91530 - She left gold to her daughter in her will are her brothers entitled to a share of it?

the question

My wife died and she left behind one daughter who is 23 years old, and she left some gold jewellery that I bought for her with my own money. Are these gold pieces part of the share of the daughter, as her mother always used to say that they would be hers after she died? Or do I have a share of this gold? Or do her brothers have a share of this gold?.

Detailed answer

Praise be to Allah.

What a person leaves behind after he dies is to be divided among his heirs, after paying off his debts and carrying out his last wishes (wasiyyah).

So long as the wife used to say that the gold would go to her daughter after her death, this is a bequest (wasiyyah) from her, but it is a will giving something to an heir, so it should not be carried out except with the consent of the other heirs, because of the report narrated by Abu Dawood (2870), al-Tirmidhi (2120), al-Nasaa'i (4641) and Ibn Maajah (2713) from Abu Umaamah (may Allaah be pleased with him) who said: I heard the Messenger of Allaah (peace and blessings of Allaah be upon him) say: "Allaah has given each person who has rights his rights, and there is no bequest for an heir."

Classed as saheeh by al-Albaani in Saheeh Abi Dawood.

Al-Daaraqutni narrated it from the hadeeth of Ibn 'Abbaas (may Allaah be pleased with him) in the words: "It is not permissible to make a bequest to an heir except if the (other) heirs agree." Classed as hasan by al-Haafiz Ibn Hajar in Buloogh al-Maraam.

The bequest to the heir (the daughter) in this case depends on the consent of the other heirs, who

are you and her brothers. Whoever allows this bequest and is of sound mind will lose his share of the gold, but whoever does not allow it will keep his share of the gold. The same applies to any bequest concerning more than one-third of the estate; it cannot be executed with regard to the additional amount except with the agreement of the other heirs.

Ibn Qudaamah (may Allaah have mercy on him) said in al-Mughni (6/58): If a person makes a bequest to his heir but the other heirs do not consent to it, then it is not valid, and there is no difference of opinion among the scholars on this point. Ibn al-Mundhir and Ibn ‘Abd al-Barr said: The scholars are unanimously agreed on that. If they do consent to it, then it is permissible, according to the majority of scholars. End quote.

It says in Fataawa al-Lajnah al-Daa’imah (16/317): It is not permissible to make a bequest of more than one-third, and it is not valid to bequeath to an heir, unless the other heirs who are of sound mind agree, because the Prophet (peace and blessings of Allaah be upon him) said: “Allaah has given each person who has rights his rights, and there is no bequest for an heir.” Narrated by Ahmad, Abu Dawood, al-Tirmidhi, Ibn Maajah and al-Daaraqutni, who added at the end: “unless the (other) heirs agree.” End quote.

To sum up: The mother’s bequest of the gold to her daughter should not be executed except with the consent of the other heirs. If they do not agree then this gold should be divided among the heirs according to the shares prescribed in sharee’ah. You – the husband – will have one-quarter of this gold, even if you were the one who bought it; the daughter will have one-half and the rest will go to her brothers.

And Allaah knows best.