105457 - Making use of something held as collateral

the question

What is the shar‘i ruling on the following situation? Someone gave some agricultural land of a known acreage to someone else as collateral for a loan of a specific amount of money, to be kept until he is able to pay off the loan. The lender will take possession of the land temporarily and make use of it, and he will keep its yield for himself and not give any of it to the borrower, until the debt is paid. The time period for this collateral may last for decades, and the lender will not give the land back to its owner until after the debt is paid off in full. Firstly: what is the ruling on the yield that the lender will keep for the duration of this period – is it halal or haram? What should the one who does that do if this action is haram – does he have to repent from it? Secondly: what should the borrower, who gave this land as collateral because he was forced to do so by his financial circumstances, do? Thirdly: what should the witnesses to this contract of collateral do? Please note that the borrower stated in this contract that he permitted the lender to make use of this land without being given any share of the yield or any rent until the debt is paid off.

Detailed answer

Praise be to Allah.

The lender’s use of the collateral is subject to further discussion:

Firstly: if he uses it and benefits from it without the permission of the borrower, then that is not permissible under any circumstances, because the Prophet (blessings and peace of Allah be upon him) said: “It is not permissible to take the wealth of any Muslim except with his willing consent.” And he (blessings and peace of Allah be upon him) said: “Your blood, your property and your honour are sacred to you, as sacred as this day of yours, in this land of yours, in this month of yours.” And he (blessings and peace of Allah be upon him) said: “Every Muslim is sacred to his fellow Muslim, his blood, his property and his honour.” And there are many hadiths which speak of

this. So it is not permissible for the lender to make use of the property given as collateral without the permission of the borrower.

It says in *al-Mughni*: We do not know of any difference of scholarly opinion regarding this.

But if the borrower gave the lender permission to make use of the property given as collateral, if what is owed is a loan, then it is not permissible for the lender to make use of the property given as collateral, even if the borrower gave permission for that, because this comes under the heading of riba, because the Prophet (blessings and peace of Allah be upon him) said: “Every loan that brings a benefit is riba.” Even though there is some discussion about the soundness of this hadith, the scholars are unanimously agreed about that, that it is not permissible for the lender to make use of and benefit from the borrower’s property because of the loan. So this comes under the heading of riba, and it is not permissible to write that down or to witness it, because the Prophet (blessings and peace of Allah be upon him) cursed the one who consumes riba, the one who pays it, the two who witness it and the one who writes it down.” And this comes under the heading of riba.

So if the debt is a loan, and the borrower gives something to the lender as collateral, it is not permissible for the lender to make use of it, whether the borrower gave permission or not, because this is riba.

But if the debt was not a loan, such as if it was the price for sold goods, for example, and the like, and he gives him permission to make use of it, then there is nothing wrong with that, because there is no reason to prevent it. End quote.

Majmu‘ Fatawa al-Shaykh Salih al-Fawzan (2/505).

And Allah knows best.