

Examining the Existing Provisions and Regulation on Matrimonial Asset Involving Matrimonial Home

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Abstract: This paper aimed to examine the existing provisions and regulation with regards distribution of matrimonial asset involving matrimonial home. The study adopted a qualitative method and the samples were collected from six zones representing Shariah Courts in Malaysia. The findings show that the rigidity in the provision cause inconsistency in the practice of the court where the court cannot fully comply with the existing proportion in the stated provision. The transfer of matrimonial home to the divorced wife is among the agreed division achieved in *sulh* and it is considered a practical approach in protecting the interest of the wife and children for support after divorce. This study is perhaps the first that concentrate on matrimonial asset involving matrimonial home.

Key words: Fair Division • Judicial Approaches • Matrimonial Home • Malaysia • Shariah Court

INTRODUCTION

Division of matrimonial assets (known as *hartasepencarian* in Malay adat) in Malaysian Shari'ah Courts involves several processes and stages subjected to the specific-drafted provision in the Islamic Family Law Enactments [1]. It involves the determination of contribution in acquiring the matrimonial assets to ensure the just portions of share to divorce spouses. Despite the existence of the enactments, fair and equitable divisions of assets in term of fulfillment of interest of parties and children as well as other factors have not been highlighted as part of the considerations in the practice of the distribution. As a result, the parties encounter difficulties particularly when the only assets available are those acquired during the marriage. This is further aggravated when divorcing spouse failed to settle the distribution either through *sulh* proceeding or other form of settlement outside the court [2]. Based on the above difficulty, the definition of matrimonial property

needs to be expanded to encompass tangible and intangible properties which have not been studied in a systematic manner despite the fact that the subject matter for claim includes capital assets, business assets and other form of property rights.

The current provision relating to distribution of matrimonial assets in Malaysian Shariah Courts is need to be reviewed as the actual mode of division of assets is based solely on the contribution of parties. In order for the provision to be fair and equitable it should address the holistic needs of all parties involved. This study is therefore conducted to examine the existing provisions and regulation with regards to the elements of contribution as factors to determine the portion of distribution of the asset. The study also examined the strengths and weaknesses of the law and judicial decisions in the distribution of matrimonial assets. This study gave a specific focus on the factors and variables which are necessary for the assessment of division of matrimonial home. Matrimonial home is given a

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specific attention in this study as this type of asset is a necessity (dharuriy). Thereby any unjust division of the asset might lead the life of the disputing parties to be badly affected.

Therefore, an analysis of judicial approaches is essential in order to examine the present judicial approaches, practices and legal provision to identify any loopholes so as to ensure a fair distribution of asset in divorce cases. This study emphasize on the application of the law of division of matrimonial assets in the Malaysian Syariah Court and the role of the Shariah court judge in interpreting the law into practice. Written judgments of matrimonial property cases were the primary sources of data for this research.

Review of Literature: Matrimonial home is substantial asset during marriage and after divorce. It is considered matrimonial home when the spouse and family reside together in the house during the subsistence of marriage [3]. Matrimonial home is used to refer to a dwelling-house or other accommodation occupied jointly by the spouse [4]. In Malaysia and Singapore law, the spouse who does not have beneficial interest in the matrimonial home has the right to live and occupy the said asset [5]. Similarly in Shariah jurisdiction, matrimonial home is part of the wife's right to maintenance or nafaqah that the husband is obliged to provide [6]. Division of matrimonial home is popular as it is frequently claimed by the divorced spouse irrespective of the circumstances of the case, length of marriage and reason for the division. This highlights the importance of the home to the respective parties especially when either party is the custodian of the children and/or when the matrimonial home is the only available matrimonial asset [7].

The law guiding the division of matrimonial home is similar with the law applicable in division of other matrimonial assets. This is embodied in section 122 of Islamic Family Law Enactment 2003 where the law provides general guidelines in dividing the matrimonial asset. The provision empowers the court to order the division of matrimonial assets acquired during marriage upon granting a pronouncement of *talaq*. The section particularly highlights two sub-sections. Firstly, sub sec (1) where the court orders the division between the parties of any assets acquired by them during their marriage by their joint efforts and secondly, sub sec (3) where the courts order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage. For division of the first

category the court shall incline towards equality of division. The division, however, is subject to certain factors which the court has to take into account such as the extent of the contribution made by each party in the form of money, property or work towards acquiring the assets. Besides, any debts owed by either party which were contracted for their joint benefit will also be considered. The needs of minor children (if any) of the marriage will not be ignored as well.

As regards to the second category of assets i.e assets acquired by the sole effort of one party to the marriage, the court may divide the assets in proportion as it deems reasonable, subject to certain factors. Besides, the court will consider the extent of contribution made by those who did not acquire the assets by looking after the home or caring the family. The court will also consider the need of minor children from the marriage, if any. In any case, the party by whose effort was acquired the asset shall receive a greater proportion.

The law governing family property was often criticised, particularly because it was unfair to married women. It was said that the law failed to deal with the economic realities of the 20th century married life especially in relation to matrimonial home [8]. With the provision the court now exercise wide powers to ensure that the particular interest of the wife and children in being properly housed are protected if the marriage breaks down [9]. The majority of married women nowadays are employed and they are part of major social and economic changes. This scenario had stirred a heated debate in the division of matrimonial home as the wives are not only contributing significantly to the acquisition of the family home but also holding household responsibilities [10]. In view of this issue, this study aimed to examine the existing provision and the judicial approach in division of matrimonial home.

MATERIALS AND METHODS

Qualitative method was utilized in analyzing statutory law and other legal provisions governing the application of law in the division of matrimonial asset. Case law analysis was conducted to depict the extension of the law for improvement of statutory provision. Identifying problems in applying the existing law is the focus in this research; therefore, the reference was made to reported cases in various law journals. This discussion was mainly confined to the factors and variables that the court commonly applies in determining the share of the parties on matrimonial home.

Content analysis on the judicial decision of reported cases focus on the practical approaches of the court in putting the law into practice for the purpose of identifying area of law which are considered impractical and unclear. The study also adopted field work research by exploiting unreported cases which were carefully selected from Shariah Courts in Selangor, Perak, Penang, Sarawak, Kelantan and Johor to represent all the states in Malaysia.

A total sample of 120 unreported cases from 2000 to 2012 have been collected and analysed. Content analysis was applied in assessing the practical approaches of the court based on three important variables i.e the scope of matrimonial assets assessed by the courts, the factors of consideration which include monetary and non-monetary contributions and the proportion of division of matrimonial home. The data were carefully selected and analysed using qualitative method. The analysis was focused on two important elements of consideration and proportion of share. The first variable was examined the assessment on the way the property is being divided where the court's judgments become the subject matter to be analyzed. The analysis was examined in term of court judgement on appropriate proportion in dividing the assets. Problems with the current mode of assessment are assessed in the second variable where the judicial reasons were analyzed. These focused on the court's discretion towards other considerations such as the needs of parties, the needs of minor children and the length of marriage to arrive to a fairer proportion on division of assets.

RESULT AND DISCUSSION

Discussion on the analysis of the data are divided into two namely the division of matrimonial home in normal court proceeding and the division of the asset in Sulh proceeding.

Division of Matrimonial Home in Normal Proceeding

Division of Jointly-owned Matrimonial Home: When monetary contribution is identified and determined based on literal interpretation on statutory law the court orders the asset to be of equal ratio. In Sarawak case of Mohamad Peridar Bin Hj. Leman v. Anni Binti Osman [11], the matrimonial home was registered in joint name. The home was purchased in 1989 by joint loan which determined the proportion to be paid by the plaintiff were RM55 000 and RM49 000 by the defendant. After divorce, the defendant wife continuesly occupied in the said house. The court granted equal share of the house to the plaintiff and defendant. The rule is equally applicable if

there is difficulty to differentiate the extent of the spouse's joint effort in acquiring the asset. The Kelantan case of *Zainol Bin Mat v. Siti Nor Asiah Binti Salleh* [12] explained that the house was matrimonial property as the payment was contributed by both parties during their marriage. The court could not differentiate the contribution of either parties as they were disputing on the quantum of their contribution. In that case the court divided their share equally.

There are cases, where monetary contribution is not the only being considered by the court in deciding on equal division of the asset. The length of marriage is also taken into consideration. The court inclined towards equal division in the situation where improvement of property irrespective of contribution and the court take into consideration of the long term. In Sarawak case of *Zaiton Binti Enchi Alli v. Hussin Bin Enchi Mat* [13] the matrimonial home was in joint name. The plaintiff and defendant had made joint monetary contributions during the 25 years of the marriage where the husband paid for mortgage installment of house valued at RM 90 000 while the plaintiff made payment for improving the ceilings, floor and she extended the front and back of the house using her own money amounting RM 8487. She had also contributed RM25 000 for renovating the house. The court held that based on the payment made by the plaintiff using her own money, the plaintiff was entitled for $\frac{1}{2}$ share of the house even though she contributed lesser amount of money. This case highlights that equal division is considered in the case of improvement of the asset. In addition, length of marriage was taken into account. This particular case implied that the court ruling was not merely confined to the contribution of parties in acquiring the asset. In other words, the court had deviated from the original rules of matrimonial division. This could also indicate the inconsistency of the court practice.

In the case of the wife as the breadwinner and contributed a large amount to the purchased price of joint matrimonial home, the wife could obtain a greater share. In Sarawak case of *Hasmi Binti Ibdrahim v. Khairul Azwal Bin Osman* [14], even though the husband contributed jointly in the deposit payment of the house priced at RM 56 000, the wife was granted as the sole owner. The court taken into account the wife effort who solely contributed to the actual mortgage payment of the house since the husband missing. Therefore, in this circumstances the court regard the assets as sole ownership of the wife which illustrates that principle relating to contribution as criteria in determining the proportion is applicable regardless of the contributor in the acquisition of assets.

Division of Solely-owned Matrimonial Home: The contribution of homemaker has been significantly addressed in the distribution of matrimonial asset. Based on 12 decided cases [15] in dividing sole effort assets, the homemaker's right to matrimonial property is recognized for her service to take care of the family. Therefore, homemaker would have an appropriate amount of share of matrimonial assets as her proportion for her service to take care of the family. It has been observed that the extent of homemaking contribution is confined to her physical effort to serve her family as a wife and mother in taking care of the husband and the family by doing some household activities during a reasonable length of marriage.

Financial contribution in family expenditure such as spending for home furnishing [16] or for groceries [17], the courts recognize as indirect contribution and significant in dividing the sole effort assets. In Kelantan case of *AimiNazuraBintiNawi v. Mohamad Sobri Bin Ahmad* [18] the appeal court increased the share of the appellant wife and granted 1/3 share of the value of matrimonial home after taking into account the appellant wife's direct and indirect contribution in the acquisition of the home during nine years of marriage. The appellant was formerly a teacher and made monetary contributions to the family expenditure. The court considered the appellant's contribution to family as a great contribution which gave opportunity to the respondent to acquire other asset such as house. Thus, this case signifies that in dividing sole effort assets, it seems that the court take into consideration the monetary contribution of the wife in family expenditure

The study showed that different approaches are adopted by the court while dividing the sole effort assets of the breadwinner husband or wife to determine appropriate proportions of matrimonial assets. The extent of indirect contributions made to acquire the asset is relevant. This is illustrated in Penang case of *Burhan Bin Abdul Manap v. NorazlinaBintiYusof* [19] where the marriage lasted for 6 years without a child and the matrimonial home was purchased in 2002 where in 2003 the spouse stayed in the said house. The plaintiff paid to the acquisition of assets including down payment and mortgage installments. Despite the plaintiff's contribution, as sole ownership of the husband, the court considered the marriage partnership of the wife in maintaining the house and doing household chores for 6 years. The court awarded the wife 1/8 of the net value of the proceeds of the house to the plaintiff.

It has been observed that no specific method has been adopted by the court for calculating the proportion of share in the division of matrimonial home. Guided by sole reliability on contribution of parties as an eminent consideration almost in all cases as stipulated in sec. 122, the court normally is fixed with the rule of 1/2 and 1/3 share [20]. Initially at starting point, the judge makes an assumption of equal division to both parties unless evidence proves otherwise that only one party has contributed to the acquisition of assets directly [21]. No exact standard method or precise mathematical calculation is used in determining the proportion of parties as the court uses discretionary power in arriving to a fair decision [22]. However, in a majority of cases it has been observed that the court strictly adheres and follows to the provision in determining the proportion. The preceding discussion on the cases indicated that there has been no specific or standard calculation method as a guideline for judges in dividing matrimonial home.

Division of Matrimonial Home in Sulh Proceedings

Divorce: Analysis of cases indicated that matrimonial home was frequently divided after a divorce where 65 cases out of the total cases involved matrimonial homes. This signifies that matrimonial home is a significant assets hold for security, stability and the survival of a divorced spouse especially for the wife. The transfer of matrimonial home to the divorced wife is among the agreed division achieved in *sulh* and it is considered a practical approach in protecting the interest of the wife and children for support after divorce.

In the case where the assets involved are more than one, it is observed that matrimonial home is commonly transferred to the wife or husband after the other party agreed to forgo each interest on the assets. This may avoid the disposal of matrimonial assets. It was explained in several case for example in Selangor such as in the case of *Aishah Bt. Abdullah v. Sharir B. Moullop* [23] where by mutual agreement of parties the court ordered a double storey matrimonial home situated at Kajang to be transferred to the applicant, the former wife and a land known as GM 296 Lot 838 situated at Kuala MudaBerapit, Kedah to be transferred to the defendant husband.

However, it has been observed that the mode of division of matrimonial assets is influenced by the number of the matrimonial assets. When the matrimonial home is the only available matrimonial asset and it is situated at an urban area, by mutual agreement the home would be transferred to the divorced wife. This is illustrated in

Selangor case of *RoslinahChe Wan v. Azlan B Sabtu* [24], where the court ordered a double-storey terrace house to be declared as matrimonial property and be transferred to the plaintiff. The defendant agreed to continue with mortgage installments of the home. If the plaintiff gets married to another man, the plaintiff has to transfer the house and register the house under the children's name.

Another form of division is where the matrimonial home is divided equally. Here, one party allocates his or her interest in $\frac{1}{2}$ share of the sole effort asset to the other party [25] or half share of net sale proceeds of the home [26]. This is illustrated in Selangor case of *Norsyahidah Ahmad Sudari v. ZalmanSalizaShuib* [27] where the court ordered a double storey matrimonial home situated at Shah Alam to be sold and the net sale proceeds to be equally divided to both parties. In Selangor case of *Norhasliza Bt. Hassan v. Shamsullkram B. Bahrom* [28] the court ordered a matrimonial home situated at Subang Jaya to be sold and the net proceed of sales of the land to be equally divided between the parties. Beside, the court ordered that a two storey bungalow house registered in joint name to be sold and the net proceed of sales to be equally divided too [29].

It has been observed that the parties may agree to transfer a joint effort asset registered in joint name to one of the parties. It is depicted in Selangor case of *Norma Mokhtaram v. KamaruddinB. Murat* [30], where the court ordered that the defendant agreed to transfer his right to the plaintiff as the settlement of matrimonial property and agreed to cooperate in the transferring process. However in a case of a house situated at Subang Jaya which was registered under the defendant's sole name, it was ordered to be transferred to the plaintiff. The defendant agreed to pay the mortgage installments of the house until completion of the mortgage settlement [31]. In the case of *Alami Bt. A. Latif v. MohdYusof Bin Shamsuddin* [32] the plaintiff, the former wife claimed her rights against a bungalow situated at Subang Jaya valued at RM1 million. The home was under the defendant's name and it was purchased during marriage. The plaintiff worked as dentist and she also did household chores and took care of the family. The plaintiff claimed that during her study in UK, the defendant started his study in law and she assisted the defendant in settling the study fees and incurring some living costs and daily expenses from 1978-1983. Upon agreement of the parties, the court decided that the respondent agrees to the claim of the applicant against 70% of the net value of the matrimonial

home. In another cases, it has been noted that the court ordered that RM 20 000 be refunded to the plaintiff and in return, the plaintiff agrees to transfer a matrimonial home situated at BatuFeringgi to the defendant [33].

In dividing the sole effort asset, through the spousal agreement the portion of $\frac{1}{3}$ could be granted to homemaker wife due to her indirect contribution to the acquisition of the matrimonial home. This is illustrated in the case of *Sarimah Bt. Mat Yassin v. Mat Amin B Dollah* [34] where the court ordered $\frac{1}{3}$ portion of a matrimonial home to the plaintiff. The home was in the sole name of the defendant. The facts showed that as a loyal wife and a homemaker, the plaintiff contributed indirectly to taking care of the family and their well being during the marriage which lasted 22 years.

There are also cases where both parties agreed to waive their rights against the proportion of matrimonial home and agreed to transfer their rights to their children. In Selangor case of *CheAminah Bt. Mohammed Saad v. Ibrahim B. Kassim* [35], the defendant agreed to transfer his double-storey terrace house situated at Subang Jaya, Selangor to their four children. Hence, all expenses related to the renovation and maintenance of the house was to be borne by the defendant. The defendant however, placed a condition pertaining to the house that no transaction was allowed without getting the defendant's approval. The court also ordered that the transfer of the interest in the matrimonial home to the wife and the sharing of ownership of the home with her children could be effective only after the children attained the age of 18 [36].

In Sarawak, transfer of matrimonial assets to children of the spouses is highlighted in several cases [37]. For example, in the case of *Sarinah Bt. Herry v. Khalid Bin Chek* [38] the court ordered the defendant to transfer a house situated at Kuching, Sarawak to the children as soon as the mortgage payments of the house was completed.

Analysis of the above cases indicated that, by mutual agreement, the court is bound to the agreed proportion in dividing sole or joint effort assets where it is not only confined to the fixed $\frac{1}{2}$ and $\frac{1}{3}$ but also extended to the exclusive transfer of assets to the wife or children. It signifies that the court is willing to accept the agreed proportion although the division deviates from the general practice of proportion based on parties' contributions. This present of agreement has accelerated the court proceeding in the division of assets.

Polygamous Marriage: Cases involving distribution of matrimonial home in polygamous marriage is common in *sulh*. In this study ten out of 13(77%) had been dealt in this division. The wife and children's interest to the living home is protected when the wife is awarded with a greater share including the transfer of home to the wife [39] One such example is the case of *Khadijah Bt Ahmad v. Khairuddin Bin Ghazali* [40] where the court ordered the transfer of matrimonial home to the defendant wife and their children [41]. Exclusive transfer to the wife is another variation of the court order in division of matrimonial home [42] The effective time of transfer takes place either at the time of granting the permission or after marriage to the subsequent wife [43]. This signifies that through *sulh* the need of an existing wife to matrimonial home is prioritized for her survival in the future where the home is divided regardless of the number of the available matrimonial asset. This form of settlement should be seen as an appropriate division when involving cases of polygamy.

It has been observed that equal share of matrimonial home assets is part of order of court in the division of a matrimonial home [44] In the case of *Zulkifli Bin HjSaedun v. ZaimatunBtHjSuradi* [45], the court allowed the application for polygamy and held that both parties be entitled to an equal share of matrimonial home situated at Rawang [46] In the case of *Muhamad Adha B. Hashim v. Yusnizah Bt. Selamat* [47] on the other hand, the court ordered the *sulh* parties to sell the matrimonial home and divide the net proceed at 60:40. Other proportions such as 1/3 and 2/3 have also been agreed upon to be appropriate share of distribution by the parties [49] Besides, the court has ordered that ownership of a matrimonial home not be claimed by the subsequent wife [50]. This study showed that court is willing to accept as consent by the parties the division irrespective whether or not the division adheres to the stipulated provision. This indicates the flexibility in the court's approach when dividing the matrimonial home through *sulh*.

Based on the analysis it can be concluded that the division of assets during marriage is substantial and significant to ensure the polygamy does not affect the survival and security of the existing wife. The interesting aspect that has been observed was that the division only involved the determination of shares of the saleable asset which is not subjected to be sold. It has been observed that transfer of assets to the existing wife is common where this indirectly gives advantage to the wife without

the court emphasizing contribution as sole criteria in dividing the share of assets. Thus, this shows that *sulh* is an amicable form of settlement for the division of matrimonial assets thus leading to a fair and just division of assets upon polygamy.

Death of Spouse: Division of matrimonial home may vary in proportion and subject to the parties's mutual agreement. However, the case is treated differently in the absence of the spouse due to death. The transfer of the matrimonial home to a deceased spouse was illustrated in Perak case of *AmienadzarizaJamali v. Abu BakarMohdYusof* [51]. The court ordered by agreement of the defendants to transfer a double-storey terrace house situated at Shah Alam to the plaintiff deceased wife and omit the sole name of the deceased in the title. The plaintiff also agreed to bear the bank's mortgage installments and expenses of the house. In another case, the court ordered an equal share of matrimonial home to deceased wife. This was illustrated in the case of *SyarikinBtAb.Rahman v. Awang B Redan & 4 anor* [52] where the court ordered a matrimonial home situated at Shah Alam owned by the deceased husband to be divided at equal share to the plaintiff and among the heirs of the deceased.

Other case involved the distribution of net proceeds of sale of a matrimonial home as part of the division. This was illustrated in Selangor case of *Mariam Abu Bakar/ Ibrahim Abu Bakar v. Dato' Zorkarnain B. Abd. Rahman* [53] where the court based on the agreement of both parties ordered that the defendant entitled to 2/3 share out of net value of the matrimonial assets consisting of a house, a land and three units of apartments amounting to RM810 000. Therefore, RM220 000 earned by the deceased after deducting RM50 000 received as the proceed of sales of the apartments was the share of the deceased distributable under faraid to the legal heirs of the deceased.

Greater share could be allocated to a deceased's spouse after the court took into account the liability of a party onto the divided assets. This was explained in Perak case of *Md Isa Jamaluddin B. Jamaluddin v. AbdWahab B. Awang&Anor* [54] where the court held that the plaintiff was entitled to 70% of the current value of the first house after deducting after deducting the housing loan balances. The balance of 30% was distributed among heirs. In addition, the plaintiff was granted 90% net value of the second house situated at PasirGudang, Johor

Bahru with only 10% remaining be distributed among the heirs. The defendants agreed to award greater share to the plaintiff due to his immense liability and greater contribution for the installment of both houses.

Upon the death of a spouse, matrimonial home which is originally *hartasepencarian* is subject to division under *faraid* rule. Nevertheless, sharing of the matrimonial home with the deceased children might cause inconvenience to the wife. At the same time, acquiring new property cause hardship especially to non-working wife due to the increased price of the property. In this regards, joint tenancy of matrimonial home is a practical solution to overcome the issue. This study is significant as it reflect a problem faced by the deceased's spouse in distributing the matrimonial home.

CONCLUSION

In the context of division matrimonial home, the law provides general rule to guide the court in dividing the asset. However the law has loopholes which led to different interpretation on the provision. This had resulted to inconsistencies in the court practice of division especially when the court merely confined to the contribution of parties in ascertaining their share. Thus, this study suggested the court should have a standard rule in division of matrimonial home. The court should emphasize on the safe guard and protection of right and interest of the divorce or deceased spouse including children in division of matrimonial home. It is suggested that in dividing the asset the court should generalize the consideration to consider other factors in dividing the matrimonial assets apart from contribution of the parties concerned. Such other factors include length of marriage, welfare of the divorced wife and welfare of other dependents associated with the wife like the ailing father or mother under her custody. *Sulh* is an amicable form of settlement for the division of matrimonial assets seen practical as a mode of division that could lead to a fair and just division of assets upon polygamy. It is suggested for *sulh* to widely use in settling the division involving matrimonial home either after divorce or upon death of the spouse. In the context of division of matrimonial home upon death, joint tenancy of matrimonial home is a practical solution to overcome the problem faced by deceased spouse.

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 21. Y.A.A Tuan Zaim Bin MdYudin, The Penang Shariah Court.
 22. Ibid.
 23. 10100-017-2/2004 (Selangor); Hindun Bt. Lazim v. Saharil Bainon 10300-017-0208-2009 (Selangor) where the parties agreed a transfer of matrimonial home to the plaintiff and the second house transferred to the defendant without involving disposal of the asset.
 24. 10200-017-0009-2008 (Selangor); Ahmad B Abu Bakar v. Hazlina Bt. Shaik Madar 13100-017- 0136-2008 (Sarawak).
 25. Hafsa Binti Hj Salleh v. Nawase B. Sadek 07100-017-0134-2006 (Penang).
 26. The court ordered equal division after deducting the debt and the EPF money owned by the defendant where it was used to pay the housing loan. See in the case of Asma Busrah v. Awang Omar B. Awang Hamsawi 13001-017- 563-2002 (Sarawak); Nadia Farida Abdullah @ Farida Anak Ulik v. Mohd Johari Abdullah @ Johniesanak Rukam 13100-017-0199-2007 (Sarawak); Nismawati Binti Moksan v. Sili @ Md Suhaili Kalen 13100-017- 0214-2007 (Sarawak); Aidawati Binti Mustapha v. Awang Musa Bin Hassan 13100-017- 0152-2008 (Sarawak); Zahrah Bt Shahidan v. Nor Ghazali Bin Mohd Hussian 07200-017-0295-2008 (Penang); the court order the net proceed of sales to be equally divided after deducting all liabilities including the total amount of the parties' contribution to the acquisition of the home. See in case of Nor Azhar Bin Atan v. Petimah Binti Hassan 07100-017-0427-2009 (Penang); Rosnita Bt Md Yusof v. Mohd Yasir Ali Bjunid Bin Omar 207300-017-0036-2010 (Penang); Haliza Bt Ahmad v. Zainal Bin Idrus 07100-017-70-2003 (Penang).
 27. 10200-017-0109-2008 (Selangor)
 28. 10200-017-136-2000 (Selangor).
 29. Asmah Alias v. Esa Ali @ Othman 10200-017-62-04 (Selangor); see also the decision in Rohani Abd Rahim v. Zakaria Mat Isa 10100-017-12-2004 (Selangor): a flat registered under joint name was ordered to be sold and the net proceed of sales was divided equally between the plaintiff and the defendant. The parties also agreed that if the asset was could not be sold, the monthly rent payment of the said house was to be equally divided. This case also decided to include payments for mutaah to be made out of the defendant's portion of share.
 30. 12200-17-17-2000 (Selangor).
 31. Nordalilati Hashim v. Erwan Zafry 10200-017-0303-2009 (Selangor); see Khairul Hissam B. Portoo v. Noraini Othman; 10300-017-0054-2008 (Selangor) a house in a joint name each at $\frac{1}{2}$ part to the plaintiff and the defendant. Both agreed to transfer the house to the plaintiff and subsequently the plaintiff agreed to incur all liabilities related to the house. After the settlement, the plaintiff was required to pay RM10 000 to the defendant as reimbursement for the

- honesty of the defendant to transfer the house to the plaintiff. See in the case *NorazlinBinti Ibrahim v. Mohd Fadzil B MohdSaad 07300-017-037-2010* (Penang); see *Pajim Bin Hassan v. Jamaliah Bt Jamaludin08300-017-0071-2010* (Perak).
32. 10200-017-013-2001(Selangor).
 33. The plaintiff contributed about RM17 000 for the construction and renovation of the home. In *MinahBintiKassim v. Anuar Bin Abu Bakar 07100-017-0149-2003*(Penang).
 34. 10100-017-326-2004 (Selangor). The court ordered the matrimonial home to be sold and 1/3 of net of sale proceeds be granted to the plaintiff. See in the case of *SuhaidaBtRamli v. Azman B Ahmad 07200-017-0404-2008*(Penang);*ZainoraBtKardimanv. Baharuddin B Sabri 08300-017-0049-2010*(Perak).
 35. 1220-17-17-2000 (Selangor)
 36. *Rashid King @Richard Alan King v. Syahriza Binti Jeli Bohari 13100-017- 0298-2010*(Sarawak).
 37. *Haderah @ Hadrah Bt Hj. Leman v. Mustapha B. Melek 13001-016-557-2002* (Sarawak); *Suraiya Bt Mohd Latiff v. Hamizan Bin Bohan 13001-017-0935-2004* (Sarawak) where the court ordered the transfer of matrimonial home to two minor children to be effected after both attain 18 years of age; *SharaBt Yusuf v. Zakaria B. Abdullah 13001-017-1019-2004*(Sarawak) and *Noraini Abdullah @Rita AK Pagan v. Isnain Bin Abdul Latif 13100-017-0072-2007*(Sarawak);*KartiniBtNawi v. Saini Bin Jamblee 13100-017-0061-2007* (Sarawak); transfer to the wife and children of the spouse is decided in the case of *HamsiahBintiBujang v. Abu Bakar B. Mohd Sami 13100-017- 0124-2005*(Sarawak); *SaadiahBintiKipli v. Sari Bin Mohamad Gani 13100-017- 0255-2007*(Sarawak); *FazillahBinti Abdul Rahman v. Khamis Bin Mahidi 13100-017-0208-2009*(Sarawak); *Hajakah @ HajarahBinti Abdullah v. MohdHanif Bin Majimon 13100-017-0255-2007*(Sarawak); a house on customary land was granted to the defendant and seven children; in Sarawak case of *Mahmudin Bin Ibrahim v. Madiah @HamdiahBinti Ismail 13100-017- 0241-2010* (Sarawak); *PatimahBtYusoff v. Osman@Othman B Dollah 13100-017- 0137-2008* (Sarawak);*Wan FauzilahBt Wan Abdullah v. Wan Azman B Hj Wan Ali 07200-017-0327-2004*(Penang); *Nazima Bt Shaik Ghani v. Suzlisham Bin Rainon 07200-017-0400-2008* (Penang); *Zarina Bt Yusoff v. Muhamad Bin Abd Ghani 03100-017-0012-2003* (Kelantan).
 38. 13001-017- 0316-2010 (Sarawak).
 39. The continuity of marriage life in the existing marriage is a security in the division of matrimonial assets. This is also consistent with one of reasons for permitting polygamy as polygamy does not affect the existing life of the existing wife. Sec 23 of IFLA.
 40. 03100-017-0046-2010 (Kelantan).
 41. Transfer ownership to wife and children can be seen in the case of *Ruslisolihin v. SabariyahBtUdin 13100-011-0400-2012*(Sarawak); *Wong Siew Choo @ Badawi Abdullah v. Jata (P) anakUnjah 13100-011-0109-2009* (Sarawak); *Mohamad Bin Ali v. HalimahBinti Abdullah 13100-011-0100-2009* (Sarawak).
 42. Transfer ownership to wife can be seen in the case of *Borhan Bin Ahmad v. Khadijah BintiMuslimin 07100-011-0280-2007*(Penang); The exclusive transfer of ownership to wife was also decided in the case of *Yusni B. MohdYusof v. NarizanBtCheNamat 08100-011-0007-2009* (Perak); *Johan B. Nasser v. RozianaBtRajali 08100-011-0170-2010*(Perak); *Mohd Isa B. Hashim v. Rusnah Ahmad 10300-011-0051-2006*; *MohdMohsi Bin Arsam v. Noraesah BtAman 10100-011-0009-2009* (Selangor).
 43. *Yusni B. Mohd Yusof v. NarizanBtCheNamat 08100-011-0007-2009* (Perak); *Johan B. Nasser v. RozianaBtRajali 08100-011-0170-2010*(Perak); *Mohd Isa B. Hashim v. Rusnah Ahmad 10300-011-0051-2006*; *MohdMohsi Bin Arsam v. Noraesah BtAman 10100-011-0009-2009* (Selangor).
 44. *Ruslisolihin v. SabariyahBtUdin 13100-011-0400-2012* (Sarawak).
 45. See cases *Khadijah Bt Ahmad v. Khairuddin Bin Ghazali no 03100-017-0046-2010* (Kelantan); *Yusni B. MohdYusof v. NarizanBtCheNamat 08100 - 011-0007-2009* (Perak); *Johan B. Nasser v. Roziana BtRajali 08100-011-0170-2010* (Perak); *Mohd Isa B. Hashim v. Rusnah Ahmad 10300-011-0051-2006* (Selangor); *MohdMohsi Bin Arsam v. NoraesahBtAman 10100-011-0009-2009*; *011-0106-2010* (Selangor); *Sahalan B. Sabah v. NorsiahBt Ismail 08100-011-0178-2008* (Perak); *Zaidi Bin Saian v. RasnaBintiJunus01100-011-0845- 2011* (Selangor); *Zulkifli Bin HjSaedun v. ZaimatunBtHjSuradi 10100-011-0045-2008* (Selangor).
 46. 10100-011-0045-2008 (Selangor).
 47. See also in the case of *Mustafa Bin Ismail v. SaadiahBinti Din 07200-011-0363-2006* (Penang); *Ibrahim Bin Zen v. HamdiahBinti Zen 13100-011-0209-2008*(Sarawak); *EnSamri Bin Suhaili v. PuanHabsahBintiDeni 13100-011-0210-2008*(Sarawak). *Yusni B. MohdYusof v. NarizanBtCheNamat*

48. 08100-011-0106-2010 (Perak)
49. This was decided in Zaidi b. MohdSupiah v. MasiahbtIbrahim 10100-011-0210-2009 (Selangor).
50. Rokem Bin Kanta v. Atimah BtHj Dassukri13100-011-0304-2011(Sarawak).
51. 10200-017-0315-2005 (Selangor); the court ordered a unit of condominium and two houses situated at Johor Bharu to be transferred to the plaintiff as agreed by the parties. See also in the case of Hasmi Bin Osman v. HabsahBtJamhari&anor01100-17-0383-2009 (Johor).
52. 1220-17-17-2000 (Johor); see also in the case of MazniBinti Abdul Wahab v. Aziz Bin Mat Ridik 07200-017-0311-2005 (Penang) where the court ordered $\frac{1}{2}$ of $\frac{1}{7}$ registered prortion of a land lot situated at SeberangPerai which was registered in sole name of the deceased husband to be granted to the plaintiff.; see NorihaBt Abdul Ghani v. Harun Bin Yusof, Maznah @ ZaininBtSalleh. 01100-017-188-2007 (Johor).
53. 10200-017-38-2003 (Perak).
53. 10200-017-179-2005 (Perak)