140078 - Is it permissible for the lender to benefit from the collateral left with him?

the question

A person left a piece of land with me as collateral for three years, during which time I cultivated it. Are the profits that result from that regarded as riba?.

Detailed answer

Praise be to Allah.

Firstly:

Making use of items left as collateral without the permission of the borrower is not permissible at all, because the Prophet (blessings and peace of Allah be upon him) said: “It is not permissible to take a man’s wealth unless he gives it willingly.” Narrated by Ahmad (20172) and classed as saheeh by al-Albaani in al-Irwa’ (5/279).

And because he (blessings and peace of Allah be upon him) said: “The whole of a Muslim is sacred to another Muslim, his blood, his wealth and his honour.” Narrated by Muslim, 2564.

Secondly:

If the borrower gives permission to the lender to make use of it, if the money owed is in the form of money lent by one person to another, then it is not permissible for the lender to make use of the collateral, even if the borrower gives permission, because a loan that brings a benefit is riba.

Al-Bayhaqi (may Allah have mercy on him) said in al-Sunan al-Sughra (4/353):

We narrated from Faddaalah ibn ‘Ubayd that he said: Every loan that brings benefit is a kind of riba. And we narrated similar views from Ibn Mas‘ood, Ibn ‘Abbaas, ‘Abd-Allah ibn Salaam and

others; it was also narrated from ‘Umar and Ubayy ibn Ka‘b (may Allah have mercy on them). End quote.

Thirdly:

If the debt for which the land is held as collateral was not a loan, such as if it was the price of goods bought or rent for a house and the like, and the owner (the borrower) gave permission to the lender to make use of it, there is nothing wrong with that. It says in al-Mudawwanah (4/149):

I said: What do you think, is it permissible to stipulate some kind of benefit from the collateral? He said: If the collateral is given because of a purchase, then it is permissible; if the debt in question is because of a loan, that is not permissible, because it becomes like a paid out loan that brings benefit. I said: Is this the view of Maalik? He said: Yes. … End quote.

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

Whatever does not need money spent on it, such as a house, goods and the like, it is not permissible for the lender to benefit from it without permission from the borrower under any circumstances, and we do not know of any difference of opinion concerning that, because the collateral is the property of the one who gave it as a pledge. The same applies to any money it makes or any benefit it brings. No one else has the right to take it without his permission. If the borrower gives the lender permission to make use of it without any compensation, and the debt for which this collateral was given resulted from giving a loan, then it is not permissible, because it leads to a loan that brings benefits, and that is haraam. Ahmad said: I regard it as makrooh (haraam) to benefit from houses which have been given as collateral in return for a loan, and it is pure riba. But if the collateral is the result of a business transaction, or outstanding rent, or any debt owed for a reason other than a loan, and the owner gave permission [to the lender] to make use of it, then it is permissible. End quote.

Al-Mughni, 4/250

Fourthly:

With regard to benefitting from collateral, as described above, it is stipulated that this benefit should not be in return for delaying the time of payment. If the benefit or use of the collateral is in return for that, then it is not permissible for the lender to make use of the collateral, because in that case it comes under the heading of a loan that brings benefit.

The Standing Committee was asked:

A man owes something to another man, and the debtor gave as a pledge or collateral a piece of land -- can the creditor benefit from this land by cultivating it or renting it out and the like?

The Committee replied:

If the collateral is something that does not need effort put into its maintenance, such as goods and property or houses, and it is given as collateral for a debt other than a loan, then it is not permissible for the creditor to benefit from it by cultivating it or renting it out, except with the permission of the debtor, because it is his property. Similarly, any benefit it brings is the right of the debtor. If the debtor gives permission to the creditor to make use of this land, and the debt does not result from a loan (qard), it is permissible for the creditor to benefit from it, even if it is not in return for payment, provided it is not in return for delaying the deadline for payment. If making use of the pledged property is in return for that, then it is not permissible for the creditor to benefit from it.

But if this land was allocated as collateral for a loan (qard), then it is not permissible for the creditor to benefit from it at all, because it is a loan that brings a benefit, and every loan that brings a benefit is riba, according to scholarly consensus. End quote.

Fataawa al-Lajnah al-Daa'imah, 14/176-177

Fifthly:

If the use or benefit of the land was without the permission of its owner, or it was with his permission but the debt was a loan (qard), as described above, or it was in return for delaying payment of the debt, it is not permissible to take anything of the produce of this land or to benefit

from any of its profits.

If the creditor - in whose hand the collateral is - has cultivated it, then the wages for his work should be deducted from the yield or crop, and whatever is left should be given back to the owner or be deducted from his debt.

See also the answer to question no. 105457

And Allah knows best.