

13632 - Division of inheritance among a mother, father and four brothers

the question

A person died, leaving behind a mother, father and four brothers. How should the inheritance be divided?

Detailed answer

There are two views concerning this matter among the scholars.

The first view:

This is the view of the majority, and is the correct view among the Hanbali madhhab. This view states that if there are two parents and a number of siblings, the mother gets one-sixth and the rest goes to the father, because of the words of Allaah (interpretation of the meaning):

“... if the deceased left brothers or (sisters), the mother has a sixth...” [al-Nisaa’ 4:11]

The general meaning of the aayah indicates that the presence of siblings reduces the mother’s share from one-third to one-sixth, whether they inherit or not.

Al-Ramli, who was a Shaafa’i, said: “Know that for a person to be able to prevent another person from inheriting or reduce his share, he should himself be allowed to inherit. Whoever does not inherit for a reason that may be mentioned later cannot prevent

anyone from inheriting altogether or decrease the amount he inherits, except in a case such as when brothers are prevented from inheriting by the presence of the father, but the mother's share is reduced from one-third to one-sixth because of their presence; and when her two children are prevented from inheriting by the presence of their grandfather but their presence reduces the mother's share to one-sixth; and when there are a husband, a full sister, a mother and a brother from the father's side, the brother has no share even though when combined with a full sister this reduces the mother's share to one-sixth."

Nihaayat al-Muhtaj Sharh al-Minhaaj, part 6,
p. 16

The view

of the Maalikis is: "Everyone who cannot inherit anyway cannot prevent an heir from inheriting or reduce his share" – except in five cases... the second of which is: parents and siblings, where the mother's share is reduced to one-sixth and they (siblings) cannot inherit because they are prevented from doing so by the father.

See Haashiyat al-'Adawi, part 2, p. 388

The second view:

That she gets one-third

along with the brothers whose share is reduced because of the presence of the father. This is the view of some later scholars and it was the view selected by Shaykh al-Islam Taqiy al-Deen Ibn Taymiyyah, but the rest of the scholars differ from him.

Their point is that the siblings do not reduce the mother's share to one-sixth unless they have the right to inherit

- so that they would benefit from reducing the mother's share. The evidence for this is the aayah (interpretation of the meaning):

"... if the deceased left brothers or (sisters), the mother has a sixth..." [al-Nisaa' 4:11]

where the father is not mentioned. The ruling here refers to when the mother is on her own with siblings; after the mother is given one-sixth, the rest is to be given to them. Among the contemporary Hanbalis, this view was favoured by Shaykh 'Abd al-Rahmaan ibn Naasir al-Sa'di, when he said: "The correct view is that the brothers who are prevented from inheriting or whose share is reduced do not prevent the mother from inheriting one-third, because Allaah says (interpretation of the meaning): '...if the deceased left brothers or (sisters)...', meaning heirs. As these brothers who are inheriting are not described as being prevented from inheriting, so none of them can be prevented, because the ruling on the division of inheritance is that the one who does not inherit cannot prevent another from inheriting whether in whole or in part. The reason for reducing the share of the mother is so that they can have a share, but if they are not heirs they cannot prevent anyone else from inheriting. And Allaah knows best.

See al-Tahqeeqaat al-Maradiyyah by al-Fawzaan, p. 87-88

Shaykh al-Islam Ibn Taymiyah (may Allaah have mercy on him) said:

Siblings cannot reduce the mother's share from one-third to one-sixth except if they are heirs, whose share is not prevented by the presence of the father. In the case where there are two parents or two brothers, the mother's share is one third. The

presence of the grandfather prevents the brothers from inheriting, thus the brothers could not reduce the share of the mother because they themselves are prevented from inheriting, according to scholarly consensus. The same applies with regard to parents or the father. This was narrated from Imaam Ahmad and was the view selected by some of his companions, and this was the view of Abu Bakr and others among the Sahaabah (may Allaah be pleased with them).

See al-Fataawa al-Kubra, part 5, p. 446

Since there is scholarly dispute on this matter, you should refer to the qaadi (Muslim judge) in your country, because the ruling of the judge will dispel the differences.

And Allaah knows best.