11724 - He died and left behind a mother, a father and a wife with whom he had not consummated the marriage

the question

If a husband dies and leaves behind a wife with whom he had not consummated the marriage, as well as a father, a mother, a brother and a sister, how should his estate be divided?.

Detailed answer

Praise be to Allah.

Firstly:

Spouses become entitled to inherit from one another by virtue of the marriage contract. If either spouse dies before the marriage has been consummated, the other is entitled to inheritance.

Al-Tirmidhi (1145) narrated from Ibn Mas'ood that he was asked about a man who married a woman but he did not stipulate a dowry for her and he did not consummate the marriage with her, then he died. Ibn Mas'ood said: She should be given a dowry like that of women who are similar to her, no more and no less, and she has to observe the 'iddah, and she is entitled to the inheritance. Ma'qil ibn Sinaan al-Ashja'i stood up and said: The Messenger of Allaah (peace and blessings of Allaah be upon him) passed a ruling concerning Birwa' bint Waashiq, one of our womenfolk, that was like the ruling you have passed. Ibn Mas'ood was happy with this (news). Classed as saheeh by al-Albaani in al-Irwa', 1939.

Ibn Qudaamah said in al-Mughni:

With regard to inheritance between spouses, it makes no difference whether that is before or after consummation of the marriage, because of the general meaning of the verse, and because the Prophet (peace and blessings of Allaah be upon him) ruled that Birwa' bint Waashiq be given the inheritance. Her husband died before consummating the marriage with her, and he had not

stipulated a dowry for her. And because the marriage is valid and proven, and thus the right of inheritance is given, just as it is after consummation. End quote.

He also said: With regard to the inheritance, there is no scholarly dispute concerning it, because Allaah has allocated a share to each of the spouses, and the marriage contract between the spouses in this case is valid and proven, and one may inherit from the other because of it, because it comes under the general meaning of the text. End quote.

Secondly:

With regard to the issue mentioned in the question, the siblings do not inherit anything. The scholars are unanimously agreed that siblings do not inherit if the father is present.

See: al-Mughni, 9/6

Thirdly:

If there are two or more siblings, the mother gets one-sixth, whether the siblings inherit or not, and whether they are male or female. The evidence for that is the verse in which Allaah says (interpretation of the meaning):

“if the deceased left brothers or (sisters), the mother has a sixth”

[al-Nisa’ 4:11]

Shaykh Ibn ‘Uthaymeen said in Tasheel al-Faraa’id (p. 33):

The mother inherits one-sixth if the deceased has descendents who are entitled to inherit, or if he has a number of brothers or sisters, because Allaah says (interpretation of the meaning):

“For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers or (sisters), the mother has a sixth”

[al-Nisa’ 4:11]

It makes no difference if his siblings are male or female, or both, whether they are full-siblings or half-siblings through the mother or father, or whether they inherit or are prevented from inheriting by the presence of the father, as is the apparent meaning of the verse, because Allaah has allocated one-third to the mother if the father is present. Then He says “if the deceased left brothers or (sisters), the mother has a sixth”. The fa’ here (in the word fa in, translated here as “if”) indicates that the second phrase is connected to the first and is based on it. Siblings do not inherit if the father is present, but despite that the mother is given one-sixth in this case. This is the view of the majority of scholars.

Shaykh al-Islam Ibn Taymiyah was of the view that they do not decrease the share of the mother to one-sixth if they are denied inheritance by the presence of the father. But this is contrary to the apparent meaning of the verse.

And he said in Nayl al-Ma’aarib (2/62):

This ruling is proven with regard to a brother or sister, and it makes no difference whether the brother or sister who is reducing the share of the mother to one-sixth inherits himself (or herself) or is deprived of inheritance by the presence of the father.

Fourthly:

Based on this, in the case asked about here, the inheritance is to be divided as follows:

The wife gets one-quarter because her deceased husband has no descendents who inherit from him. Allaah says (interpretation of the meaning):

“… their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts”

[al-Nisa’ 4:12]

The mother takes one-sixth because of the presence of a number of siblings.

The father gets the rest of the estate, because the Prophet (peace and blessings of Allaah be upon him) said: “Give the shares of inheritance to those to whom they belong, and whatever is left is for the closest male.” Narrated by al-Bukhaari, 6732; Muslim, 1615.

So the estate should be divided into twelve equal shares, three of which should be given to the wife, two to the mother, and the remaining seven to the father.

And Allaah knows best.