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Law of Trust and the Beneficial Interest in Matrimonial Property

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ABSTRACT

Beneficial interest at home is a very fundamental element of a marriage institution. When a couple ties the knot, wanting to spend the rest of their lives together, such relationship will give rise to many implications, be it legal or social. Such legal implications will continue throughout their lives not only as husband and wife, but will also become more apparent if the union between these two is broken. Hence, issues relating to distribution of property, especially matrimonial property, need to be handled as subtle as possible, alongside other ancillary claims such as maintenance and custody. The existence of both legal and beneficial interests in a property has enabled the court to resolve claims relating to ownership by looking at the existence of common intention to share beneficial ownership. Thus, this article examines the ways on how the court has utilized the concept of trust in dealing with disputed issues on matrimonial property. The study adopted a qualitative methodology where data were collected through library research. It analysed statutes, books, journals, reports, conference proceedings and other periodicals. The study concludes that the use of law of trust in the distribution of matrimonial property has become obvious since trust will be the best option to be used in resolving matters relating to any disputed property.

Keywords: Beneficial interest, common intention, matrimonial property, property, trust

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INTRODUCTION

Trust is a very unique creation. It is said to be one of the best creations of English jurists as it covers both legal rights and equitable rights. Despite the fact that Malaysia does not have a specific statute on trust, this has not been an obstacle for the law to develop with a wider coverage. There are many definitions of trust and although Malaysia has no single statute governing the law of trust, the law developed and to some extent, the principles of English law of trust are fully adopted. (George, 1999) This development has led to the recognition of new circumstances that may give rise to the creation of trust. Many terms have been created in order to give recognition to trust in relation to matrimonial property which is known as "beneficial interest in the family home" (Ramjohn, 2019).

Although married couples have had their legislated rights as to how their interests in the matrimonial home or house are determined upon separation or divorce, that does not mean that trust mechanisms should only be confined to those without legislated rights. There are situations where the court is more than willing to decide on the distribution of property involving a married couple. The ever-famous maxim of equity which looks into intent rather than forms has been regularly observed in order for the court to uphold the existence of trust based on the existence of intention (Ramjohn, 2019). Even by looking at an express declaration of trust, the court is often faced with legal rules which are uncertain and difficultto apply and sometimes being put in a state of uncertainties.

It was not until 1990 when Lord Bridge of the House of *Lord in Llyods Bank plc v Rosset* [1991] 1 AC 107, where through his judgment, two types of cases relating to distribution of property between couples were clearly distinguished. The first type is where there is an agreement, arrangement or understanding that the property is to be shared beneficially and secondly, where there is no evidence of any agreement and thus it is independently of the conduct of the parties. These are among the rules adopted by the court in recognizing the rights of a couple when the argument revolves around the distribution of property. This practice has led to the application of two trusts namely, the resulting and constructive trust in matters dealing with beneficial interest in the family home. The discussion revolves around the mechanisms adopted by the courts in Malaysia when dealing with the similar subject matter.

METHODS

This paper describes the application of trust concept used by the court in dealing with distribution of assets or interest in matrimonial homes by exploring cases decided by the courts in England and Malaysia, The methods used was analysing provision in relevant statutes and decision of the courts and compared it with the situation both under civil and Syariah laws.

DEFINITION OF MATRIMONIAL PROPERTY

There is no statute in Malaysia which defines the term 'matrimonial property'.

No definition can even be found in the *Married Women Act 1957 (Revised 1990)* although it is the main statute dealing with married women's property. The *Law Reform (Marriage and Divorce) Act 1976* (the "LRA") is also silent on this and this failure has led to uncertainty indeciding what should and should not be included in the definition, though it is very pertinentfor the parties to know what matrimonial property is, before making any claim for its division. Although no definition can be found in the acts, a study of case law demonstrates that it comprises *inter alia*, matrimonial home and everything put into it by either spouse to be used jointly and severally for the benefit of the family as a whole; all landed properties acquired during the marriage apart from the matrimonial home; cars, cash in bank accounts, jewellery, shares in companies including the family business(es) and even club memberships if acquired during the marriage. (Division of Matrimonial Assets: https://www.mondaq.com/divorce/467070/division-•of-•matrimonial-•assets).

In the case of *Ching Seng Woah v. Lim Shook Lin* [1997] 1 MLJ 109*,* the court held that above definition clearly showed that matrimonial property should cover anything that was acquired during the marriage. The matrimonial home (even if acquired before the marriage)and everything which is put into it by either spouse is considered a matrimonial property. This includes the purchase of kitchen cabinets, furniture and so on, payment of servant's/maid's salary, keeping, maintaining, and servicing the house as a going concern. Similarly, the earning power of each spouse is also an asset although its division may lead to another dispute especially in term of its quantification (Ibrahim et al., 2014).

The above finding corresponds to the decision of Lord Denning in the case of Wachtel v. Wachtel [1973] Fam. 72 where matrimonial assets should refer to those things which were acquired by one or the other or both of the parties. This must be coupled with the intention that it should be a continuing provision for them and their children during their joint lives and used for the benefit of the family as a whole. Additionally, the judge dividedthe matrimonial assets into two parts that was the assets "of a capital nature" such as the matrimonial home and its furniture while the other one was a "revenue producing nature" which includes the earning power of husband and wife. In another English case of Pettit v Pettit [1970] AC 777, Lord Diplock deliberated that matrimonial property or family assets meant "property whether real or personal, which has been acquired by either spouse in contemplation of their marriage or during its subsistence and was intended for the common use and enjoyment of both spouses or their children". The cases obviously demonstrate that the English courts by using the word "family assets", describe matrimonial property as property in which both spouses should have some interest in, either because of the way in which it was acquired or because of the manner in which it was used (English Law Commission (Family Property Law), 1971).

Meanwhile, matrimonial property for the Muslims is called "*harta sepencarian*". Section 2 of the *Islamic Family Law (Federal Territories) Act 1984* (the "IFLA") defines it as acquired by husband and wife during the subsistence of marriage in accordance with the conditions stipulated by Hukum Syarak". The judicial decisions explained that *harta sepencarian* refers to any property acquired during marriage in which both parties contributed to its acquisition. Briggs J, in the old case Hajah Lijah binti Jamal v. Fatimah binti Mad Diah [1930] 16 MLJ 63*,* defined *harta sepencarian* as "property acquired during the subsistence of their marriage by a husband and wife out of their resources or by their joint efforts. It also extended to the enhancement of value by reason of cultivation or development." In pursuant to that, there was no reason for the wife, being a lawful widow, not to get one-half of the property bought originally from savings which accumulated from a piece of land inherited from her parents, although it was registered in the name of the deceased husband.

The definition of *harta sepencarian* can be found also in other cases like the case *Yang Chik v Abdul Jamal* [1985] 6 JH. 146 and the case of *Piah binti Said v Che Lah bin Awang* (1983) 3 JH. 220). In the former case, the learned Kadhi defined *harta sepencarian* as a property that was acquired during the marriage with both husband and wife contributing by the joint efforts or money to acquire the property while the latter case illustrated that *harta sepencarian* was not only confined to both of the spouses' efforts in acquiring the property, but extended further to cover their contribution whether formal or informal that would arise in cases where the parties were either employed in similar occupations or otherwise.

Harta sepencarian basically refers to any property which is acquired during marriage, either by joint or sole effort of the parties as long as there is a contribution either directly or indirectly by the party who does not acquire the property (Ibrahim & Abdul Ghadas, 2017). It is based upon the "recognition of the part played by a divorced spouse in the acquisition of the relevant property and improvement done to it (in cases where it was acquired by the sole effort of one spouse). It is due to this joint effort or labour that a divorced spouse is entitled to a share in the property acquired (during coverture). As long as the claimant has assisted in the working of it, the law presumes that the property was *harta sepencarian* and it therefore falls on the other spouse who denies the claim to rebut the presumption" (*Piah binti Said v Che Lah bin Awang* (1983) 3 JH. 220).

Thus, although typically the claim on *harta sepencarian* involves the matrimonial house, land and animals that used to work on the land, the form has developed as to include moveable and immovable property like household goods and furnishing, in line with the lifestyle and the purchasing power of society (Majid, 1999). It may also include other properties such as joint bank accounts, compensation paid for land acquired by the government (*Rokiah bte Haji Abdul Jalil v. Mohammad Idris bin Shamsuddin* (1410)

JH 111; [1989] 3 MLJ ix; *Kamariah v. Mansjur* (1986) 6 JH 301), shares registered in the name of either spouse (*Noor Jahan bt. Abdul Wahab v. Md Yusuff bin Amanshah* [1994] 1 MLJ 156), as well as business assets which have been acquired during marriage (*Tengku Anun Zaharah v. Dato' Dr. Hussein* [1980] 3 JH 12).

THE LAW ON MATRIMONIAL PROPERTY IN MALAYSIA

Family matters in Malaysia are governed by two separate laws, namely civil laws for non-Muslims and Syariah laws for Muslims. The law governing the division of matrimonial property of the non-Muslims is the LRA which is enforced throughout Malaysia since 1st March 1982 (PU (B) 73/1982). Its Long Title provides for monogamous marriages, solemnization and registration of such marriages, amendment and consolidation of the law relating to divorce and matters incidental thereto. The division of matrimonial property is specifically dealt with in section 76 of the LRA. The LRA generally applies not only to all non-Muslims in Malaysia but also to those residents outside Malaysia whose domiciles are in Malaysia (Section 3 of the LRA).

On the other hand, the Muslims are governed by their respective Islamic Family Law Acts and Enactments in their states. However, for the purpose of this article, reference is made only to the IFLA, being the model followed by many other states in Malaysia.

Law Reform (Marriage and Divorce) Act 1976

Section 76 of the LRA deals with the power of the court to order the division of matrimonial assets acquired during the marriage upon granting a decree of divorce or judicial separation. Basically, it requires the court to consider the contributions of the parties in the form of money , property or work towards the acquiring of the assets or payment of expenses for the benefit of the family (Section 76 (2)(a) of the LRA). In addition, the court will also take into consideration the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring for the family (Section 76(2)(aa) of the LRA). Several other factors that are also included are the participation of the spouse in looking after the home or the family, the payment of expenses for the benefit of the household, the duration of the marriage, the debts contracted for the parties' joint benefit, and the needs of minor children. Subject to these factors, the court will divide the property equally between the divorcing spouses (Section 76(2)(b)(c)(d) of the LRA). Hence, section 76(5) of the LRA further elaborates that for the purposes of this section, assets acquired during a marriage includes assets owned before the marriage by one party as well. Nevertheless, it is subject to the condition that the claimed property must be substantially improved during the marriage by the other party or by their joint effort.

Islamic Family Law (Federal Territories) Act 1984

Section 122 of the *Islamic Family Law (Federal Territories) Act 1984* empowered the Syariah Court, when permitting the pronouncement of talaq or when making an order of divorce, to order any assets acquired by the parties during the marriage (harta sepencarian) either through their joint efforts or by the sole effort of one party to the marriage or the sale of any such assets to be divided between the parties (Section 122 of the IFLA). Where the assets were acquired by the joint efforts of the parties, in accordance with Section 122(2) of the IFLA, the court must have regard to: (i) the extent of the contributions made by each party by way of money, property or labour towards acquiring the assets; ; (ii) any debts owed by either party that were contracted for their joint benefit; and (iii) the needs of any minor children of the marriage. Subject to these considerations, the court should be inclined to order equal division of the assets. (Section 122(2) of the IFLA).

In case the assets were acquired by the sole of one party to the marriage, in accordance with Section 122(3) of the IFLA, the court must have regard to: (i) the extent of the contributions made by the party who did not acquire the assets, to the welfare of the family by looking after the home or caring for the family; (ii) the needs of any minor children of the marriage. Subject to these two considerations, the court may divide the assets or the proceeds of sale in such proportions that the court deems reasonable, but in the case where the party of whose efforts the assets were acquired must receive a greater proportion of the assets. (Section 122 (4) of the IFLA).

THE CONCEPT OF TRUST AND MATRIMONIAL PROPERTY

The association of trust and matrimonial property can be seen when two persons (husband and wife) claimed the same property which either one or both of them acquired during their marriage. The thin line dividing these matters which are often misunderstood as the position under the English law which was followed in Malaysia, clearly imposed the concept of trust in cases where claims are made between unmarried couple who jointly acquire property during their cohabitation (*Tinsley v Milligan* [1994] 1 A.C 340; *Hussey v Palmer* [1972] 1 WLR 1286; *Eves v Eves* [1975] 1 WLR 1338). Nonetheless in a few other decided cases, namely *Gissing v Gissing* [1971) AC 886 and *Pettitt v Pettit* [1970] AC 777, the concept of trust had also been invoked in cases involving married couples. Lord Diplock in Gising v Gising [1971] A.C 886 stated that any claim to a beneficial interest in land by a person, whether spouse or stranger needed to be based upon the fact that the person in whom the legal estate was vested held it as trustee upon trust to give effect to the beneficial interest of the claimant as beneficiaries and this applied in the case where the legal estate in the land was not vested in the stranger or a spouse.

In most cases relating to the division of a shared or matrimonial home, the court will

need to look at the intention of both parties in order to ensure the relevant intention and this was emphasized by Lord Diplock in *Gissing v Gissing* [1971) AC 88. The concept of trust has been manifested as the law which is not only governing property between unmarried couple but also as between married couple. The legal principles applicable to this type of claim may come under the creation of resulting, constructive trust or proprietary estoppels.

Resulting Trust

A resulting trust is a type trust where the trustee will be holding the beneficial interest in favour of the settlor or his estate instead of the beneficiaries. It is a type of trust which being without being consciously created. The "sulting" in "resulting" shares a common Latin root with the word "sault" in "somersault". It is also a Latin word of "*resultare*" which means "spring back" (Edwards & Stockwell, 2002). "To result" literally means "to jump, returning, ends up or revert". It is also known as returning or implied trust as resulting trust arises as a result of the implied intention of the settlor. Resulting trust exists not based on the actual ntention of the parties, but is founded on the existence of a state of affairs giving rise to presumed intention (Hingun & Ahmad, 2013).

Lord the Browne-Wilkinson in *Westdeutche Landesband Girozentrale* v *Islington* LB.C [1966] A. C 669 stated that resulting trust could be divided to two types, namely, automatic resulting trust and presumed resulting trust. The connection of resulting trust and matrimonial property can be seen under the first type of resulting trust, that is, presumed resulting trust. The court will make a presumption in three situations, firstly, where there is voluntary transfer of property in the name of a stranger, secondly a purchase by a person who provides purchase money and lastly a transfer by a purchaser to his wife or children or anyone stands in *loco parentis*. The last two situations are very much applied in our present discussion.

As for Malaysia, the law on resulting trust is settled. Gopal Sri Ram in *Loo Hon Kong v Loo Kim Hoo* [2004] 4 CLJ 1 emphasized that the categories of cases in which a resulting trust might arise were settled and although this case did not deal with matrimonial property, it is sufficed to reflect Malaysian law towards the division of resulting trust. One of the common situations in which the court will presume is where that the legal owner holds the property in favor of the purchaser. Hence, if both husband and wife have jointly purchased the property, the court will have no problem in dividing their respective shares as they are considered as joint tenant in common.

More importantly, if both of them have expressly agreed as to the way in which the beneficial interest in the property should be held, the court will give its recognition. Lord Bridge stressed on the need to show the common intention that the beneficial interest in the property would be jointly owned. In another different scenario, the wife's right to the property would be uphold in certain cases despite the fact that she did

not make any contribution in purchasing of such property. This is known as the equitable doctrine of advancement. The court will make a presumption in cases where the husband bought a property and put it in the name of the wife, that there exists a gift (*Yeoh Poh Hong v Ng Cheung On* [2010] MLJU1077; *Noor Jahan bte Abdul Wahab v Mohd Yusuf Aman Shah & Anor* [1991] 3 MLH 190; *Neo Tai Kim v Foo Stie Wah* [1982] 1 MLJ 170).

This often occurs in a relationship where a moral obligation is imposed on upon one to provide for another. In this specific case, the court will regard that it is the duty of the husband to support his wife. (*Re Eykyn's Trusts* (1877) 6 Ch D 115). This presumption also extends to the relationship between a father and his child, children or any other person to whom he stands in *loco parentis*. In *Bennet v Bennet* (1879) 10 Ch D 474, Jessel MR stressed that the presumption of gift arose from the moral obligation to give and to provide for his child. This rule does not apply in cases involving unmarried couple or cohabitees (*Dharmaratna v Dharmaratna* [1939] 1 MLJ 310). Nonetheless in some English cases, the doctrine of advancement was used in cases relating to relationship established during betrothal and recently to mistresses as well (Hingun, 2010).

The ground of rebuttal varies and it must not be illegal. As trust is very much the creation of equity, the maxim "he who seeks equity must come with clean hand" plays a very important role. If the husband transfers the property in order to defeat his creditor or even to escape from paying taxes, the court will be in favor of advancement. If a husband transfers the legal title to cloak the truth from his creditors and also with the intention of getting the property back to himself, the husband cannot use such illegal evidence as a ground of rebuttal (Watt, 2009). In Tinker v Tinker [1970] 2 WLR 331, the rebuttal forwarded by the husband was rejected as the evidence showed that the reason for transferring the house in the name of the wife was to escape from a creditor in the event if his garage business failed.

In Lew Pa Leong v. Chi Shen Lan [2007] 1 CLJ 2003, the dispute between the husband and wife revolved around a property which was registered in the name of the wife. The Court of Appeal held that the husband must be able to rebut the contention by relying on the original purpose behind the registration of property in the name of his wife. Since in this case, the purpose was to escape any future claim by the creditors, the court held that the presumption of advancement applied. Still the best point of rebuttal is the intention on the part of the donor, namely the husband, that the gift was not intended. In the case of Ponniah v Sivalingam & Ors [1991] 3 MLJ 90 the defendant, a father and husband to the plaintiffs, averred that the company and shares that he had transferred to his children and wife were not meant as a gift. This is supported by the evidence that he still kept all the shares certificates and more importantly he was still in charge of the company. Hence, such presumption can only be allowed to be rebutted if it can be shown at the time of the transaction, both the

husband and wife commonly intended that it was to be otherwise (*Dato Kadar Shah bin Sulaiman v Datin Fauziah Harun* [2009] 8 MLJ 850).

According to some opinions, the presumption of advancement does not reflect the contemporary socio-economic reality and the idea of gender equality (Salim & Abdul Ghadas, 2012). It would no longer be a good reason that husbands are the only ones who provide means in the family and the same applies in cases relating to mothers. It is said that the presumption between husband and wife is now understood to be very weak and the courts will need to redress the inequality by not focusing more on ones (Hayton & Mitchell, 2005).

Constructive Trust

The word "constructive" is derived from the verb "construe" and it may arise under a wide variety of circumstances and sometimes these situations are slightly different from resulting trust. The nature and scope of a constructive trust is always vague and undefined (*Carl Zeis Stifting v Herbert Smith* (1969) 2 CH 276). As it may arise in any given situation, the court will not wait for someone to think that there is an existence of constructive fraud, malice or notice as it will be the court's duty to consider the existence of this trust. There is a thin line dividing constructive trust and resulting trust. The similarity lies with the fact that the legal owner or person with legal title is held by the court as a trustee, holding the property for the claimant. Unlike resulting trust, the door to constructive trust is still open and in most cases (other circumstances where the court may hold the existence of constructive trust are in cases where strangers are in possession of trust property; fiduciary relationship, agreements to create secret trust, vendors of land and also acquisition of property by killing), deals with the rights of unmarried couple and the development can be seen over the past 40 years (*Bernard v Joseph* [1982] Ch. 391; *Burns v Burns* [1984] Ch. 317; *Springette v Defoe* [1992] 2 F.L.R 388).

The hypothetical situation is where there is a need to show that a man or a woman have contributed in acquiring the home which they shared and both relied on in reliance on a common understanding that they would be sharing the property. The court may impose constructive trust on the basis that it would not right for the one with legal title to keep the property for himself (Chong, 2005). Lord Diplock in *Gissing v Gissing* [1971] AC 886, emphasized that the existence of common understanding between the parties that the other party (whether husband or wife) should obtain a share of the property. Lord Bridge in *Lloyd's Bank plc v Rosset* [1991] 1 AC 107 stated that what was needed to be shown further was that both intended to share the ownership of the property commonly. All these have been the centre of discussion over these years and has ultimately built a foundation for the court to acknowledge the concept of constructive trust not only in cases between married couples, but extended to cohabitees as well (Hingun & Ahmad, 2013; Greer & Pawlowski, 2010).

Mutual will is another situation where the concept of constructive trust has been introduced. This is when two persons (usually husband and wife) have come to an agreement that their property, after the death of either of them, shall be enjoyed by the survivor or by the nominated beneficiary. The existence of mutual will is subject to the availability of an irrevocable agreement to make wills whereby it must indicate that the wills are to be mutually binding with clear or extrinsic evidence and must amount to clear contract at law. (*Re Oldham* [1925] Ch 75; *Re Cleaver* [1981] 1 WLR 939).

Although this may involve matrimonial property, there is no direct and detail discussions on the issue of mutual will. Mutual will denotes an understanding between spouses as to how their assets should devolve upon their death and the reason why court imposes constructive trust is to ensure what has been discussed or agreed before the demise of either of them needs to be uphold. Dixon in *Birmingham v Renfrew* (1936) 57 CLR 666 has imposed constructive trust in the case of mutual will and he stressed that express promise should be understood as to mean that if the wife died leaving her will unrevoked then husband on the other hand, would not revoke his. The constructive trusteeship will be imposed on the survivor and the terms in his will would not be considered as the last terms. There is no single case on mutual will in Malaysia.

Proprietary Estoppel

Proprietary estoppel is one of the branches of equitable estoppels. It is also known as estoppel by acquiescence or estoppel by encouragement and this doctrine gives rise to a right in property. It usually applies in relation to land (Ali et al., 2017). The foundation of the doctrine is the protection of a person who has expended money pursuant to the request and encouragement of another (*Paruvathy v Krishnan* [1983] 2 MLJ 121). There are four elements that must be shown in order to invoke proprietary estoppel as stated in the case of *Brinnard v Ewens* [1987] 2 EGLR 67. In *Willmott v Barber* (1990) 15 Ch D 96, Fry had come up with four probandas on proprietary estoppels. First, the claimant must have incurred expenditure or otherwise acted to his detriment; secondly, the claimants must have acted in the belief that they either owned or would obtain a sufficient interest in the property to justify the expenditure thirdly, the claimant's belief must have been encouraged by the landlord and lastly there must be no bar to the equity such as the contravention of any statute.

The concept of trust has been invoked in order to support the application of proprietary estoppels and this can be seen in cases involving relationship between spouses. (In *Naleen Nair a/p Sekaran Nair v Jasim Sura Puthucheary & Anor* [2018] MLJU 2070, the court rejected the existence of proprietary estoppel in a claim relating matrimonial property since the application was for an interlocutory injunction to restrain the respondent from disposing and transferring an asset and there was a need to show that the case was frivolous and not vexatious). If a husband promises the wife to have the house conveyed to

her but after the marriage ended refuses to do so, the wife may claim the right to the property by invoking proprietary estoppel. The court would then impose trusteeship on the husband so that the property that he is now holding as an owner before is a trust property and to be held in favor of the wife. In *Pascoe v Turner* [1979] 2 All ER 945, the wife spent her own money to repair, improve and decorate the house and also on furniture after the husband told her that the house and everything in it would be hers. The Court of Appeal ordered the house to be conveyed to her.

Proprietary estoppels require a cautious approach as the claimant needs to show that the reason for the chances in his position is due several reasons namely, acquiescence, encouragement sometimes detriment (Ali et al., 2017). Although the latter is one of the requirements and must be very substantial, it does not consist of any expenditure of money or other financial detriment, and at times, reliance and detriment are often intertwined (Per Walker LJ in *Gillet v Holt* [2001] Ch 210). It may be in other forms such as taking care of a handicapped person without payment and also doing something more than ordinary house work (*Greasley v Cooke* [1980] 3 All ER 710).

CONCLUSION AND DISCUSSION

The connection between matrimonial property and trust, therefore, lingers around the concept of legal and equitable ownership. The maxim that equity will not suffer a wrong to be without any remedy showed that equity is more than willing to accommodate any problem that comes before the court on how matrimonial property should be distributed when a relationship ends. No doubt the legal structures on matrimonial property law is clear when it comes to this but nonetheless, the application of trust on this matter shows that there are the conduct of parties in dealing with matrimonial property that has led to the rise of three main concepts namely, the presumption of advancement, constructive trust and proprietary estoppels in order to support claims to any interest arising thereof. The presumption of advancement has clearly indicated the recognition given by the court in acknowledging the wife's right in a shared home. Although it is subject to some criticisms, the generating idea behind this presumption lies more towards moral obligation owned by the husband to the wife. Constructive trust on the other hand, has in one way or another facilitated this issue ina very subtle way i.e. empowering the concept of constructive trusteeship on to those who have the legal titles. Meanwhile, proprietary estoppels supplement cases that deal with acquiescence and encouragement. The only setback here is that the coverage is only limited to the jurisdiction of the civil court and not the shariah court.

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