

Problems of home enjoyment between jurisprudential solutions and the legal text



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Karima mahrouk^{1*}

¹ Faculty of Law, University Constantine 1 Brothers Mentouri
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email. karimane79@yahoo.fr

Abstract

One of the contentious issues affecting the family is the dispute over the belongings of the house, especially its ownership, which is the property that may be claimed by each of the spouses, or one of them and the heirs of the other, or their heirs together in the event of their death. The Algerian legislator dealt with this problem in the text of Article 73 BC by stating that: "If a dispute occurs between the spouses or their heirs regarding the belongings of the house, and neither of them has evidence, then the word to the wife or her heirs is with the oath, usually for women, and the word for the husband or his heirs is with the oath in The usual for men, and what is common between them they share with the right." However, this provision was not applied in the same way before the judicial authorities in general, and the Supreme Court in particular.

The study aims to clarify the most important problems raised by the enjoyment of the home between the spouses or the heirs of one of them, and how jurisprudence and the law confront them, trying to find weighting solutions to reduce them.

Keywords

House ;
law ;
suits ;
dispute .

الكلمات المفتاحية

نزاع؛
متاع البيت؛
قانون؛

إشكالات متاع البيت بين الحلول الفقهية والنص القانوني

ملخص

من المسائل الخلافية الماسة بالأسرة النزاع حول متاع البيت لاسيما ملكيته، وهي الملكية التي قد يدعيها كل من الزوجين، أو أحدهما وورثة الآخر، أو ورثتهما معا في حال وفاتهما. وقد عالج المشرع الجزائري هذه المشكلة في نص المادة 73 ق.أ.ج بإقراره أنه: "إذا وقع نزاع بين الزوجين أو ورثتهما في متاع البيت، وليس لأحدهما بيينة فالقول للزوجة أو ورثتها مع اليمين في المعتاد للنساء، والقول للزوج أو ورثته مع اليمين في المعتاد للرجال. والمشتراك بينهما يتقاسمانها مع اليمين". ويعد طريق الاثبات له خصوصية استدعته الطبيعة الخاصة لمنازعات الواقعة على متاع البيت.

تهدف الدراسة إلى بيان اهم الإشكالات التي يثيرها متاع البيت بين الزوجين او ورثة احدهما وكيف تصدى الفقه والقانون لها محاولا وجود حلول ترجحية للحد منها.

* Corresponding author. E-mail: karimane79@yahoo.fr

Doi:

I- Introduction:

The issue of spouses' disputes over the ownership of their shared household belongings is considered one of the most important issues to which jurists have given attention, both ancient and modern, as they have given the name "household possessions" to all things included in the marital residence, which obliges the husband to provide them, such as covers, mattresses, and cooking utensils, just as belongings are used to refer to a car in The house, and animals in rural areas in particular, and other material possessions that are the subject of a dispute between spouses over the right to their ownership. The issue of a dispute between spouses over the ownership of household property that they share has received attention in Islamic law with the legislative measures it has put in place to resolve the dispute. What happens between the spouses regarding this issue, by setting the conditions for considering household property as the property of the husband or wife, or both, and the means of proving ownership of this property, such as evidence, acknowledgment, and oath.

The most important problem that preoccupies our courts and judges at the present time regarding family affairs is the disputes and disputes that arise between spouses upon their divorce or between one of the spouses and the heirs of the deceased spouse due to a difference in ownership of household goods.

What are the rulings on a dispute between spouses over ownership of the property they share in their shared home? How did Islamic jurisprudence and law address this issue?

It entails the following sub-questions:

What is the truth about household goods in language and legal terminology? What is the relationship between the device and household belongings?

What are the doctrines of jurists and the law in resolving disputes over the division of household property shared between spouses?

I.1. First Subtitle:

First: Definition of household belongings

1: Baggage is a language

What is meant by belongings is something that is used to benefit, to be used, and to be provided with. It was also said that it is everything that is used to benefit from needs, such as food, household furniture, tools, and goods.

1 - Household items in language:

Enjoyment is everything from which one can benefit from the world's offerings, whether large or small. Ibn Manzur, 2000 Muhammad al-Azhari, 2001 And what you have enjoyed and he has "enjoyed" with, that is, he has benefited from the meaning of "enjoyment" of such and such and "enjoyment" of it, and the name is "pleasure" with it. Among them is the pleasure of Hajj because it is a benefit and (God has given him enjoyment with such and such pleasure) and what a person enjoys for his needs is called Al-Azhari, 2001, AlAazam, Ibn Saydah, 2000, such as money, furniture, and other things, and customarily it is everything that people wear and spread, and it is also furniture from The mattress and the like. Al-Razi, Mukhtar Al-Sahah, 2012.

It is also used as chattel, meaning: commodity.

2: Heirlooms, in terms of terminology.

It is what the husband must provide for his wife in the household, or it is what the husband must provide for his wife in the house, and this is represented by eating, drinking, cooking, etc. equipment, or "it is everything that is useful in the marital home, such as furniture and household utensils." Badran Abu Al-Ainyin, 2004

Most of the early jurists did not give a specific definition to "household goods," but they applied this name to everything contained in the house, such as furniture, rugs, covers, clothing, decorative tools, and utensils and tools that are useful to it. This includes the servant, if any, and the animal placed to serve the house, and the car is also included in it. Allocated to serve the house, and from that comes what was specific to the craft or work of each one of them, as well as the dwelling.

In this context, it was stated in Al-Bujairmi Ali Al-Khatib: "Household goods mean the house furnishings on which you sit or sleep and cover yourself with, and it also includes the cooking equipment, the eating and drinking equipment, and the household." Al-Bajirmi, Al-Bujairmi's Commentary on Al-Khatib, 2008 A continuation of Al-Muhtar's response to Al-Durr Al-Mukhtar: "The possessions are what was in the house: that is, what is proven that they placed their hands on it or disposed of it by saying that their hands alternated over it and differed in their disposition." Ibn Abidin, 2007. Among the modern jurists, Professor Muhammad Mustafa Shalaby defined it as: "Everything that is found in the marital home that is useful for living, whether it is equipment or household items found after the wedding," Mohamed Mostafa Shalaby, 1983, and it is almost the same definition that I found at An explanation of the law, as Muhammad Al-Kashbour defined it by saying: "Everything in the marital home that is usually useful and facilitates the process of legal cohabitation between spouses, including, for example, kitchen utensils, mattresses, covers, and clothes..." Muhammad al-Kashbour, 2009

Based on the above, it is clear that there is an overlap between what is considered a home's possessions and what is considered a wife's equipment. In fact, the equipment is part of the possessions, so it is difficult to distinguish between them, which requires resorting to the custom and habit that govern each town separately.: Ibn Njeim, 2011 Hashiyah Al-Desouki, 2008 Ibn Hajar Al-Haytami, 2003, Nawawi Al-Jawi, 1991

I. 2. Second Subtitle:

Second: The jurisprudential position in household property disputes

What jurisprudence has to do with regard to a dispute over household belongings is to resort to evidence. Everyone who establishes evidence for his claim will have a ruling for him. However, if there is no evidence, the jurists differed in this matter based on three opinions. Some of them saw that the ruling should be based on parity and equality, and some of them He argued that the ruling should be based on validity, and some of them favored the idea of the responsible person over the equipment as a basis for ruling between them. Below we review in detail these opinions:

1. Disputes of ownership of household belongings in the absence of evidence

1.1. The first jurisprudential opinion divides them equally with the oath

If the spouses disagree regarding the ownership of the household goods, some or all of them, and each of them claims ownership of this property and they have no evidence, or they both have valid evidence and the evidence is equal, then it is divided equally between them after they take the oath, because what appears to be the case is with the spouses together and there is no preference for one of them over the other. Whether the disputed furniture is suitable for men, or is suitable for women, or is suitable for both, and this is what Imam Al-Shafi'i argued, Lashafi'i, Mother, 2001. The Shafi'is and those who agreed with them argued with several pieces of evidence, including:

- They took evidence from the Sunnah by saying, may God's prayers and peace be upon him: "Proof is upon the plaintiff, and the oath is upon the one who denies." Al-Bayhaqi, Al-Sunan Al-Kubra, 2003. Taking the apparent meaning of the hadith indicates equality in the relationship between the spouses, and one of the spouses should not take precedence over the other except with a pretext. It is apparent that the man does not take precedence over her with his money as the head of the family, nor does the woman take precedence over the man on the grounds that her hand on the furniture in the house is more prominent, nor does one of the spouses take precedence over the other on the pretext that the disputed furniture is better for one of them.

The spouses' hand is firmly on all the possessions, and it appears that the possessions are in their hands, so each of them swears an oath to his claim. If both of them swear, the possessions are shared between them equally, because the man owns the women's possessions through purchase and inheritance, and the woman owns the men's possessions through purchase and inheritance.

2.1. The second opinion: Ownership of property is based on what is appropriate for women and men

It is the doctrine of the majority of jurists Al-Sarakhsi, 1993, Al-Kasani, Badaa' Al-Sana'i, 2001.

From the Malikis and Hanafi schools, the argument over the people of Medina, Mohammed bin Al-Hassan Al-Shaibani, 1983. And the Hanbalis, Al-Kafi fi the jurisprudence of Imam Ahmad, Ibn Qudamah, 1994, with differences in some details, they agreed regarding the property of men and the property of women, and they held that if The spouses disagreed about the ownership of household goods, and there was no evidence, whether that was during marital life, the trade goods, or after the separation between them. The opinion is the husband's statement along with his oath regarding what is appropriate for men, such as the sword and the turban. If he swears, he will be judged for it, and if he refuses, he loses the lawsuit. The same applies to the wife with regard to what is appropriate for women, such as jewelry, women's clothing, and adornment tools, unless one of them is a trader, in which case whatever is a trade item belongs to the one who practices the trade.

Here are some quotes from their sayings:

Abu Hanifa was asked about a man who divorces his wife, so she claims what is in the house of possessions, money, and slaves, and her owner (her husband) denies that. He said: "Whatever women's possessions are known to be for women, such as armor, veils, spindles, anklets, silk clothes, and the like, are more worthy of it, unless he comes." The husband must provide evidence, as it belongs to the man. As for what is a man's property, such as weapons, bows, trousers, and horses, the man has more right to it, unless you provide evidence." Al-Hujjat Ala Ahl al-Madina, 983, 2004.

Abu Hanifa justified his opinion by saying that what is appropriate for women is close to their use, and the same applies to men, so the statement is the statement of someone to whom the apparent meaning is attested by the structure Badr al-Din al-Aini, 2000 and the use. See: Fern, 2006, Al-Marginani, 2000.

- The Malikis justified their saying that the hand is apparent in the ownership, and that it is the arbiter, so each one of them has a hand in the household's belongings in whatever is appropriate for each of them, and on this basis the ruling was between them when they separated. See: ElBaradei, 2002.

The Malikis were exposed to issues including:

- Whatever women's possessions were commissioned by a man to buy and he has proof of that, then it is his. He swears by God, besides whom there is no god, that he did not buy it for her, and he only bought it for himself and has more right to it, unless she has proof. Likewise, if a woman claims something from the household's possessions, it is like that. It is for men like a sword, so she said, "It is for me," and she established that she had bought it with proof that it would be decided for her.

And he remained silent in the blog about her right, so it was said that the man's oath was part of her right, and it was said that she does not have to take an oath. Because men are the guardians of women.

- Camels, sheep, and cows are for men, except for those on which there is evidence that they are for women, or the man with them is known to be poor and she is known to be rich. The ownership of this is attributed to her, and the statement of the neighbors is taken into account, even if it is not conclusive testimony.

2. Dispute over shared property that is appropriate for both spouses:

If the spouses disagree about the belongings of the house they share and each of them claims ownership, the opinions of the jurists on this issue differ as follows:

1.2. First opinion: preferring the husband's side

This is what Abu Hanifa, Muhammad, and the Malikis said, Sarakhsi, 1993, Kasani, 2003, 1994, Al-Qarafi, 2005. Its meaning is that the property that is suitable for both of them, such as the refrigerator, the television, the wardrobe, the furniture, and the car, is decided by the one who has the evidence. If there is no evidence, then the statement is the husband's statement with his oath. This is because the husband's hand on the remaining furniture in the house is stronger than the wife's hand, so his hand is a disposable hand and her hand is a preserving hand, and the disposable hand is stronger than the preserving hand.

Such as the servant, the slave, the sheep, and the brushes, and such as the dirhams, the dinars, the offerings, the rugs, the grains, and the like...that when the woman was in the husband's protection, she and what was in her hand were in the husband's hand, so the hand was a witness to the ownership, and the opinion in lawsuits belongs to the owner of the hand, other than what pertains to her because it is opposed by a stronger apparent statement.

- Imam Malik justified his doctrine by saying that the house is the man's house on the record, Malik (narrated by Sahnoun), and this does not mean that the woman owns the house, but rather the man; Because the house is his house, even if the house belongs to someone else.

2.2. The second opinion is divided equally between the spouses:

Shared household belongings that are different between men and women should be divided into two halves: This is the Hanbali doctrine.

They said that the property that is suitable for both spouses is decided by the one who establishes evidence. If they do not have proof, each of them swears that the property is his, and after the alliance it is divided equally between them, because their hands on the property are the same. You see, if a foreigner disputes with them about it, the word is theirs. So, either If one of them swears and the other refuses, then the property belongs to the one who swore.

3. Ownership of property based on who is responsible for the equipment or ownership of the house

There are multiple opinions, and each one of them has an argument upon which to base his position, and it oscillates between who is responsible for preparing the house, and to whom the ownership of the house belongs, but in the end, it is more likely that the ownership of the entire property belongs to one of the spouses, and it is as follows:

1.3. Ownership of property is based on who is responsible for furnishing it: This is an opinion expressed by Abu Yusuf, a Hanafi scholar. It seems that this opinion stems from the idea of who is responsible for furnishing the house, and since the husband is responsible for spending, including furnishing the house, logic requires that all the possessions be his. Because the woman, along with what is in her hand, is in the husband's hand. However, what appears to be the case is that she does not go to her husband's house except with a device similar to hers. In the amount of a device similar to hers, the measurement is left to the apparent custom and makes that hers. And whatever is added to it, the statement is the husband's statement according to the analogy that we said, and this opinion is based on what He is subject to the Sharia ruling and custom and custom are not subject to him. The husband is responsible for preparing and furnishing the marital home, except by custom and custom that the wife is given the wedding with her own device.

2.3. Ownership of property is based on who owns the house: This is the doctrine of Al-Hasan Al-Basri, Al-Shirazi (Abu Ishaq Ibrahim bin Ali Al-Shirazi), 1970 AD, and it is a position that distinguishes between whether the house in which the spouses live belongs to the woman or the man. If the house is for the woman, then all the property is hers. The man does not have anything except what he has on of his body clothes, and if the house belongs to the husband then all the possessions are his and she is not hers except what she has on of her body clothes, because the hand of the owner of the house is stronger and more prominent than the hand of anyone else and because the woman lives in the house. Don't you see that she is called sedentary? If the house is For her, the house and what is in it are in her hand, and in the case of absolute ownership, the word is the word of the one who has the hand.¹.

Third: The legal position of household property disputes

1. The legal ruling on shared household property between spouses

Household belongings are considered one of the most important things that raise problems in the family. However, the Algerian legislator did not address the provisions of shared possessions between spouses in the family law. As for what was mentioned in the last paragraph of Article 73, "And what is common between them, they shall divide it with an oath." What is meant is what is suitable for both men and women.

Accordingly, if the possessions present in the house are among the usual things for both men and women, such as bedding, chairs, or furniture designated for home décor and decoration, such as paintings, statues, etc., then if one of the spouses has proof of ownership of the present things, then their ownership is proven to him without an oath. However, if this is The belongings are in the house and neither of them has evidence, so they divide it with the oath. (Qais Abdel Wahab), 2008.

Islamic Sharia jurists differed on the issue of disputes over household belongings. For details, see: AL-ZIBARI (RASHEED OMAR), 2009.

This was confirmed by a decision of the Supreme Court, which said: "It is legally established that the shared luggage between the spouses is shared by them on the right."

Determining what is counted for women and what is counted for men is a matter of fact that is up to the judges of the matter to evaluate. As for evaluating the amounts of belongings, it is a technical matter that is up to the experienced craftsmen and merchants and not to the judges. This is what the Supreme Court confirmed in its decision.

SUPREME COURT, PERSONAL STATUS CHAMBER, 2001.

Also, the oath of one of the spouses after taking the oath is considered an acknowledgment of the other party's ownership of the disputed property. This is what the Supreme Court stated in its decision: "It is legally established that the one who renounces the oath loses his case."

Supreme Court, Personal Status Chamber, 2001.

2. The legal ruling on household belongings if their existence is denied

However, if the usual possessions of both men and women are not present in the family residence, one of the spouses would present a list of the possessions and the other would respond with denial and disapproval. In this case, Article 73 of the Law cannot be applied to prove in law (evidence on the one who claimed and the oath on the one who denied). (And excluding the application of Article 73 of the family law in such cases and in accordance with the provisions stipulated in Articles 172 and 173 of the Code of Civil Procedure. In the event of a divorce lawsuit being filed and the possibility of a dispute arising over household belongings, one of the spouses can request the president of the court to issue an order proving The condition and inspection of the belongings and furniture in the marital home. If proving the

required condition is not feasible unless carried out by experienced people, the judge may appoint an expert to carry out the required procedure.

Despite the existence of all these rules, it may be the case that there are prior agreements between the spouses regarding the system of money acquired between them - such as an agreement to make the ownership of marital effects joint, as reality may impose on the wife to share in the household's possessions with the things that she carried with her from her family's home from a device. Friendship,.

Supreme Court, Personal Status Chamber, 2001.

Or what she buys later with her own money.

And when it became clear - in the current case - that the critical decision, when it supported the ruling requiring the appellant to swear an oath regarding the luggage with the exception of the television set, the gold standard, and the radio, but for which no evidence was presented even though it was considered common luggage, violated the provisions of Article 73/2 of family law.

"This requires that the contested decision be partially overturned."

3. Proof of household belongings at the judicial level:

At the level of judicial applications, when a dispute arises over household belongings, as soon as a list of the belongings of one of the spouses is presented and the opposing party denies, the judges directly apply the provisions of Article 73 of the Constitution by directing an oath. However, the original is to direct the oath in the event of disagreement and lack of evidence to the plaintiff that it is necessary to verify the existence of the belongings. Failure to do so, then moving to the oath in the event of denial, and this was confirmed by a decision of the Supreme Court: "Sufficing to take the oath before knowing the existence or non-existence of the alleged subject of the dispute is considered a lack of justification and a clear violation of the rules of evidence, and when it becomes clear from the case at hand that the appellant has denied the existence of the property and He had the wording and asked to provide evidence for her claim and requested to hear the testimony of the appellant's son. When the judges of the matter did not respond to the appellant's request and took the initiative to direct the oath to the appellant without verifying the existence of the wording, they exposed their decision to a lack of justification." Supreme Court, Personal Status Chamber, 2001.

Also, there is no text in civil law that regulates joint property between spouses, and from it the general provisions for joint ownership apply, but the legislator must establish special provisions for the property shared between the spouses in order to protect the family in general and the children in particular, and that no spouse may dispose of the property. shared property between them, except with the consent of both spouses. In the event of a dispute, one must resort to the judiciary in order to obtain a license to carry out that disposal if it is in the interest of the family, so that a kind of protection can be established for the shared property between the spouses.

In the event of dissolving the marital bond, the common property must be divided between them, and since there are no special provisions for dividing the common property between the spouses, the provisions for dividing common property are applied, in accordance with Article 722 and the following of Algerian Civil Law. With regard to whether or not furniture is proven, Article 73 family law. It states that if a dispute occurs between spouses or their heirs regarding household belongings and neither of them has evidence, this situation raises two issues, which we present in the following form:

- Evidence is based on the one who claims and the oath is on the one who denies:

The property subject to the dispute must be present and visible to everyone, including the divorced parties or their heirs. Under no circumstances can a judicial dispute arise over property that does not exist at all or is denied by the opponent. In this case, one of the divorced parties presents a list of the furniture, and it is usually the owner of the property. The judicial request is made by the woman, given that her belongings are in the marital home, which is usually owned or rented by the divorced person, and the plaintiff demands that he be granted access to his furniture. Here we are faced with a situation.

IV- Conclusion:

The aforementioned jurisprudential opinions reflect the breadth and richness of Islamic jurisprudence and its ability to confront all modern calamities. Emphasis should only be placed on the proper selection of jurisprudential opinions that respond to the requirements of possible disputes. Therefore, the settlement of a household property dispute cannot be subject to a single ruling applied to All disputes differ according to each case and its circumstances. Therefore, it should

be subject to the discretion of the judge, who must be intelligent and discerning when deciding the dispute. Therefore, the preference of a jurisprudential opinion among these opinions may be correct at an earlier time in which marital life is characterized. In the same way, but in our present time it is a mistake to give priority to one jurisprudential opinion over other jurisprudential opinions due to the difference in circumstances from one case to another.

By comparing what the Family Law stated with the jurisprudential opinions, it can be said that what the Family Law stated is consistent with the opinion of the public with regard to property that is suitable for men and property that is suitable for women, and in it the apparent presumption is applied with the oath in the absence of evidence. As for what is related to problematic property, the legislator acted according to The Hanbalis and the Hanafis went to it by adopting the Maqasma after taking the oath.

Given the impossibility of resolving the dispute according to a fixed ruling, due to the difference in circumstances from one family to another, I believe that it is better to delegate the matter to the judge in this regard because he has the ability to understand the living reality of the spouses and on the basis of which he determines the owner of the property. Accordingly, it should be sufficient to stipulate that the dispute over the property is subject to the principle What is considered to be women's property is up to the wife along with her oath, and what is considered to be men's property is up to the husband along with his oath, while the rest of the property for shared use is subject to the discretionary authority of the judge.

This study concluded the following results:

Through Article 73 of the Family Code mentioned above, we notice that the legislator placed it in the second chapter, which relates to the effects of divorce, and here we direct the criticism on the basis of two matters. The discussion is a dispute between divorced persons over the furnishings of the marital home, and from it the issue of dissolution of marriage by death is subject to the rules of inheritance mentioned in Sharia and law. .

The legislator had to choose the correct term, as disputes over household belongings arise upon divorce, making the marriage dissolved, and thus the term "wife" is dropped from the divorced woman, just as the term "husband" is dropped from the divorced man.

Recommendations:

- The necessity of keeping invoices and receipts that enable her to prove what she acquired during married life, and that the dispute, if it is not between her and her husband, may be with his heirs over this possessions.

- Expanding the scope of proof regarding household belongings and the judiciary's diligence in finding other solutions to what he raises

- Accordingly:

The legislator must make special provisions for the property shared between spouses in order to protect the family in general and the children in particular. It is not permissible for any spouse to dispose of the property shared between them except with the consent of both spouses. In the event of a dispute, one must resort to the judiciary in order to obtain a license. To carry out this action if it is in the interest of the family, in order to determine a type of protection for the shared property between the spouses.

- The Algerian legislator did not establish special provisions regulating the husband's right to benefit from his wife's device, so a new article must be added to the Family Code to regulate this, Article 52 bis, which states: "The device belongs to the woman alone, so the wife has no right to any of it, and the husband must benefit from it." He must exercise the same care in preserving it as a normal person would, if there is no agreement or custom requiring otherwise. If some of it is usurped or disposed of without her permission during or after the marriage, she has the right to claim it or its value if it perishes or is consumed.

Documenting everything that the spouses own before and after marriage in order to preserve rights and prevent conflict that might be expected if marital life is plagued by some disturbances.

Expediting the enactment of all deterrent laws that enable women to enjoy their financial rights after separation, especially working women who fall victim to exploitation by some husbands.

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