315059 - He gives his children bank certificates to be redeemed after he dies, so that his wife will not inherit any of this money

the question

My father took another wife after my mother died, and he gave her a large amount of money, then there were disputes between them and she asked for khula‘. She took the matter to court and claimed that my father had not given her anything. Then my father made gift certificates for me and my siblings, giving each male double the share of each female, which are only to be redeemed after our father dies, and my father is living on the dividends of these certificates. That is so that his wife will not inherit anything of this money if he dies before his divorce from her is complete, because in fact she has already taken a large amount. Is there any infringement (of Islamic teaching) in what my father has done? I hope you can describe any infringements and the way to deal with them. Please note that the second wife is not a good person and has hurt us a great deal; she has taken a huge amount but she denies it.

Detailed answer

Praise be to Allah.

Firstly:

When a person is alive and healthy, he may give whatever he wants of his wealth, to relatives and others, on condition that he does not intend to deprive an heir of his inheritance. If that is his intention, then in that case it is haraam to give the gift and this action is not valid.

Imam Muhammad ibn al-Hasan ash-Shaybaani (may Allah have mercy on him) said: It is not the attitude of the believers to seek to evade the rulings of Allah by means of tricks that are aimed at depriving people of their dues. This was quoted by al-‘Ayni in ‘Umdat al-Qaari Sharh Saheeh al-Bukhaari (24/109).

It is not permissible for a person to make a fake contract in order to deprive some of his heirs of their inheritance. Allah, may He be glorified and exalted, can see every individual and what his intentions and aims are, and we warn you against taking a path because of which you may be punished. And Allah is the source of strength.

See also the answer to question no. 260349.

Secondly:

If the gift is conditional upon the death of the giver, then this is a bequest.

It says in Sharh Muntaha'l-Iraadaat (2/434: It is not valid to make the gift conditional upon anything except the death of the giver; in that case it is valid, and it is a bequest. End quote.

But giving a bequest to an heir is haraam, and is not to be executed except with the agreement of the other heirs, because of the report narrated by Abu Dawood (2870), at-Tirmidhi (2120), an-Nasaa'i (4641) and Ibn Maajah (2713) from Abu Umaamah, who said: I heard the Messenger of Allah (blessings and peace of Allah be upon him) say: "Allah has allocated for each heir his share of the inheritance, so it is not permissible (to make) a bequest for an heir." This hadith was classed as saheeh by al-Albaani in Saheeh Abi Dawood.

It was also narrated by ad-Daaraqutni from Ibn 'Abbaas as follows: "It is not permissible to make a bequest to an heir, unless the other heirs agree." Classed as saheeh by al-Haafiz Ibn Hajar in Buloogh al-Maraam.

Thirdly:

The investment certificates that are issued by riba-based banks are haraam, because they are riba-based loans and are not permissible kinds of investment. This has been discussed previously in the answers to questions no. 98152 and 126073.

So you should advise your father to correct his intention and cancel his gift, and return these certificates if they are in riba-based banks.

Then he has the choice between keeping this wife if he decides to do so, or leaving her if he wishes, and he has no need to resort to tricks to deprive her of the estate.

And Allah knows best.