106236 - The father bequeathed a car to one of his sons

the question

My father died and left behind my mother and six brothers only. One of the things that he had was a car worth 25,000 riyals, which he had transferred to the name of our oldest brother during his lifetime, so that he could sell it for him and he could dispose of its value. This is what our father told us before he died. But after he died, his oldest brother is saying that our father instructed him and told him that the car should be in the name of another brother and not the rest. Is this permissible, or is there no bequest to an heir? Also, if it was a gift, is it permissible to give a gift of high value to one of his sons and not to the others? Please note that we were all helping equally with monthly expenses, and also that the car was not transferred to the ownership of the person to whom it was given when our father was still alive, as explained above, and it is still in the name of our oldest brother. What is your shar'i opinion in detail? Is this permissible or is there any sin on our father for this? As our brother is insisting that the car is his according to what our father said. We also hope that you can advise this brother of ours.

Detailed answer

Praise be to Allah.

If your father said that the car was to go to your brother after he died, or he gave it to him when he was still alive, then it is part of the estate and should be divided among all the heirs. Making a bequest to an heir is not permissible and should not be executed except with the consent of all the heirs. Then if any one of them allows the bequest and is an adult of sound mind, his share is waived, and if anyone insists on his right, he may take it. As for heirs who are not adults of sound mind, such as minors, their consent does not count and it is not permissible to detract any part of his share in favour of the one to whom the bequest was made.

The evidence for this is the report narrated by Abu Dawood (2870), al-Tirmidhi (2120), al-Nasaa'i (4641) and Ibn Maajah (2713) from Abu Umaamah (may Allaah be pleased with him) who said: I

heard the Messenger of Allaah (blessings and peace of Allaah be upon him) say: “Allaah has given each person who has rights his rights, and there is no bequest for an heir.” This hadeeth was classed as saheeh by al-Albaani in Saheeh Abi Dawood.

In one of the versions of the hadeeth which was narrated from Ibn ‘Abbaas (may Allaah be pleased with him) it says: “It is not permissible to make a bequest to an heir unless (all) the 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): If a person makes a bequest to his heir that the rest of the heirs do not agree to, it is not valid, and there is no difference of opinion among the scholars concerning this point. Ibn al-Mundhir and Ibn ‘Abd al-Barr said: The scholars are unanimously agreed on this. There are reports from the Messenger of Allaah (blessings and peace of Allaah be upon him) to that effect. But if they agree to it, then it is permissible, according to the opinion of the majority of scholars. End quote.

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

But if the father gave it to him when he was still alive, then it is also a gift that is not permissible and he has to give it back, because the Prophet (blessings and peace of Allaah be upon him) enjoined fairness between children in giving. This has been discussed with the evidence in the answer to question number 22169.

Our advice to the one to whom this bequest was made is that he should stop asking for this bequest, because it is contrary to sharee’ah and perhaps if he forsakes it, no sin will be upon the father as a result.

But if he insists on asking for it, then the matter should be referred to the other heirs as stated

above.

And Allaah knows best.