145685 - The father and mother have died, and before the estate was divided, one of the sons died, and left behind a wife and daughters

the question

This is regarding the division of property among my father,his brothers and sisters.My father is the eldest followed by 4 brothers ,that is five brothers totally , all are married with well settled lifes with children, one of my fathers brothers died instate leaving his fmaily which comprises of three daughters and spouse, on the same hand my fathers sisters are again 5 all are well settled except one sister who lost her husband and daughter in an accident, All the sisters have completed their duties and are free from all responcibilities.
Now the property division is becomming a problem as they are not aggreeing to divide the property the islamic way , my Grand father and grand mother did not leave any deed or will which says the property should be divided in any form as they have mentioned. They passed away even before they could settle their children, all the responcibilities of the sisters were shared by brothers as it was their duty to get then in safe hands to lead a happy life , so their marriages were conducted and all responcibilities were managed by brothers in all respective ways, even before this problem one of our properties were sold and we have given all sisters a equal contributation as they hand needs for their good life. Now when the major property is getting settled we are have informed them that we should do the way almighty allah has asked us to divide the property , for which they are opposing and abusing us . Kindly shower your valuable consideratons to this and guide us how to find a remedy to settle this in a propery manner where we do not create any gunnah in the path way of the almighty allah.

Detailed answer

Praise be to Allah.

Firstly:

Division of the estate according to the command of Allah is an obligation which it is not

permissible to overlook, because Allah, may He be exalted, Himself decided the shares and issued a warning to the one who goes against it. Allah says, after explaining the shares of inheritance (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].

So it is obligatory to advise all the heirs to refer the matter for judgement according to sharee‘ah, and to divide the wealth as Allah has divided it, and to avoid going against that.

Secondly:

The person who wants to divide the estate has to find out which heirs were alive at the time of death. If the grandmother left behind an estate, you have to find out who was alive at the time of her death: her husband, her father, her mother and her children. With regard to the grandfather, if he died after his wife (the grandmother), then his heirs are: the five sons and five daughters. So the estate should be divided among them, with each male getting the share of two females.

If the grandmother was alive at the time of the grandfather’s death, then she takes one eighth of her husband's estate, then the remainder is to be divided among the sons and daughters, with each male getting the share of two females.

In this way the share of your father and the share of each of his brothers and sisters may be worked out.

Then if one of the sons died, his estate is to be divided among the living heir.

You said that he left behind three daughters and a wife, in addition to his four brothers and five sisters.

So his estate – which is all that he left behind of wealth, in addition to his share of his father's estate and his mother's estate – should be divided as follows:

The wife gets one eighth.

The daughters get two thirds.

The rest goes to his brothers and sisters, to be divided among them, with each male getting the share of two females.

If you are confused about the matter, then refer to the scholars in your country.

And Allah knows best.