



385629 - His father gave him half of the business in return for running it, then he died. Do the heirs have the right to take back what his father gave him?

the question

My father called me to talk about his business as he was thinking of retiring. As I was working somewhere else, he told me he wants to make me an offer so I can run his business, and his offer was 50% shareholder of which we will share the profit 50/50 as he would be retired when I start running the business. I accepted his offer of which he then added me to his company as both a director and a shareholder. I have 2 witnesses that he spoke to regarding this matter. 2 months later he was admitted to hospital of which a month later of being in hospital he was pronounced dead. My question here is, do I still have the 50% shareholder or does all the profits of the business goes back to the whole family? Does this also mean I am not entitled in running the business anymore? where the family is now to decide who runs the business?

Detailed answer

Praise be to Allah.

Firstly

It seems from your question that your father gave you fifty percent of his company in return for running it. There are two matters to discuss here:

1. If you have siblings, male or female, and he did not give them something like what he gave you, then this is an unfair gift and he should have been equitable in giving. If he died without having done that, then you must include this gift in the estate. Please see the answer to question no.

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2. If you have no siblings, then we say: This was not purely a gift; rather it was in return for running the business, but when he died the partnership between you and him ended, and the heirs have the right to divide the company or to leave it as it is and appoint someone else to manage it, as we will explain below. If you are no longer able to run the business, then there is no reason for you to keep these shares, because they were in return for running the business.

Secondly:

If one of the two partners dies, the partnership becomes nullified according to the majority of jurists.

Ibn Qudamah (may Allah have mercy on him) said in *al-Mughni* (5/16): A partnership is a permissible kind of contract, and it becomes nullified by the death of one of the partners or if he becomes insane, or if he is deemed legally incompetent, or if one of the partners nullifies it, because it is a permissible contract but will be nullified by the things mentioned above, which is similar to the case of appointment of a proxy. End quote.

In *al-Mawsu'ah al-Fiqhiyyah* (39/308) it says: The majority of jurists among the Hanafis, Malikis, Shafa'is and Hanbalis are of the view that the partnership contract (of whatever type) can be invalidated and nullified, and all commitments connected to it become non-binding, when one of the partners dies. End quote.

The heirs in this case have the right to divide the company or leave it as it is and appoint a manager who is to be paid a salary. They do not have to retain you as manager of the company.

Based on that, the shares that your father gave you go back to the estate, then the heirs have the choice between leaving the company as it is, or dividing it, or appointing a manager for it.

If they decide to leave the company as it is and they accept you as manager and agree to give you half in return for managing the company, as your father did, then they have the right to do that, but it will be a new partnership from the time they make that decision, because the original partnership has been nullified.



And Allah knows best.