187154 - His grandfather divided his wealth between his male children and deprived the females; what should the heirs do?

the question

My grandfather divided what he owned of agricultural land between his male children, depriving the females and their mother, and my father did not hesitate to accept that; as far as I know the females allowed him to do that, and the mother has passed away.
What should my father do? If he dies, what must his heirs do?

Detailed answer

Praise be to Allah.

What every Muslim must do is understand that the shares of inheritance are the ruling that Allah has ordained for His slaves, and He has forbidden them to overlook the shares prescribed in sharee'ah and divide the estate according to man-made law and human whims and desires. Allah, may He be exalted, says explaining the rulings on inheritance to His slaves (interpretation of the meaning):

"You know not which of them, whether your parents or your children, are nearest to you in benefit, (these fixed shares) are ordained by Allah. And Allah is Ever All-Knowing, Most Wise."

[an-Nisa' 4:11].

Allah, may He be exalted, also says (interpretation of the meaning):

"These are the limits (set by) Allah (or ordainments as regards laws of inheritance), and whosoever obeys Allah and His Messenger (Muhammad (blessings and peace of Allah be upon him)) will be admitted to Gardens under which rivers flow (in Paradise), to abide therein, and that will be the great success.

And whosoever disobeys Allah and His Messenger (Muhammad (blessings and peace of Allah be

upon him)), and transgresses His limits, He will cast him into the Fire, to abide therein; and he shall have a disgraceful torment”

[an-Nisa’ 4:13-14].

Whoever changes any of the rulings that Allah has ordained for His slaves, or uses trickery to cause some to miss out on their due shares, has transgressed the limits set by Allah and has wronged himself and exposed himself to the wrath and punishment of Allah.

Shaykh ‘Abd al-‘Azeez ibn Baaz (may Allah have mercy on him) said:

It is not permissible for anyone to deprive a woman of her inheritance or to use trickery for that purpose, because Allah, may He be glorified, has allocated to her a share of inheritance in His holy Book and in the Sunnah of His trustworthy Messenger (blessings and peace of Allah be upon him) and all the scholars of the Muslims based their rulings and fatwas on that. Allah, may He be exalted, says (interpretation of the meaning):

“Allah commands you as regards your children’s (inheritance); to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two thirds of the inheritance; if only one, her share is half. For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers or (sisters), the mother has a sixth”

[an-Nisa’ 4:11].

And at the end of the same soorah, He says (interpretation of the meaning):

“They ask you for a legal verdict. Say: "Allah directs (thus) about Al-Kalalah (those who leave neither descendants nor ascendants as heirs). If it is a man that dies, leaving a sister, but no child, she shall have half the inheritance. If (such a deceased was) a woman, who left no child, her brother takes her inheritance. If there are two sisters, they shall have two-thirds of the inheritance; if there are brothers and sisters, the male will have twice the share of the female. (Thus) does Allah make clear to you (His Law) lest you go astray. And Allah is the All-Knower of everything”

[an-Nisa’ 4:176].

What all Muslims must do is act in accordance with Allah’s laws concerning inheritance and other matters, and beware of anything that is contrary to that; they should denounce anyone who denies the laws of Allah or uses trickery to go against them in order to deprive women of inheritance, and other matters that are contrary to sharee‘ah. These people who deprive women of inheritance or use trickery for that purpose, in addition to going against sharee‘ah and the consensus of the Muslim scholars, are also following in the footsteps of the people of the Jaahiliyyah, the disbelievers, by depriving women of inheritance.

End quote from Majmoo‘ al-Fataawa (20/221)

Secondly:

With regard to giving gifts to children, it is stipulated that one must treat them fairly, and it is not permissible to favour some of them over others, regardless of whether they are male or female, because of the report narrated by al-Bukhaari (2587) and Muslim (1623) from an-Nu‘maan ibn Basheer, who said: My father gave me some of his wealth and my mother, ‘Amrah bint Rawaahah, said: I will not approve until you ask the Messenger of Allah (blessings and peace of Allah be upon him) to bear witness. So my father went to the Prophet (blessings and peace of Allah be upon him) to ask him to bear witness to my gift. The Messenger of Allah (blessings and peace of Allah be upon him) said to him: “Have you done this for all your children?” He said: No. He said: “Fear Allah and treat your children fairly.” My father came back and took back the gift.

According to another report narrated by Muslim (1623): The Messenger of Allah (blessings and peace of Allah be upon him) said: “O Basheer, do you have any other children?” He said: Yes. He said: “Have you given to all of them like you have given to this one?” He said: No. He said: “Then do not ask me to bear witness for I will not bear witness to injustice.”

Ibn Qudaamah (may Allah have mercy on him) said: It is obligatory for a person to treat his children equally in terms of gift giving, unless there is a valid reason for singling out one of them for a gift. If he does single out one of them for a gift or favours some of them over others in terms

of giving, then he is sinning and he must treat them equally by doing one of two things: either taking back that with which he had favoured some of them or by making up the share of the others. Tawoos said: That is not permissible, not even by giving a burnt piece of bread. This was stated by Ibn al-Mubaarak and something similar was narrated from Mujaahid and ‘Urwah.

End quote from al-Mughni (5/387

If the children are both males and females, then treating them fairly means giving the male the share of two females, because this is the way of sharing out that Allah is pleased with for His slaves with regard to inheritance. This is the view of the Hanbalis.

Based on the above:

What your grandfather did is an action that is not compatible with sharee‘ah. What your father and each of your paternal uncles who accepted this gift must do is advise their father, by explaining the shar‘i ruling in the way that is best. Perhaps he was unaware of the ruling on what he did, and he will come round to the truth and make amends for his wrongdoing.

If he takes back his gift or he shares things out fairly among his children, then this is what you wanted.

But if he refuses, then your father and his brothers must return the gifts to their father, because these are gifts that are haraam and do not rightfully belong to them, because of the hadith of an-Nu‘maan ibn Basheer (may Allah be pleased with him), according to which the Prophet (blessings and peace of Allah be upon him) said: “Have you given something similar to all your children?” He said: No. He said: “Fear Allah and treat your children fairly.” So he took back that gift

Narrated by al-Bukhaari (2587) and Muslim (1623)

Shaykh ‘Abdullah ibn al-Bassaam (may Allah have mercy on him) said, in his commentary on the hadith of an-Nu‘maan ibn Basheer (may Allah be pleased with him):

Rulings that are contrary to sharee‘ah are invalid and should not be carried out, and the contract

that is written concerning that is invalid, because that is contrary to Islamic teaching.

End quote from Tayseer al-‘Allaam Sharh ‘Umdat al-Ahkaam (2/26)

If your grandfather died before taking back his gifts, then your father and his brothers must return the gifts to the estate, then it should be divided among all the heirs in accordance with the sharee‘ah of Allah, because of the evidence from the Sunnah mentioned above.

Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said: If we assume that he did not do that, then he – I mean the father – died before he could give fairly to all his children, is it permissible for the one who was favoured to keep it?

Answer: He should not keep it; rather he must return it to the estate and let all the heirs inherit it.

End quote from Fataawa Noor ‘ala ad-Darb

If they, or some of them, refuse, then what the others must do is return whatever is surplus to their shar‘i shares to the estate, and divide it among the sisters who were deprived of their rights. Then with regard to what remains of their rights, the sin of that is on those who devoured it unlawfully, because this is a matter of justice that was within their means to rectify, and Allah does not burden any soul with more than it can bear.

And Allah knows best.