itself: if, by its nature, it cannot be moved without damage, it is considered real property; if it can be moved without damage, it is considered movable.

Section Two: Definition of a Real Property Ownership Claim

In general legal terms, an ownership claim refers to any lawsuit filed with the aim of claiming ownership of a thing—whether real or movable property^{vi}. In other words, it is the legal mechanism used by someone who claims to own an object, whether real estate or a movable item, to recover it from someone who possesses it unlawfully. Accordingly, the real property ownership claim under study here is: *a legal action filed to claim private real estate ownership*^{vii}.

The Algerian legislator defined private real estate ownership as follows: “Private real estate ownership is the right to enjoy and dispose of real estate and real property rights by using the property in accordance with its nature or intended purpose.”

It is worth noting that this definition does not merely describe the rights of the owner over the property; it also links those rights to a social function, ensuring the use of the property aligns with both individual and societal interests.

As for its legal nature, this type of claim is considered a **real action** (i.e., a claim related to rights in rem), which differs from **personal actions** in which the claimant demands the return of an item based on contractual obligations. For example, a landlord who sues a tenant to recover leased land, a lender who sues a borrower to return a loaned item, a depositor who sues a depositary, or a buyer who sues a seller to deliver the sold item—none of these are filing ownership claims. Rather, they are bringing personal actions based on contractual obligations arising from contracts such as deposit, loan for use, lease, and sale. These parties are required to prove the existence of a contract that establishes an obligation to return or deliver the property, not to prove ownership.

Chapter Two: Evidence in Real Property Ownership Claims

Section One: Evidence in Ownership Claims between Ordinary and Administrative Courts

Evidence in any legal case is considered a substantive matter and the tool upon which the ruling is based—regardless of any emotions or personal inclinations the judge, as a human being, may feel toward one of the parties. However, in real property ownership claims, evidence holds a particularly special place. This will be clarified in the following two subsections:

Subsection One: The Specificity of Evidence in Ownership Claims in Surveyed Areas

It is a well-established legal principle that the plaintiff in any lawsuit is required to prove the claims made during the proceedings. The general rule for the distribution of the burden of proof is: “*The burden of proof lies with the plaintiff*”; since the default presumption is the absence of liability, anyone claiming a right against another must prove the event or fact that gave rise to that right^{viii}.

Therefore, once the plaintiff is identified in any case, the judge must task them with providing evidence and obligate them to bring forth proof. It is important to note here that the plaintiff is not necessarily the party who files the lawsuit, but rather the one who challenges the current legal situation—whether permanent, temporary, or apparent^{ix}.

However, the evidentiary process in real property ownership claims has a particular complexity. From a legal standpoint, the burden of proving property ownership is among the most difficult and critical issues—not only because it serves as the basis for the court's judgment, but also because it determines whether the case is admissible in the first place. If the plaintiff fails to provide evidence for any reason, the case is

dismissed without the court being required to investigate the defendant's ownership^x. Moreover, the plaintiff is not allowed to refile the case by merely changing its legal basis from ownership to possession^{xi}.

According to Article 13 of the Algerian Code of Civil and Administrative Procedure, eligibility, interest, and legal standing are prerequisites for appearing in court. In addition, real property ownership claims—where the plaintiff seeks the return of ownership of their property—require evidence as a **procedural condition** for the case to be considered. This applies whether the case is brought before an ordinary court or an administrative one. This requirement stands when the property in question is located in an area that has undergone land surveying and where relevant contracts have been drafted. This ensures time efficiency and enables the court to resolve the dispute based on clear and established facts.

In contrast, in other types of lawsuits, evidence is generally a substantive matter—it is not a condition for accepting the case but rather a condition for issuing a judgment.

As for unsurveyed areas where no contracts exist, the Algerian judiciary—both ordinary courts and administrative courts—have been divided on whether to accept real property ownership claims in the absence of adequate proof. This divergence is presented in the second subsection.

Subsection Two: The Specificity of Evidence in Ownership Claims in Unsurveyed Areas

As previously mentioned, both the administrative judiciary (represented by the Council of State) and the ordinary judiciary (represented by the Supreme Court) agree that in areas covered by the land survey process with contracts in place, evidence is a formal condition for admitting ownership claims. However, they differ on how to approach cases arising in unsurveyed areas—where no contracts exist—leading to two different legal perspectives, which will be outlined below.

First: The Position of the Administrative Judiciary

Represented by the Council of State, this position holds that an ownership claim cannot be accepted from someone alleging ownership unless they prove it with a legal title. This is confirmed by a decision from the Council of State, which stated^{xii}:

“...Whereas the appellant maintains that he has occupied the disputed piece of land for more than fifty years continuously and without interruption. However, the Municipality of Fnaya considers the mentioned land to be state property incorporated into vacant state lands by virtue of Decree No. 63/88 dated 18/03/1963^{xiii}. However, in support of his claims, the appellant did not provide any document or contract to prove the validity of his statements. Therefore, the decision of the Administrative Chamber of the Béjaïa Council, which rejected the appellant's request to compel the Mayor of Fnaya to return the plot of land, must be upheld^{xiv}.”

This decision clearly shows that ownership claims will not be admitted—whether or not the land is in a surveyed area—unless the claimant provides proof of ownership. Accordingly, this position considers evidence a **procedural requirement**, not merely a substantive issue affecting the merits of the case. As such, a real property ownership claim will be rejected if the plaintiff fails to provide evidence of ownership.

Second: The Position of the Ordinary Judiciary

Represented by the Supreme Court, this position holds that an ownership claim should be admitted from any person claiming ownership of property located in an unsurveyed area where no official contracts exist, even if the person does not submit sufficient—or any—proof of ownership.

This was affirmed by the Real Estate Chamber of the Supreme Court in Decision No. 150865 dated 25/02/1998, which stated:

“...Indeed, as can be deduced from page 2 of the judgment being upheld, the defendant relies on possession of the disputed plot of land since 1946 and requests the dismissal of the plaintiff's claims on the sole ground that the plaintiff has not presented any document proving his ownership. By upholding the appealed judgment, the court rejected the plaintiff's legal standing based solely on form, even though this issue is substantive and should have been resolved through an appropriate investigation pursuant to Article 43 of the Code of Civil Procedure.

Furthermore, such an investigation was indeed requested, and many ownerships exist without title deeds due to the incomplete implementation of land surveying and the lack of contracts. Therefore, conducting an investigation is the only way to determine whether the parties qualify as owners, especially since the defendant himself relies only on acquisitive prescription and not on any actual source of ownership. Consequently, the decision is flawed and must be overturned because it erroneously treated legal standing as a procedural issue when it is in fact a substantive matter that should be verified or denied by the judiciary.”

Thus, the ordinary judiciary sees ownership claims in unsurveyed areas as requiring judicial investigation, considering that many properties lack documentation due to historical and administrative limitations^{xv}.

The above ruling shows that the acceptance of an ownership claim without sufficient or any evidentiary proof, according to the Supreme Court, is based on the reasoning that the evidence which determines the legal standing of the parties as owners or not is a substantive issue, not a procedural one. On one hand, this means that the court considers the plaintiff's capacity as owner a matter related to the substance of the case. On the other hand, such evidence is often unattainable in areas that have not undergone land surveying and where no contracts have been issued.

Therefore, conducting an investigation is the only means by which the ownership status of the parties can be established. Consequently, the Supreme Court ruled that presenting evidence of ownership is not a prerequisite for accepting a real property ownership claim in areas where land surveying and contract issuance have not been completed. However, the court implicitly accepts that such proof may be required in areas where surveying has taken place and contracts exist, as this would save time and enable the court to resolve the dispute based on clear and reliable information.

Section Two: Evaluation of the Two Approaches

Subsection One: Evaluation of the Administrative Judiciary's Approach

Some legal scholars, including Professor Hamdi Bacha Omar, consider the administrative judiciary's approach to be more valid. They offer several justifications for this position, including^{xvi}:

First: The reasoning behind the Supreme Court's position is flawed, as the Algerian legislator has issued legal texts to encourage individuals occupying property without legal title—or even long-term possessors—to obtain legal documentation to justify their possession of the real estate in question^{xvii}.

Given that the well-established legal principle is that "ignorance of the law is no excuse," judges must reject ownership claims that lack a legal title. This refusal would push the occupants of real estate to regularize their legal status under the framework of those legislative texts, ultimately accelerating the process of purifying property ownership records.

Secondly: Under Algerian real estate law, possession alone does **not** automatically confer ownership upon the expiration of the prescription period. Rather, the possessor must register their ownership in accordance with the provisions of Article 15 of Order No. 75/74 dated 12/11/1975, which concerns the preparation of the general land survey and the establishment of the real estate registry^{xviii}. This article stipulates that anyone claiming ownership of a property or any real property right must prove it by registration in the set of property cards.

According to Professor Hamdi Bacha, this can be done either by obtaining a judicial ruling that affirms the possessor's ownership based on acquisitive prescription if there is a disputant^{xix}.

Registration can also be done by obtaining a title deed through a real estate investigation by applying to the Directorate of Real Estate Registration in the absence of a disputant and if the area is unsurveyed^{xx}.

Thirdly: It is well established in procedural jurisprudence that **standing** to file a lawsuit means the relationship between the plaintiff and the right subject to the judicial claim. Therefore, a litigant who files an ownership claim must prove their relationship to the property they claim has been infringed upon by one of the legally authorized means of proving real estate ownership, pursuant to Article 29 of the Real Estate Guidance Law, which states: "Private ownership of real estate and real property rights shall be proved by an official contract subject to the rules of real estate registration."

Based on the above justifications, its proponents believe it is necessary to favor the opinion adopted by the administrative judiciary, in order to accelerate the formation of the real estate registry and the purification of ownership throughout the country.

At the same time, however, we see the need to accept claims brought by those who possess property with proper possession but without a title deed, and in an unsurveyed area. In such cases, the judge must verify this and issue a ruling on the dispute. This ruling will constitute future proof of ownership for the claimant after registration.

Here, we note the error of some judicial bodies that considered the reliance on acquisitive prescription contingent upon carrying out a registration contract, which is a substantive error due to the differing reasons and purposes of each legislation^{xxi}.

Given the preference for this approach, it is appropriate to discuss the legally recognized means of proving ownership to file an ownership claim, which may be as follows:

Section Two: Evaluation of the Ordinary Judiciary's Approach

Despite the validity of the Council of State's opinion and the strength of the justifications presented by its supporters, opponents have not accepted these justifications without criticism, and they directed several criticisms at them, including:

First: Demanding that the plaintiff provide proof as a condition for accepting an ownership claim—on the grounds that the Algerian legislator aims to ensure that owners without title deeds or even possessors obtain legal deeds to justify their possession of properties through legal texts—is not accurate in practice. This is because obtaining deeds is not always realized merely by the existence of legal texts and the will of possessors to regularize their status. Rather, it requires the presence of administrative and technical authorities capable materially and humanly of implementing those texts, which is lacking in many areas.

Second: While Article 15 of Order No. 75/74 confirmed that anyone claiming ownership of a property or any real property right must prove it by registration in the set of property cards, this registration, as explained by Professor Hamdi Bacha, can be accomplished by obtaining a judicial ruling that affirms the possessor's ownership based on acquisitive prescription if there is a disputant. In such a case, the claim is indeed an ownership claim because the ruling awards ownership^{xxii}. Therefore, it becomes the judge's duty to accept any claim brought by a possessor who claims real estate ownership once the registration requirement is fulfilled, even though possession remains merely a factual matter that does not in itself prove legal ownership.

Third: The disagreement between the two judiciaries is not about the standing (qualification) that the plaintiff must have, but rather about the nature of the proof itself. The Supreme Court views it as a substantive issue to be resolved through appropriate investigation, whereas the Council of State sees it as a procedural condition on which acceptance or rejection of the claim depends.

Despite these criticisms, we believe that the administrative judiciary's approach is more appropriate for several reasons:

- The existence of legal texts and the availability of material and human resources have made land surveying and contract drafting processes accessible to all and in all regions, so there is no justification for the Supreme Court's reluctance to generalize this.
- Requiring proof to file an ownership claim ensures the principle of speedy litigation by saving time and enabling courts to decide disputes with clarity and evidence.
- The established rule in this regard is: "Ignorance of the law is no excuse," especially given the efforts and resources—legal, material, and informational—that the Algerian state has devoted to raising awareness of the importance of real estate purification.
- Moreover, adopting the Council of State's opinion serves as an incentive for owners without deeds to document their ownership.

Section Three: Means of Proof for Private Real Estate Ownership

Since the prevailing opinion is that presenting evidence in a property entitlement claim is a necessary condition for its consideration, the means of proving private real estate ownership can be summarized as follows:

First Requirement: The Land Register

It is considered the sole proof of ownership after completing the land survey process^{xxiii}, according to the provisions of Article 19 of Order 75/74 dated 12/11/1975 concerning the preparation of the general land survey and the establishment of the land register^{xxiv}, as well as Articles 32 and 33 of Executive Decree 73/32 dated 05/01/1973 related to proving the right of private ownership^{xxv}. So, what is the land register, and what is its evidential value?

First Branch: Definition of the Land Register

The land register is the natural and official expression of the legal status of the property, deriving its essence from the survey documents. It is established based on property cards and is issued by the property registrar to the owner as proof of their rights.

Second Branch: Evidential Value of the Land Register

Under the land registration system, the land register is considered conclusive and the sole evidence after the survey in entitlement claims, including against a defendant who has possessed the land for a long time but cannot rely on acquisitive prescription (usucaption). This is because such reliance contradicts the absolute probative force of the register; possession, as a factual circumstance, cannot serve as stronger evidence than legal proof. On the other hand, this contradicts the objectives of both Order 75/74 mentioned above and Law 90/25 concerning land guidance.

Second Requirement: Official Documents Registered with the Property Registry

Official documents are those papers in which a public official or a person entrusted with a public service records^{xxvi} what has been done before them or what they have received from the concerned parties, in accordance with legal provisions and within the limits of their authority and jurisdiction^{xxvii}.

An official document is evidence against all people of the matters it contains that the recorder performed within their duties or that occurred in their presence from the concerned parties, unless forgery is proven by legally prescribed means^{xxviii}. These documents can be categorized as follows:

First Branch: Notarial Contracts

These are contracts drafted by a notary acting as a public officer authorized by the public authority to give them an official character. Such contracts do not produce their legal effects unless they have a registered original with the property registration office^{xxxix}. Examples of these contracts include the acknowledgment contract (contract of notoriety), sales contract, exchange contract, gift contract, will, and partition contract^{xxx}.

Second Branch: Administrative Documents

These are documents issued by the public administration in connection with the disposal of its real estate property in favor of others^{xxxi}. Examples include administrative contracts issued under Executive Decree No. 92/289 dated July 6, 1992, which sets the conditions for the concession of desert lands in reclamation areas. Also included are administrative contracts issued under Executive Decree No. 97/483 dated December 15, 1997, which determines the procedures for granting a concession right on a plot of land from the State's private national property in reclamation areas, along with its obligations and conditions.

Among the administrative documents related to proving ownership rights in private agricultural lands are ownership certificates, which are considered official documents recognizing the ownership right of the possessor in the absence of a document proving this right. These certificates remain valid until the general survey is conducted and replaced by land registers, which become the sole evidence proving private real estate ownership^{xxxii}. Such documents also include temporary numbering certificates valid for four months or temporary certificates valid for two years^{xxxiii}.

There are also possession certificates aimed at encouraging investment in agricultural lands, which differ from acknowledgment contracts that constitute immediate means of ownership^{xxxiv}. These certificates were introduced pursuant to Article 39 of Law 90/25 concerning land guidance, and Executive Decree No. 91/254 dated July 7, 1991, which regulates their preparation and issuance by the president of the municipal popular assembly^{xxxv}.

The property chamber of the court stated in its decision:

“Using acquisitive prescription as a means to prove ownership rights along with submitting a possession certificate issued according to Article 39 of the land guidance law later, does not constitute filing a possession claim; therefore, there is no violation of Article 418 of the Code of Civil Procedure^{xxxvi}.”

Also included are ownership deeds that replaced the acknowledgment contracts, which are issued based on acquisitive prescription (adverse possession) to a possessor without a deed in non-surveyed areas within the framework of the property investigation procedure, pursuant to Law 07/02 dated 27/02/2007, establishing a procedure for verifying real property ownership rights and issuing ownership deeds through a property investigation^{xxxvii}.

Third Branch: Judicial Documents

Final judgments issued by judicial authorities, once registered in certain cases, are considered official documents that replace ownership contracts concerning real estate ownership. These include^{xxxviii}:

First: Auction Confirmation Judgment

The judgment confirming the public auction after its publication constitutes a deed of ownership for the highest bidder^{xxxix}.

Second: Judgment Confirming a Promise to Sell Real Estate

Article 72 of the Algerian Civil Code provides that: "If a person promises to conclude a contract but then reneges and the other contracting party sues for enforcement of the promise, and the necessary conditions for the completion of the contract, especially those related to form, are met, then the judgment shall have the effect of the contract."

Third: Judgment Confirming the Validity of a Customary Contract

After the Algerian legislator adopted the system of real registration pursuant to Order 75/74 dated 12/11/1975^{xl}, concerning the preparation of the general land survey and the establishment of the land registry, it became mandatory for owners of these customary contracts—especially those without a fixed date—to resort to the courts to confirm their validity. This allows them to register these contracts with the property registry offices, thereby making them valid deeds of ownership^{xli}.

Fourth: Judgment for the Partition of Co-Owned Property

The law requires anyone wishing to withdraw from co-ownership, if they disagree with the other partners on the division of the common property, to file a lawsuit against them without exception^{xlii}, to obtain a judgment ordering the partition. This partition may be in kind if the property can be divided; it is conducted by drawing lots, and the court records this in its minutes and issues a judgment granting each partner their allotted share^{xliii}. This judgment constitutes the deed that proves ownership.

If a partition in kind is impossible or would significantly reduce the property's value, the property is sold by public auction. The bidding may be limited to the co-owners alone if they unanimously request this. In this case, the auction confirmation judgment constitutes the deed proving ownership^{xliv}.

Fifth: Judgment Confirming Ownership Based on Prescription (Acquisitive Prescription)

According to Articles 827 or 828 of the Civil Code, anyone who fulfills the conditions of possession may directly initiate an entitlement claim before the court having jurisdiction over the property if someone disputes their possession, to obtain a judgment confirming their ownership of the property.

Section Three: Customary Documents

Branch One: Definition of Customary Documents

Customary documents refer to any written paper prepared by ordinary parties without the intervention of official authorities. Article 327 of the Algerian Civil Code states: *"A customary contract is considered issued by the person who signed it unless they explicitly deny the handwriting or signature attributed to them. However, their heirs or successors are not required to deny it; it is sufficient that they swear an oath that they do not know that the handwriting or signature belongs to the person from whom they inherited this right."*

Branch Two: Proof of Private Property Ownership by Customary Documents

The plaintiff in an entitlement claim may invoke a customary contract against anyone disputing their ownership if the contract predates 01/01/1971; this is because it was issued under the French law that was applied in Algeria. Customary documents have gained official status without the need to resort to judicial authorities for their registration, as it suffices to go to a notary to draft a deposit contract that is then registered with the property registry.

Section Four: Possession

This section has two branches:

Branch One: Full Possession

This is the legal possession that has fulfilled the required prescription period, often referred to as long or short acquisitive prescription. This possession is a means—although not an easy one—to conclusively prove ownership. Once a possessor without title proves that they have possessed the property for the required period and that their possession meets legal conditions, their legal status changes from a mere possessor to a true owner, protected by law against others—even if the others are actual owners^{xlv}.

Branch Two: Incomplete Possession

This is the legal possession that has not fulfilled the required prescription period, whether short or long, and it is considered a legal presumption of ownership but not conclusive; it serves as evidence of ownership until proven otherwise. Article 823 of the Civil Code states:

"The possessor of a right is presumed to be the owner of that right until proven otherwise."

Conclusion

In conclusion, the main results reached from the foregoing can be summarized as follows:

1. There is agreement between the ordinary and administrative courts in considering proof in a property entitlement claim, in areas covered by the land survey process, as the tool on which the judge relies to base their judgment, and as a condition that must be met for the case to be considered.
2. There is disagreement between the ordinary and administrative courts regarding whether proof is a formal matter necessary for accepting or rejecting a property entitlement claim in areas not included in the land survey and where contracts have not been drafted. This disagreement splits into two trends:
 - One represented by the Real Estate Chamber of the Supreme Court, which holds that it is necessary to accept consideration of the entitlement claim from anyone claiming property ownership, even without providing any proof.
 - Another represented by the Council of State, which holds that it is not permissible to accept an entitlement claim from anyone claiming ownership unless they prove their ownership with a legal document.
3. (Note: The original text skips number 3 and goes to 4.)
4. The opinion favoring the necessity of requiring the plaintiff in a property entitlement claim to provide proof as a formal matter on which the acceptance or rejection of the claim depends is the stronger view, for the following reasons:
 - To accelerate the formation of the land registry and to clear up property ownership nationwide.
 - To embody the principle of speedy litigation by saving time and enabling the courts to decide the case with full awareness and evidence.
 - The established rule in this regard is that: "Ignorance of the law is no excuse," especially considering the efforts and legal, material, and informational means mobilized by the Algerian state to raise awareness of the importance of property purification.
 - Adopting the Council of State's opinion motivates owners without documents to formalize their ownership rights.

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- ^{vii} Ibid.
- ^{viii} See: Al-Sanhouri, op. cit., Vol. 8, p. 601.
- ^{ix} See: Article 529 of Law No. 09/08 dated 25/02/2008, comprising the Code of Civil and Administrative Procedure, *Official Gazette* dated 23/04/2008, No. 21.
- ^x Article 29 of the Land Orientation Law states: "Private ownership of real estate and real rights shall be proven by an official deed subject to land registration rules." Law No. 90/25 dated 18/11/1990, *Official Gazette* dated 18/11/1990, No. 49.
- ^{xi} The decree regulating vacant properties was repealed by Decree No. 80/278 dated 29/11/1980, *Official Gazette* dated 19/03/1963, No. 15.
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- ^{xiii} *Judicial Journal*, 1998, No. 01, p. 74.
- ^{xiv} See: Hamdi Basha Omar, previously cited work, pp. 130–131.
- ^{xv} See: Ibid., p. 131.
- ^{xvi} *Official Gazette*, No. 92, dated 18/11/1975.
- ^{xvii} See: Hamdi Basha Omar, previously cited work, p. 132.
- ^{xviii} Ibid.
- ^{xix} See: Supreme Court Ruling No. 180876 dated 30/09/1998, *Judicial Journal*, 1998, No. 02, p. 39.
- ^{xx} See: Hamdi Basha Omar, previously cited work, p. 132.
- ^{xxi} See: Reem Merahi, *The Role of Land Surveying in Proving Real Estate Ownership in Algerian Legislation*, Algeria: Baghdad Publications, p. 125.
- ^{xxii} *Official Gazette*, No. 92, dated 18/11/1975.
- ^{xxiii} *Official Gazette*, No. 15, dated 20/02/1973.
- ^{xxiv} The Algerian legislator referred to the official document or official paper in Article 324 of the Civil Code as the "official contract," which is an imprecise expression since official status applies to the document or paper, not the legal act itself. There is no such thing as an "official contract"; rather, there is an official document that contains the content of a legal act, which could be a contract or a unilateral act such as an acknowledgment of discharge.
— Seraich Zakaria, *Concise Rules of Evidence: A Study Supported by Islamic Jurisprudence*, Algiers: Houma Publishing, 2015, pp. 56–57.
- ^{xxv} See: Al-Sanhouri, op. cit., Vol. 2, p. 111; and Article 324 of the Civil Code.
- ^{xxvi} See: Al-Sanhouri, op. cit., pp. 144–145.
- ^{xxvii} See: Article 3 of Law No. 06/02 dated 20/02/2006, regulating the notary profession, *Official Gazette*, dated 08/03/2006, No. 14.
- ^{xxviii} See: Decree No. 352/83 dated 21/05/1983, regarding proof of acquisitive prescription and preparation of the notoriety deed recognizing ownership, repealed by Law No. 02/07 dated 27/02/2007 establishing procedures for verifying property rights and issuing title deeds through land investigations. *Official Gazette* dated 24/05/1980, No. 21.
- ^{xxix} Hamdi Basha Omar, previously cited work, p. 45.
- ^{xxx} These certificates are issued under the conditions and procedures defined by Decree No. 73/32 dated 05/01/1973, relating to proof of private property rights. *Official Gazette*, dated 20/02/1973, No. 15.
- ^{xxxi} See: Instruction No. 16 dated 24 May 1998, issued by the General Directorate of National Property concerning the conduct of land surveying and property registration operations.
- ^{xxxii} See: Mahmoudi Abdelaziz, *Mechanisms for Purification and Settlement of Private Real Estate Ownership Deeds in Algerian Legislation*, 2nd ed., Algiers: Baghdad Publications, 2010, p. 163.
- ^{xxxiii} *Official Gazette*, dated 31/01/1991, No. 36.
- ^{xxxiv} Ruling No. 200373 dated 26/07/2000, *Judicial Jurisprudence Journal of the Real Estate Chamber*, Vol. 2, p. 347 et seq.
- ^{xxxv} *Official Gazette*, dated 28/02/2007, No. 15.
- ^{xxxvi} *Official Gazette*, dated 31/01/1991, No. 36.
- ^{xxxvii} Hamdi Basha Omar, previously cited work, p. 45.
- ^{xxxviii} See: Hamdi Basha Omar, previously cited work, p. 69.
- ^{xxxix} See: Article 762 of the Code of Civil and Administrative Procedure.
- ^{xl} *Official Gazette*, No. 92, dated 18/11/1975.
- ^{xli} According to Executive Decree No. 93/123 dated 19/05/1993, amending and supplementing Decrees No. 63/76 and No. 80/210 related to the establishment of the Real Estate Register. *Official Gazette*, No. 34, dated 23/05/1993.
- ^{xlii} See: Article 724 of the Civil Code, and Ruling No. 47222 of the Real Estate Chamber of the Supreme Court dated 27/12/1988, *Judicial Journal*, 1990, No. 02, p. 26.
- ^{xliii} See: Article 727 of the Civil Code.
- ^{xliv} See: Article 728 of the same Code.

^{xlv} See: Al-Sanhouri, op. cit., Vol. 8, pp. 603–604; and Mohamed Laâchache, Legal Protection of Private Real Estate Ownership in Algeria, Doctoral Thesis in Law, Mouloud Mammeri University, Faculty of Law and Political Science, 2016, p. 233.

Decrees

1. Decree No. 73/32 dated 05/01/1973, concerning the proof of private property ownership. *Official Gazette*, dated 20/02/1973, No. 15.
2. Decree regulating vacant property, repealed by Decree No. 80/278 dated 29/11/1980. *Official Gazette*, dated 19/03/1963, No. 15.
3. Decree No. 352/83 dated 21/05/1983, concerning the proof of acquisitive prescription and preparation of the notoriety deed recognizing ownership, repealed by Law No. 02/07 dated 27/02/2007, which establishes procedures for verifying real estate ownership and issuing title deeds through land investigation. *Official Gazette*, dated 24/05/1980, No. 21.
4. Executive Decree No. 91/254 dated 07/07/1991, on the procedures for preparing and issuing [documents] by the President of the Municipal People's Assembly. *Official Gazette*, dated 31/01/1991, No. 36.
5. Executive Decree No. 93/123 dated 19/05/1993, amending and supplementing Decrees No. 63/76 and No. 80/210, related to the establishment of the Real Estate Register. *Official Gazette*, No. 34, dated 23/05/1993.

Instructions

6. Instruction No. 16 dated 24 May 1998, issued by the General Directorate of National Property, concerning the conduct of land survey and real estate registration operations.

Judicial Decisions

7. Ruling of the Real Estate Chamber of the Supreme Court No. 47222 dated 27/12/1988, *Judicial Journal*, 1990, No. 02.
8. Ruling of the Real Estate Chamber of the Supreme Court No. 150865 dated 25/02/1998, *Judicial Journal*, 1998, No. 01.
9. Ruling No. 180876 dated 30/09/1998, *Judicial Journal*, 1998, No. 02.
10. Ruling of the Supreme Court No. 180020 dated 13/07/1999, *Judicial Journal*, 1999, No. 01.
11. Ruling of the Supreme Court No. 146425 dated 07/01/1997, *Judicial Case Law Journal*, Commercial and Maritime Chamber, Special Issue, 1999.
Ruling of the Real Estate Chamber of the Supreme Court No. 200373 dated 26/07/2000, *Judicial Case Law Journal of the Real Estate Chamber*, 2004.