365431 - There is a new Muslim sister whose mother left all her wealth to her in her will, although she has other heirs. Should she take one third only?

the question

There is a new Muslim sister whose non-Muslim mother has died, and she left all her wealth to her, because she trusted her to take care of her sister. Please note that the woman who died had a husband, two daughters and a brother.

According to the law in Canada, if one of the spouses dies, all the wealth goes to the other spouse, unless there is a will stating otherwise. Does the Muslim sister have the right to take one third of the money on the basis that it was a bequest to her, and to divide the rest among the other heirs? Or what should she do?

Detailed answer

Praise be to Allah.

Bequest of a disbeliever to a Muslim

There is nothing wrong with the Muslim accepting the bequest of a disbeliever and taking whatever was bequeathed to him.

Ibn Qudamah (may Allah have mercy on him) said: It is valid for a Muslim to make a bequest to a dhimmi [a non-Muslim living under Muslim rule], or for a dhimmi to make a bequest to a Muslim, or for a dhimmi to make a bequest to another dhimmi. The view that it is permissible for a Muslim to make a bequest to a dhimmi was narrated from Shurayh, ash-Sha'bi, ath-Thawri, ash-Shafa'i, Ishaq and ashab ar-ra'y, and we do not know of anyone who disagreed with them. Muhammad ibn al-Hanafiyyah, 'Ata' and Qatadah said, regarding the verse {… except that you may do to your close

associates a kindness [through bequest]} [al-Ahzab 33:6]: This refers to the bequest of a Muslim to a Jew or Christian.

Sa‘id said: Sufyan told us, from Ayyub, from ‘Ikrimah, that Safiyyah bint Huyay sold her apartment to Mu‘awiyah for one hundred thousand. She had a Jewish brother, and she asked him to become Muslim so that he would inherit from her, but he refused, so she bequeathed one third of that one hundred thousand to him. Because it is valid to give a gift to a non-Muslim, it is valid to bequeath something to him, as in the case of a Muslim.

If it is valid for a Muslim to make a bequest to a dhimmi, then it is more appropriate that it should be valid for a dhimmi to make a bequest to a Muslim or to another dhimmi.

But that is not valid unless it is done in the manner in which a bequest from a Muslim to another Muslim is valid. If a bequest is made to an heir [one who is entitled to a specific prescribed share] or a bequest of more than one third of the estate is made to a non-heir, then it depends on the agreement of the heirs, exactly as in the case of a Muslim."(A*l-Mughni* 6/121).

Secondly:

Bequest of a disbeliever to a Muslim of more than one third of the estate

If the bequest is within the limit of one third of the estate or less, then the bequest is valid and should be executed.

If it is more than one third, then the additional amount depends on the permission of the other heirs.

Based on that, this Muslim sister should consult the other heirs; if they allow her to take whatever is more than one third, then she may take it.

If they do not allow that, then she should still take all the wealth, in accordance with the terms of the will, and not leave it to be disposed of according to the law of the land, which is contrary to Islamic law. Then she can take her rightful share of the estate, which is one third, then give the

rest to the other heirs, dividing it among them in accordance with the shares of inheritance as prescribed in Islamic teachings, and not divide it according to the law of the land, which is contrary to Islamic law.

And Allah knows best.