89882 - His father gave him something then he died before the son took it

the question

My family consists of my father, may Allah have mercy on him, my mother and my brother. Seven years before my father died he wrote 3 feddans to me and 3 to my brother of his entire estate which is 14 feddans. What is the ruling on this? Is it permissible to take them or not?.

Detailed answer

Praise be to Allah.

Firstly:

The father has the right to give his children whatever he wants, so long as he treats them fairly in giving. This is what your father did when he gave you something like that which he had given to your brother.

Secondly:

A gift does not become one’s property or become binding until one takes possession of it, according to the majority of scholars.

If the son did not take possession of the gift and take it for himself, then the father died, then the gift is cancelled out and that property becomes part of the estate of the deceased, to be divided among all his heirs.

Imam al-Shaafa’i (may Allaah have mercy on him) said in al-Umm (121): If a man gives a slave woman to his son, if the son is an adult, the gift is not complete until the son takes possession of it. Something similar was narrated from Abu Bakr, ‘Aa’ishah and ‘Umar ibn al-Khattaab (may Allaah be pleased with them). End quote.

Taking possession of land is done when it comes under his control and he begins to deal with it.

Taking control of land, if it is arable land, begins when one starts working it or renting it to someone to cultivate it, and other kinds of transactions.

Taking control of non-arable land, such as that which is prepared for construction, is done by registering it and defining its borders.

Based on this, if you took possession of these feddans then they belong to you now, but if it was simply the matter of writing down something to the effect that your father was giving it up to you, but he was still controlling the land and dealing with it in exclusion to you, then the gift was not complete, and this land is to be counted as part of the estate, and it is be divided among all the heirs, and your mother is entitled to a share of that.

The same may be said of your brother’s share too.

And Allaah knows best.