

98771 - He gave his mother a gift then she bequeathed it to him after her death

the question

I have bought a gift of great value for my mother before she passed away. She said to everyone that the gift should be returned to who bought it for her after I die. Is it considered of her heritage, do I have to ask my brothers' permission to take it, knowing that they do not mind? What makes me confused is what the prophet (PBUH) said: "There is no will for the heirs" in case we consider my gift included in the heritage.

Detailed answer

What you gave to your mother and she accepted from you has become her property, and the basic principle is that it is part of her estate which is to be divided among all of her heirs. But her saying that gifts are to be returned to the one who gave them after she died, which is clearly a bequest in your favour, is a bequest to an heir as you say. Abu Dawood (2870), al-Tirmidhi (2120), al-Nasaa'i (4641) and Ibn Majaah (2713) narrated that Abu Umaamah said: I heard the Messenger of Allaah (peace and blessings of Allaah be upon him) say: "Allaah has given each person who has rights his rights, and there is no bequest for an heir." Classed as saheeh by al-Albaani in Saheeh Abi Dawood.

This bequest should not be executed unless the heirs agree, so long as they are adults of sound mind. As for one who is not an adult of sound mind, such as a minor, his agreement does not count, and it is not permissible to detract anything from his share in the interests of the one for whom the bequest was made.

It says in one of the versions of the hadeeth quoted above from Ibn 'Abbaas (may Allaah be pleased with him): "It is not permissible to make a bequest to an heir unless the other heirs agree." Narrated by al-Daaraqutni and classed as hasan by al-Haafiz Ibn Hajar in Buloogh al-Maraam.

Ibn Qudaamah (may Allaah have mercy on him) said in al-Mughni (6/58): “There is no bequest for an heir, unless the other heirs allow that.” To sum up, if a person makes a bequest to one of his heirs and the other heirs do not agree to it, then it is not valid, and there is no difference of opinion among the scholars concerning that. Ibn al-Mundhir and Ibn ‘Abd al-Barr said: The scholars are unanimously agreed on that, and there are reports from the Messenger of Allaah (peace and blessings of Allaah be upon him) to that effect. Abu Umaamah narrated: I heard the Messenger of Allaah (peace and blessings of Allaah be upon him): “Allaah has given each person who has rights his rights, and there is no bequest for an heir.” Narrated by Abu Dawood, Ibn Majaah and al-Tirmidhi. ... But if they agree to it then it is permissible, according to the majority of scholars. End quote.

It says in Fataawa al-Lajnah al-Daa’imah (16/317): It is not permissible to bequeath more than one-third, and it is not valid to make a bequest to an heir, unless the heirs who are adults of sound mind give up part of their shares, because the Prophet (peace and blessings of Allaah be upon him) said: “Allaah has given each person who has rights his rights, and there is no bequest for an heir.” Narrated by Ahmad, Abu Dawood, al-Tirmidhi and Ibn Majaah, and by al-Daaraqutni who added at the end: “unless the other heirs agree.” End quote.

And Allaah knows best.