

145657 - Inheritance of properties

the question

My uncle (mother's brother) passed away (in india) leaving a widow, 4 sons(a,b,c & d), 4 daughters & about 12 properties, out of which only 3 properties are in the name of his 4 daughters (one property each in 2 daughters' names, & 1 property jointly in the other 2 daughters' names.) The daughters' economic condition is also not good & they have the liabilities of their own daughters getting married off.

For the balance 9 properties its all a mix-up - all in the names of his widow & 3 sons (a,b,c&d) only (daughters are not included).example, 1 property is in the name of his widow & son a, another property in the name of son a, another property in the name of son b & son c, another property in the name of just widow, another property in the name of son d, such mix up for all the 9 or so properties, but no property in the names of daughters at all in the 9 properties.

The value of the 3 properties in 4 daughters' names is very nominal.

The value of the other 9 properties is very huge.

The daughters' grievence is: 4 sisters have to share only 3 properties of very nominal value, whereas the brothers enjoy the benefit of huge value properties.

The sons are claiming that (i)what their father did is correct (ii) that they'll not divide all the properties according to shariah princples of male/female ratio of 2:1(iii)also claim that their father had verbally instructed them to give some amounts to their sisters out the huge property sales, if any.

I'll also add that:

- the deceased had 2 wives:
- 1st wife passed away decades ago leaving 2 sons 2 daughters
- 2nd wife now alive has 2 sons 2 daughters
- all children above 21 years of age
- all married except son d

dear shaykh, i implore you to please look into this & suggest a solution in the light of quran & sunnah which inshallah will be a sadqa jaariah for you, as the 4 sisters are so dejected & lost all hope apart from the help of allah. They literally say there is nobody to help them. I have taken this up because i heard the last parting words of the prophet(sal) in ali's(ra) ears uushiikum bis salati, wa maa malakat aimanuku - take care of the saalat and take care the weak people among you.

I consider my 4 cousin sisters weak in the plight they find themselves in. Hence please help them.

Dear shaykh

i think you would want to know my uncle's "gift " element of his properties. To the best of our knowledge none of his properties were gifts to his children. Those days taxations were high & he was working in a private company. He must have bought those properties in his childrens' name as an "arrangement" for legal taxation reasons with a possible niyah to buy later in other childrens' names, allah knows best.

In fact, the concept of gifting a property to one's own children is not heard of in our part of

india. It's an open secret there that people buy property in their childrens' names for reasons of taxations.

Detailed answer

Firstly:

The father has to be just and fair between his children in terms of giving, because of the report narrated by al-Bukhaari (2586) and Muslim (1623) from al-Nu'maan ibn Basheer, who said that his father brought him to the Messenger of Allaah (blessings and peace of Allah be upon him) and said: I have given this son of mine a slave that belonged to me. The Messenger of Allaah (blessings and peace of Allah be upon him) said: "Have you given a similar gift to all your children?" He said: No. The Messenger of Allaah (blessings and peace of Allah be upon him) said: "Then take it [the gift] back."

According to a version narrated by Muslim (1623), the Messenger of Allah and peace of Allah be upon him) said: "O Basheer, do you have any other children?" He said: Yes. He said: "Have you given to all of them like you have given to this one?" He said: No. He said: "Then do not ask me to bear witness for I will not bear witness to injustice."

If the father goes against that and shows preference among his children, then the children have to make it fair and just, and they have to re-divide it as prescribed by Allah.

The Standing Committee for Issuing Fatwas was asked: Is it permissible for the father to register a farm in the name of one of his sons and leave out the rest of his children? My father registered a farm in my name, leaving out my sister and my younger brother. Should I sponsor these children or not?

They replied: The father should treat these children fairly in terms of giving, according to the shares of inheritance prescribed in Islam. It is not permissible to single out some of them to the exclusion of others, because the Prophet (blessings and peace of Allah upon him) forbade that. It was narrated from al-Nu'maan ibn Basheer (may Allah be pleased with him) that his father brought him to the Messenger of Allaah (blessings and peace of Allah be upon him) and said: I have given this son of mine a slave that belonged to me. The Messenger of Allaah (blessings and peace of Allah be upon him) said: "Have you given a similar gift to all your children?" He said: No. The Messenger of Allaah (blessings and peace of Allah be upon him) said: "Then take it [the gift] back." Agreed upon.

Based on that, your father has to correct what he did of giving to some of his children, by giving each of his sons something like he gave to the son mentioned, or by taking back the gift from him. If your father has died, then you should divide the estate between you and the rest of the heirs according to the shar'i ruling. End quote.

Shaykh 'Abd al-'Azeez ibn Baaz, Shaykh 'Abd-Allah ibn Ghadyaan, Shaykh Saalih al-Fawzaan, Shaykh 'Abd al-'Azeez Aal al-Shaykh, Shaykh Bakr Abu Zayd.

Fataawa al-Lajnah al-Daa'imah,
16/216.

Secondly:

If your maternal uncle did not do that on the basis that it was a gift, as you mentioned, and he retained possession of the properties during his lifetime, and he only registered them in the names of his children so as to avoid taxes, then these properties still belong to your

uncle. If he died, then they must be divided among the heirs according to the shar'i rulings on division of the estate.

To sum up: the sons have to re-divide the estate, whether the properties are regarded as gifts or a bequest or neither. Rather they are an estate that the father apparently registered in the names of his sons, but he intended to reregister them in his own name.

What you have to do is to advise the sons and remind them of the command of Allah and the rights of their sisters, and tell them that they should beware of injustice and consuming people's wealth unlawfully, because whoever seizes land the size of a handspan unlawfully, it will be like a yoke around his neck to the depth of seven earths on the Day of Resurrection. What is the value of the written documents if the owners know that their father did not intend to give them possession thereby; rather if he wanted to give them possession he would have been unjust and they would have to re-divide the wealth.

Allah has explained how the estate is to be divided (interpretation of the meaning):

“These are the limits (set by) Allaah (or ordainments as regards laws of inheritance), and whosoever obeys Allaah and His Messenger (Muhammad صلى الله عليه وسلم) will be admitted to Gardens under which rivers flow (in Paradise), to abide therein, and that will be the great success.

14. And whosoever disobeys Allaah and His Messenger (Muhammad صلى الله عليه وسلم), and transgresses His limits, He will cast him into the Fire, to abide therein; and he shall have a disgraceful torment”

[al-Nisa' 4:13, 14].

We ask Allah to guide them and enable them to be just and fair.

And Allah knows best.