193698 - Their father died and left them a house and a tailor shop; how should the estate be divided among them?

the question

We are a family composed of four daughters and one son, who is married, as are two of the daughters, and the other two daughters are still at home with our mother. One of them works for a private company and the other is the youngest of us, and is the focus of our question; she works as a tailor. When my father died, may Allah have mercy on him, he left us a house that he had built, so it belongs to us, and he left the store in which he was a tailor and for which he used to pay rent every month. We have allowed our sister who works as a tailor to use the shop after our father died; now she is the one who spends on the house and on our mother, but the Shaytaan has started to whisper into the hearts of some of us and some have started to demand their share of this shop.
What is the Islamic opinion concerning this? Is it permissible for us to speak about the inheritance at all when our mother is still alive? Are we entitled to a share of the income earned by our sister by means of her own efforts in this shop? Especially since I am certain that she is the one who is bearing the responsibility of spending on the house and on our mother, with all that she needs of medicines and other things. This matter is upsetting my mother too, and she is the one who has asked me to consult someone whom I trust concerning the ruling so that she will not be wronging any of her children.

Detailed answer

Praise be to Allah.

Firstly:

The basic principle is that whatever the deceased left of wealth, property or goods belongs to all of the heirs, whether that estate is small or big, because Allah, may He be exalted, says (interpretation of the meaning):

“There is a share for men and a share for women from what is left by parents and those nearest related, whether, the property be small or large - a legal share”

[an-Nisa’ 4:7].

Based on that, what your father left behind of sewing machines in that shop are to be regarded as belonging to all of the heirs; if they wish they may sell those machines and divide the price amongst themselves, each according to his allocated share of the inheritance. So the one whose share is one eighth, for example, may take one eighth of the sale price, and so on for the rest of the heirs.

In fact this is what we advise you to do, to divide the estate and give each person his or her share. The one who works in that profession is more entitled to the shop than anyone else, so she should give each of the heirs his share, and you should be easy going with regard to that. If she is not able to pay all that she is required to, then be lenient towards her with regard to payment.

If they want to leave the machines and the shop as they are, if the heirs agree to that, in that case then the sister who is working can rent it from them, so the rent of the shop and machines will be an inheritance to be distributed among the heirs, each according to his share of inheritance; or they can pay her a salary like that of her professional peers, whatever is left over (of the income from the shop) may be distributed among the heirs; or she can work on a profit-share basis (mudaarabah), in which she receives a portion of the profit and the others receive the rest. Any of these options may be chosen, according to what you agree upon.

The safest of these solutions and the one which is most likely to prevent conflict, is to divide the estate completely. Experts should work out the value of what your father left in the shop of machines and so on, and it should be divided among the heirs.

Secondly:

The fact that your mother is still alive has nothing to do with the question of dividing the estate; rather if any of the heirs asks for his share of the inheritance then it should be given to him. This

has been explained previously in the answer to question no. 97842

With regard to your mother’s maintenance, such as food, drink and so on, if her share of the inheritance is not sufficient to meet her needs, then those of her children who are well off are obliged to spend on her. If they are equal in that regard, then the responsibility for maintenance should be shared among them. For more information on this matter, please see question no. 144721

We ask Allah to grant you ample provision and to unite you in truth and goodness.

And Allah knows best.