

247902 - He built a house and gave it to his wife instead of her dowry, and he lived in it with her; is it part of her estate?

the question

We are 3 sisters. No brother. My father had built a house in his life which he had gifted to my mother as a dowry. (note: The original amount of dowry is much lesser than the worth of the house). This is a multi-level house in which we used to live throughout our lives. And my father used to rent a portion of the house in order to receive extra income.

After the death of my mother, my father had been told by the Imam of local mosque that the way he gifted the house as a dowry is not acceptable in Islam. A dowry is something which you pay to your wife and she is the sole proprietor of that. But in this case, as my father with all family members (including parents and siblings) been living in the same house; the purpose of the dowry has not been accomplished.

So, to compensate, he was advised to pay the amount of dowry to any Sadaqa e Jariya on my mothers name. But as my father was very sick and financially weak, so he didnt pay and told us (daughters) to pay that money as Sadaqa whenever we would have sell the house and get the money for our mother.

Meanwhile, as the house was on my mothers ownership, so after her death it was transferred to the legal heirs (i.e. my father and we 3 sisters).

Now after my father's death we are confused, as to how should we distribute the shares. As according to Shari Law, due to not having brothers, our Uncles and Aunts are eligible heirs too.

Should we consider this house as my mother's property or my father's property?

Detailed answer

What we understand from your question is that your father gave the house that he built to your mother instead of her dowry that had already been decided, and he registered the house in her name. This means that ownership was transferred to her, whether she took possession of it or not, because this does not come under the heading of a gift; rather it is an agreement on an exchange and it comes under the rulings on buying and selling, and buying and selling becomes binding when the deal is concluded.

It says in ar-Rawd al-Murbi' (p. 248):

If he comes to a deal to give him his due in a form different from what he owes him, such as if he acknowledges that he owes him a particular item or a debt, and he gives him something in its place that it is permissible to give him instead – so that if it is one currency instead of another currency, which she can then exchange, or if he gives him an item that he can sell, then it will be regarded according to its value.

Ibn Qudaamah (may Allah have mercy on him) said:

Transactions are of four types, one of which is a binding contract when the aim is exchange, which is like buying and selling, and whatever comes under the same heading.

This is of two types, one of which is that in which two choices may be stipulated: the choice to proceed or annul in the same sitting, and the choice to stipulate a condition, which is applicable in cases where there is no stipulation to do the exchange in the same sitting. Making a deal comes under the same heading as buying or selling, and a gift in return for compensation also comes under this heading, according to one of the two reports, as does renting.

End quote from al-Mughni (4/130).

It does not matter that he and his children lived in it, or that he was in control of it and rented out part of it, because that would have been done with the consent of his wife when she allowed her husband to use some of her property.

Based on that, it is part of her estate; your father gets one quarter of it and you (sisters) get two thirds. Then we should see if she had any male relatives on her father's side, such as a brother or brother's son, or a paternal uncle or paternal uncle's son, in which case the remainder goes to these male relatives. If she did not have these male relatives, then the remainder goes to you (sisters) only, not to your father.

If your father dies, then his estate is to be divided among his heirs, and one quarter of the house is to be included in his estate. So the daughters take two thirds, and the remaining third is to be shared between his full brothers and sisters, with each male getting the share of two females, because Allah, may He be exalted, says (interpretation of the meaning):

“if there are brothers and sisters, the male will have twice the share of the female”

[an-Nisa' 4:176].

And Allah knows best.