439738 - His father used to take some of his salary and buy property with it, then he became cognitively impaired; does he have any right to that property?

the question

I have been working for twenty-three years, and I am still working. For approximately fifteen years, my father used to take some of my salary to buy land with it and build on it. Please note that he is financially well off. He also used to pay most of the price from his own pocket, but that was so that he would be able to buy and build quickly. During this time, he registered some properties in my name, and he finished building on some of them. Because my father is sick, following a stroke, and is now cognitively impaired and not aware of anything, my question is: what is the ruling on these properties? Are they regarded as part of my father’s wealth? Please note that I have siblings, and now I am in charge of these properties. My second question is: I am now managing these properties, but I do not take any of his wealth; rather I am working to grow his wealth, and it takes up a lot of my time and energy. What you think about that?

Detailed answer

Praise be to Allah.

Firstly:

What you gave to your father is subject to discussion:

1. If it was by way of a gift, then the properties all belong to your father, even if he registered some of them in your name.

It is not permissible to take back a gift, because of the report narrated by Abu Dawud (3539), at-Tirmidhi (2132), al-Nasa’i (3690) and Ibn Majah (2377) from Ibn ‘Umar and Ibn ‘Abbas from the

Prophet (blessings and peace of Allah be upon him) who said: “It is not permissible for a man to give a gift or a present then take it back, except in the case of what a father gives to his son. The likeness of the one who gives a gift then takes it back is that of a dog that eats then when it is full it vomits, then it goes back to its vomit.” This hadith was classed as sahih by al-Albani in *Sahih Abi Dawud*.

2. If that was a partnership, meaning that some of the property belongs to you, then if what he registered in your name is equivalent to what you gave, then those properties belong to you.

But if what he registered in your name is worth more than you are entitled to, the extra amount was a gift, but he has to be fair in giving gifts to his other children, unless your siblings agreed to that. If they did not agree to your receiving something extra, then it must be returned to your father’s wealth.

Secondly:

The wealth of your father who is cognitively impaired and no longer aware of things must be kept and not spent on anything, except on his maintenance and the maintenance of those on whom he is obliged to spend.

In *al-Mawsu‘ah al-Fiqhiyyah* (45/162) it says: There is no difference of opinion among the jurists regarding the fact that it is not permissible for the guardian to dispose of the wealth of one who is legally incompetent except in the most careful and prudent manner, and in the manner that best serves his interests, because of the hadith: “There should be no harm and no reciprocating harm.”

Based on that, they said: Handling the money in a manner that serves no interest for the legally incompetent person – such as giving gifts for nothing in return, making bequests on his behalf, giving charity on his behalf, manumitting a slave of his, or showing favouritism when selling – is something that the guardian has no right to do, and he is liable for whatever he gives as a gift or a charity, or for manumitting the slave, or showing favouritism when buying and selling, or if he spends more than is proper on maintenance, or he gives any of the wealth to someone who is not trustworthy, because he is giving away that which belongs to him without getting anything in

return, so it is pure harm…

There is no difference of opinion among the jurists regarding the fact that the guardian must spend from the wealth of the person under his care on his maintenance and that of those on whom he is obliged to spend, on a reasonable basis, without being extravagant or stingy, because Allah, may He be exalted, says (interpretation of the meaning):

{And who, when they spend, are neither extravagant nor stingy, but follow a middle path between the [two]} [al-Furqan 25:70].

The Shafa'is and Hanbalis added: If he is stingy in spending on maintenance, he is sinning, and if he is extravagant, he is sinning, and he is liable for his negligence. End quote.

Thirdly:

It is permissible to take some payment on a reasonable basis for developing and growing the wealth, if that takes time and effort, provided that it is no more than the going rate for similar work, because the son is not obliged to work with his father or to develop his wealth.

And Allah knows best.