104346 - She left instructions to deprive her oldest son of his inheritance because she had helped him to get married with her money

the question

A woman died and left behind some money and some gold. Before she died, she left instructions that her oldest son should not be given any of her wealth, because she had helped him get married with her money, and she said: It is enough that I helped him get married; divide the money and gold among yourselves and do not give anything to my oldest son, because he has taken his share. Should we execute her will or give her oldest son his share? Should we divide the wealth now or wait until the younger sons grow up? Because currently they are still minors. Also, the grown up sons and daughters are asking for it to be divided now. What is the solution?.

Detailed answer

Praise be to Allah.

Firstly:

This will that gives instructions to deprive the oldest son of inheritance is not permissible and is not valid, because it is transgressing the limits set by Allah and is harming one of the heirs. Allah, may He be exalted, says (interpretation of the meaning): "… after payment of any bequests or debts, so that no harm is done to anyone." [an-Nisa' 4:12].

Ibn Katheer (may Allah have mercy on him) said in his Tafseer: i.e., so that his bequest will be based on justice and not on harming, unfairness or wrongdoing by depriving one of the heirs or detracting from his share, or giving more than Allah has decreed should be his share. Whoever tries to do that is like one who has opposed Allah and His wisdom and division of the estate. End quote.

Hence Ibn 'Abbaas (may Allah be pleased with him) said: Causing harm in bequests is a major sin.

Al-Haafiz said in al-Fath: This was narrated by Sa‘eed ibn Mansoor in a mawqoof report with a saheeh isnaad. It was also narrated by an-Nasaa’i and its men are thiqaat (trustworthy).

The mother’s getting her son married is a righteous deed and she is not obliged to give to the rest of his siblings the equivalent of what she gave to him; rather if any of them need to get married during her lifetime, she should get him married. What some people do, if they get one of their sons married off, is to bequeath money to the rest of them, thinking that this is fair, and something like this is what has happened in the case of the woman asked about here; she wanted to deprive her son of his share of the estate, thinking that this was fair.

But Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said: It is not permissible for a person to favour some of his children over others except between male and female; he can give the male double what he gives to the female, because the Prophet (blessings and peace of Allah be upon him) said: “Fear Allah and treat your children fairly.” So if someone gives one of his sons one hundred dirhams, he should give the others one hundred dirhams each, and he should give the daughters fifty dirhams, or take back the money that he gave to the first son. What we have mentioned here does not apply to obligatory maintenance; when it comes to obligatory maintenance he should give each of them what he needs. If it so happens that one of his sons needs to get married, he should get him married and give him the mahr if the son cannot pay the mahr, and in this case he does not have to give the others the same as he gave to this one who needed to get married and he paid for the mahr, because getting sons married is part of maintenance. I would also like to point out something that some people do out of ignorance: when a man has sons who have reached the age of marriage, he gets them married, and if he has other sons who are still young, he leaves a bequest in his will giving them something like what he spent to get the adult sons married. This is haraam and is not permissible, because this is a bequest to an heir, and making a bequest to an heir is haraam. The Prophet (blessings and peace of Allah be upon him) said: “Allah has given each one who has rights his rights, and there is no bequest to an heir.” So if he says: I am bequeathing this money to them because I got their brothers married with a similar amount, we say: if the younger ones reach the age of marriage before you die, then get them married as you got their brothers married, but if they do not reach that age (before you

die), you are not obliged to get them married.

End quote from Fataawa Islamiyyah, 3/30

To sum up: it is not permissible for a person to bequeath to the rest of his sons money for them to get married, or to deprive those whom he previously got married of all or part of their inheritance, because that is transgressing the limits set by Allah, may He be exalted, and is causing harm by means of one's bequest.

What must be done is to divide the estate among all the heirs, each one taking the share allocated to him by sharee'ah.

Secondly:

With regard to the request of some of the heirs for the estate to be divided, this is their right and you should respond to that. As for those who are still minors, their share should be kept for them and what they need for their maintenance should be taken from it. Then when they grow up and become mature, they may be given what remains of their wealth, because Allah, may He be exalted, says (interpretation of the meaning):

"And try orphans (as regards their intelligence) until they reach the age of marriage; if then you find sound judgement in them, release their property to them, but consume it not wastefully, and hastily fearing that they should grow up, and whoever amongst guardians is rich, he should take no wages, but if he is poor, let him have for himself what is just and reasonable (according to his work). And when you release their property to them, take witness in their presence; and Allah is All-Sufficient in taking account"

[an-Nisa' 4:6].

And Allah knows best.