



THE ROLE OF THE JUDGE IN ESTABLISHING PRIVATE REAL ESTATE OWNERSHIP UNDER ALGERIAN LAW

Dr. Salah SAIDI *

Faculty of Law, Saïd Hamdine, University of Algiers1- Algeria

s.saidi@univ-alger.dz

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Abstract:

This research paper highlights the pivotal role of the judge in establishing private real estate ownership within the Algerian legal system. The judge is bound by rules of public order that govern the creation, protection, and transfer of this right. He does not enjoy absolute freedom in evaluating evidence but is instead constrained by specific legal procedures aimed at balancing the protection of property with the safeguarding of rights.

This framework has contributed to stabilizing judicial interpretations after a period of hesitation and inconsistency.

The judge's role is particularly evident in weighing the evidence presented before him, as he must adhere strictly to the binding legal texts that govern the proof of private property ownership, without exceeding their limits. Algerian legislation lays down clear rules that prevent unrestricted judicial discretion, thereby reinforcing trust in judicial decisions and emphasizing the importance of legal adherence in ensuring the rights of all parties involved in real estate matters.

Keywords: judge, private real estate ownership, proof

Introduction:

Private real estate ownership is considered one of the most significant original property rights guaranteed by law and enshrined in the Algerian Constitution. It serves as a fundamental pillar for achieving social stability and economic development, as well as being a vital source of wealth and investment-particularly in light of the State's orientation toward encouraging real estate projects and private investments.

The Algerian legislator has attached great importance to the regulation of this form of ownership, surrounding it with a set of

*Dr. Salah SAIDI



constitutional and legal safeguards. Among these are the explicit guarantees of its protection and the prohibition of any infringement upon it, except in accordance with the law and for reasons of public interest, with the obligation of fair and equitable compensation. Moreover, the legal framework governing private real estate ownership has been codified through civil legislation, land orientation laws, and specific statutes designed to define its nature, the foundations of its possession, and the legal mechanisms governing its transfer and disposition—particularly with regard to proof of ownership (Rabiha Al-Ghat, 2013, p. 181).

However, the proof of private real estate ownership is considered one of the most complex issues in the field of property law, due to its direct connection with legal and transactional security—particularly since Algerian property legislation, most notably the Civil Code and the Land Orientation Law, requires strict formalities in real estate transactions. The absence of formal proof renders transactions void, undermines confidence in real estate dealings, and exposes parties to significant legal risks.

In this context, the following research question arises :

To what extent has the Algerian legislator succeeded in reconciling the protection of private real estate ownership with the requirement of formal proof ?

To address this issue, the study is divided into two main sections

- Section I : The Concept of Private Real Estate Ownership
- Section II : The Role of the Judiciary in Reconciling the Protection of Property Rights with the Requirements of Proof

The discussion will unfold as follows:

Section I : The Concept of Private Real Estate Ownership

Private real estate ownership represents the legal framework that grants an individual full legal authority over property, enabling the owner to use, enjoy, and dispose of it in accordance with the provisions established by law.

1.The Right of Use (Usus):

This right allows the owner to utilize the property for any purpose consistent with its nature and intended function. For example, the owner of agricultural land has the right to cultivate it and benefit

from its produce, while the owner of a residential property may occupy it and reside therein.

2. The Right of Enjoyment (Fructus):

This refers to the right to obtain the fruits or benefits generated by the property. These fruits may be material or civil :

- Material fruits are the products derived periodically from the property without impairing its substance, such as natural fruits (e.g., animal offspring) and industrial fruits (e.g., crops produced through human labor).

- Civil fruits refer to monetary income obtained from allowing others to use the property, such as rent from leasing real estate, or interest and dividends from financial assets.

3. The Right of Disposal (Abusus):

This entails the owner's power to dispose of the property either physically or legally.

- Physical disposal means consuming, destroying, or substantially transforming the property.

- Legal disposal involves transferring ownership to another party, such as through sale or donation. In this case, ownership passes from one person to another, making disposal the principal cause of ownership transfer.

The owner may also grant another person the right of usufruct, thereby transferring the powers of use and enjoyment while retaining the right of disposal, thus remaining the bare owner (propriétaire de la nue-propriété).

These three powers—use, enjoyment, and disposal—constitute the core elements of ownership. When they are held by a single person, ownership is said to be complete. However, only the right of disposal distinguishes ownership from other real rights, as the rights of use and enjoyment can be granted to others while ownership of the substance remains with the original owner.

It should also be noted that ownership is no longer considered an absolute right conferring unrestricted authority. Once regarded as sacred and inviolable, ownership has evolved into a social function, subject to both public and private limitations designed to protect the collective interest.



One of the most significant legal restrictions on ownership is enshrined in Article 677 of the Algerian Civil Code, which provides:

“No one may be deprived of ownership except in cases and under the conditions provided by law. However, the administration has the right to expropriate all or part of real estate ownership or real property rights for public utility, in return for fair and equitable compensation.”

Throughout history, property ownership has constituted the cornerstone of economic and social structures, playing a vital role in ensuring transactional stability, regulating relationships among individuals, and facilitating investment and urban development.

Accordingly, there arises a pressing need to clarify the doctrinal and legal concept of private real estate ownership as the essential foundation for understanding its legal nature and distinguishing it from other rights, whether real or personal.

Subsection I : Definition of Private Real Estate Ownership

The definition of private real estate ownership corresponds to the general definition of ownership provided under Article 674 of the Algerian Civil Code. In this regard, Article 27 of the Land Orientation Law stipulates that:

“Private real estate ownership is the right to enjoy and dispose of immovable property and/or real rights for the purpose of using such property, selling it, or encumbering it.” (Abdallah, 2019, p. 47)

It is noted that the Algerian legislator, whether in the Civil Code or in the Land Orientation Law, has defined ownership in general and real estate ownership in particular by referring to the elements of ownership represented in the right of enjoyment and the right of disposal. The legislator has combined the rights of exploitation and use within the comprehensive right of enjoyment and has formulated the legal provision with precision.

In principle, the right of real estate ownership is an absolute right vested in its holder, unless there is a clear legal provision that limits or restricts this right. Accordingly, Georges N. Chédrawi considers that the right of real estate ownership:

“Grants its holder the widest powers over the property, and these powers may be restricted, as a rule, only by a legal provision that must be interpreted and applied narrowly, since it constitutes an exception

to the general principle of the owner's freedom to deal with his property." (Georges N. Shadrawi, 1995, p. 45)

Subsection II : Characteristics of Private Real Estate Ownership

Private real estate ownership is one of the most prominent forms of ownership recognized by law, representing the most stable expression of a real right over immovable property, given its direct impact on securing rights and ensuring the freedom to dispose of property within the limits permitted by law. This form of ownership constitutes the foundation upon which numerous legal and economic transactions are based, particularly in the fields of real estate investment, bank financing, and urban planning. (Massoud, 2017, p. 32)

The Algerian legislator has paid particular attention to regulating this form of ownership within a precise legal framework that seeks to strike a balance between the individual's freedom of disposition and the necessity of protecting the public interest. This has been achieved through its subjection to the provisions of the Civil Code, the Land Orientation Law, and the laws governing notarization and property registration. To understand the nature of this right and distinguish it from other rights, it is essential to examine the fundamental characteristics that define private real estate ownership.

Branch I: Private Real Estate Ownership as a Comprehensive Right

Through the powers granted to the owner, it becomes evident that the rights of enjoyment, exploitation, and disposal of private real property are comprehensive in nature, encompassing all the prerogatives and authorities vested in ownership, unless a specific provision restricts some of these powers.

This feature—the comprehensiveness of powers—constitutes a distinguishing element not found in other real rights. Accordingly, legal scholars emphasize that the essence of private real estate ownership lies in freedom and absoluteness, meaning that the owner enjoys complete liberty to dispose of their property.

This concept was expressly affirmed by the French legislator in Article 544 of the Civil Code, which defines ownership in absolute and general terms. Likewise, Dr. Al-Sanhouri described ownership as



“comprehensive,” meaning that it is free from any restrictions except those expressly imposed by law.

Branch II : Private Real Estate Ownership as an Exclusive Right

The owner alone enjoys the right to exclusively benefit from and control the advantages and utilities of the owned property. No one else has authority over the property or the right to use it, nor may anyone share in these benefits unless they are a co-owner in common, an occupant, or a usufructuary acting with the owner’s consent.

This exclusivity ensures the autonomy and inviolability of ownership, reinforcing the principle that the owner’s rights prevail over any third-party claims except as expressly provided by law.

Branch III : Private Real Estate Ownership as a Perpetual Right

Once property is classified as private ownership, this characteristic remains inseparable from it, whether the original owner retains the right or transfers it to another person. As such, ownership in itself—abstracted from the person of the owner—is perpetual, meaning that the right continues to exist over the property despite the transfer of ownership; only the identity of the owner changes. The right ceases to exist only upon the destruction or extinction of the property itself.

Accordingly, the right of private ownership is permanent and enduring, giving rise to the following implications : (El-Chazli, 2018, p. 51)

- The right of ownership does not lapse through non-use. In principle, the owner is free to use or not to use their property, regardless of the duration, unless a specific legal provision prohibits such non-use. Neglecting to use the property does not result in the loss of ownership; rather, ownership may be lost only if another person acquires possession of the property and meets the conditions of acquisitive prescription.

- While a personal right is a temporary right that expires upon the occurrence of legal causes of extinction, the right of ownership is perpetual as long as the property itself exists. If ownership is transferred to another person, the right continues to exist through that transfer, thereby retaining its permanent nature.

Section II : The Role of the Judiciary in Reconciling the Protection of Property Rights with the Requirements of Proof

The legal debate concerning the rules of evidence and their relationship to public order is confined to a narrow scope when addressing private real estate ownership, since such ownership is governed by mandatory provisions enacted by the legislator, making it an inseparable part of public order, both substantively and procedurally. These rules are embodied in the Civil Code and other related statutes, and the parties are not permitted to deviate from them by mutual agreement.

In this context, both the judge and all parties involved in real estate disputes are required to strictly adhere to these rules, without resorting to any interpretation or discretionary reasoning beyond what is explicitly prescribed by law. The legislator has clearly and rigidly defined the means of proof and their legal force, thereby limiting judicial discretion in this field.

Consequently, the role of the judge is confined to weighing the evidence presented before the court, without interpreting or extending the scope of the statutory provisions. This approach reinforces the mandatory nature of real estate evidentiary rules, ensuring consistency, legal certainty, and protection of property rights within the Algerian legal system. (Draïji, 2021, p. 60)

Subsection I : The Legal and Regulatory Framework of Private Real Estate Ownership

The Algerian legislator has enshrined the right of private real estate ownership and recognized it as a constitutionally guaranteed right. Article 49 of the 1989 (Constitution of February 23) Constitution stipulates that : “Private property is guaranteed; the right of inheritance is guaranteed; endowment property and the property of charitable associations are recognized, and the law shall protect their designated purposes.”

The same principle was reaffirmed and further consolidated in Article 52 of the 1996 (Constitution of November 28) Constitution, thereby reinforcing the constitutional protection of private real estate ownership as a fundamental right safeguarded by Algerian law. 1996

In addition to this constitutional guarantee, private real estate ownership has also been granted a set of legal safeguards established



under specific legislation, foremost among them the Land Orientation Law, which provides in Article 28 that:

“Private ownership of real estate property and real property rights is guaranteed by the Constitution and is governed by the provisions of Ordinance No. 75-58 of September 26, 1975.”

Furthermore, Article 674 of the Algerian Civil Code (Ordinance No. 75-58 of September 26, 1975) addresses this right, stating that :

To define the right of ownership, it states :

“... the right to enjoy and dispose of things, provided that they are not used in a manner prohibited by laws and regulations.”

This same concept is also embodied in Article 27 of the Land Orientation Law (Law No. 90-25 of 18 November 1990), which reaffirms and clarifies the scope of the right of private real estate ownership within the Algerian legal framework which enshrines the same substance of the right to own, use, and dispose of property, within the limits permitted by law. (Abdallah, 2019, p. 50)

Within the framework of regulating real estate ownership, the Algerian legislator has intervened through several legal instruments aimed at defining, protecting, and establishing the legal rules governing this right. These rules serve as the foundation upon which the system of property ownership is built and as a guarantee for achieving its intended objectives, particularly in the areas of encouraging and financing economic projects. (El-Chazli, 2018, p. 58)

No one can deny the vital role played by real estate ownership, particularly in the field of investment, in addition to its significant contribution to the development of what is known as mortgage lending, which in turn requires the availability of real estate assets serving as the basis upon which such loans are granted to applicants. Indeed, real estate constitutes a fundamental element in this financial process.

The Algerian legislator has intervened in the regulation of private real estate ownership by imposing formal requirements as an essential condition for the proof of legal transactions related to real property. This approach dates back to the enactment of the law governing the notarial profession, which entered into force on January 1, 1971. (Algerian Notarial Law, 1971)

Article 12 of that law expressly provides that:

"In addition to the contracts that the law explicitly requires to be in an official form, any contract involving the transfer of ownership of real property or real rights in rem, or commercial or industrial establishments, or any element thereof, as well as the assignment of shares in a company or part thereof, or agricultural and commercial lease contracts, or contracts for the management of commercial premises or industrial enterprises, must — under penalty of nullity — be drawn up in official form, with the payment of the price made before a notary.

Pursuant to this provision, all deeds executed after the entry into force of this law, the object of which is the transfer of real estate ownership or the creation of real rights in rem, must be drafted in official form, otherwise they will be subject to absolute nullity.

Subsection 2: The Judge's Role in Proving Private Land Ownership — Between Legal Duty and Statutory Limitation

The legislator reaffirmed this same principle through Article 324 bis 1 of the Civil Code, which emphasizes the necessity of official formality in real estate transactions. The Land Orientation Act further reinforced this obligation in Article 29, which provides that:. (Fatma Zahra Ben Abdallah, 2018, p. 39)

Accordingly, the judge has no authority other than to verify the existence of a duly registered official deed when examining any case related to real estate ownership. If either of these two conditions is lacking, the claim must be dismissed, as there is no legal evidence supporting the asserted right. In such circumstances, the judge has no discretionary power to consider any other means of proof. (Bouchnafa Mohamed, 2018, pp. 134–136)

In the event of a judicial dispute concerning private real estate ownership, and in accordance with the procedures established by the Code of Civil and Administrative Procedure, the judge issues a judgment or decision that may include confirmation of the validity of the contract, approval of partition, confirmation of a public auction, recognition of the right of pre-emption (shuf'a), or other legal determinations.

Article 284 of the Code of Civil and Administrative Procedure stipulates that a judicial judgment carries the same evidentiary force as an official deed, subject to the provisions of Article 283.



Accordingly, such a judgment or judicial decision constitutes a title of ownership, drawn up and signed by a competent judge in the course of adjudicating a specific dispute, thereby conferring upon it the character of authenticity and legal authority. In this context, the judge is considered among the persons authorized to issue property titles, within the limits of his jurisdiction and powers as prescribed by law.

This restriction imposed by the legislator on the judge aims to protect the stability of real estate transactions and ensure transparency and publicity in the transfer of property rights, while reducing opportunities for manipulation or disputes concerning such rights.

Conclusion:

At the conclusion of this research paper, we present the key findings we have reached, as outlined below:

- Given the crucial importance of real estate ownership, whether as a means of generating and safeguarding wealth or as a pillar of national development, the current legal framework governing private real estate ownership in Algeria requires a comprehensive and in-depth revision.
- The rules of evidence contained in Book II, Title VI of the Algerian Civil Code focus primarily on the proof of obligations, without clearly addressing the proof of real rights, particularly real estate ownership.
- Accordingly, two options are available to the legislator:
- Either amend the title of Title VI to become “Proof of Rights” instead of “Proof of Obligations,” and introduce new provisions encompassing both real and personal rights; or
- Establish a new title specifically dedicated to “Real Estate Evidence”, setting out the legal means of proving real estate ownership.
- In the absence of a comprehensive and coherent legal framework regulating the proof of private real estate ownership, judicial interpretation becomes an indispensable tool to fill legal gaps and achieve equity between litigants, particularly in cases where one party lacks “superior evidence” (i.e., a complete official deed).
- There is no dispute regarding the conclusive evidentiary value of properly executed official deeds in proving private real estate

ownership. However, in cases where such deeds are unavailable, judges should be granted broader powers to assess other types of evidence, especially circumstantial evidence, which may be sufficient to establish judicial conviction of the existence of ownership rights.

- This approach takes into account the historical context of property rights in Algeria, which suffered distortion and confiscation during the colonial period, thereby justifying a more flexible interpretation of evidence beyond the formal written framework.
- Recommendations:
- Based on the foregoing analysis, and in light of the findings of this research, we propose the following recommendations to address the shortcomings in Algerian legislation and improve legislative policy in this domain:
- Conduct a comprehensive and systematic review of the evidentiary provisions in the Algerian Civil Code-particularly in Book II, Title VI-to explicitly include the means of proving real and real estate rights, not only obligations.
- Amend or supplement existing legal provisions-either by modifying the title of Title VI to “Proof of Rights” instead of “Proof of Obligations” and adding new articles addressing real rights, or by creating a new section titled “Real Estate Evidence” that clearly defines the accepted legal methods for proving private real estate ownership.
- Grant judges broader discretion to consider non-formal evidence, such as presumptions and circumstantial evidence, in cases where complete official deeds are unavailable, while maintaining transparency and protecting legal rights.
- Promote judicial reasoning (ijtihad) as a flexible tool to fill legislative gaps and achieve justice, especially in real estate ownership cases that suffer from a lack of formal documentation due to Algeria’s colonial legacy and historical distortions.
- Establish legal mechanisms to protect and restore real property rights that were distorted or confiscated during the colonial period, thereby strengthening confidence in the legal system and fostering economic and social development.



- Develop training programs for judges to familiarize them with diverse evidentiary mechanisms and the importance of considering non-formal evidence, ensuring fair and realistic application of the law.
- Encourage property owners to formally document their rights through awareness campaigns and legal incentives, reducing future legal disputes and enhancing legal security.

List of sources and references :

Books :

- Abdallah, A. B. (2019). The Land Orientation Law and Its Impact on the Regulation of Real Estate Ownership. Algiers: Dar Al-Nahda Al-Arabiya.
- El-Chazli, M. (2018). Real Estate Ownership in Algerian Legislation: A Comparative Study. Dar Al-Nahda Al-Arabiya.
- Fatma Zahra Ben Abdallah. (2018). Private Ownership in the Algerian Civil Law. Algiers: PhD Dissertation.
- Georges N. Shadrawi. (1995). Real Estate Ownership and Property Rights. (Dar Al-Nahda Al-Arabiya, Éd.) Beirut.
- Massoud, M. E. (2017). Private Real Estate Ownership in the Algerian Civil Law. Algiers: Dar Al-Fikr Al-Jami'i.
- Bouchnafa Mohamed. (2018). Proof of Real Estate Ownership in Algerian Legislation. Algiers: Dar Houma

Journal Articles:

- Rabiha Al-Ghat. (2013). "Real Estate Ownership under Algerian Legislation. Algerian Journal of Legal and Political Sciences, 10(5), p. 181.
- Drajji, -A. (2021). Proof of Private Real Estate Ownership in Light of Legislation and Judicial Interpretation. , Al-Bahith Journa, 12(1).

Legal Text :

- Constitution of 23 February 1989, issued by Presidential Decree No. 89-18 of 28 February 1989, concerning the publication of the constitutional amendment approved by referendum on 23 February 1989, Official Gazette of the People's Democratic Republic of Algeria, No. 09, 1 March 1989..
- Constitution of 28 November 1996, issued by Presidential Decree No. 96-438 of 7 December 1996, concerning the promulgation of the constitutional amendment approved by referendum on 28 November 1996, Official Gazette, No. 76, 7 December 1996, as amended and supplemented..
- Algerian Notarial Law. (1971). enacted by Ordinance No. 71-02 of 1 January 1971).
- Law No. 90-25 of 18 November 1990. (1990, November 18). Official Journal of the People's Democratic Republic of Algeria.
- Ordinance No. 75-58 of September 26, 1. (1975, Septembe 30). containing the Civil Code. (78). as amended and supplemented, Official Gazette of the People's Democratic Republic of Algeria.