159393 - How can the house be divided among the heirs, when one of them has nowhere else to live and does not want to sell?

the question

Is it possible for the heirs to sell the house, if one of them does not have any other place to live and does not want to sell?

Detailed answer

Praise be to Allah.

The heirs share the estate according to the allocated share of each of them. In most cases, houses are small and not possible to divide them among the heirs without causing harm to some of them, such as if he takes a small part of the house that he cannot make use of.

The scholars call sharing this house among the heirs “sharing by mutual consent,” because it can only be done with the consent of all the partners.

If one of them asks for it to be divided and another refuses, the one who refuses should be forced to sell, and if he insists on his refusal, the authorities should intervene, sell the house and give each one his due share.

Al-Mirdaawi said in *al-Insaaf* (11/335):

Whoever calls his partner to sell in a case in which mutual consent is required, but he refuses, he should be compelled, and if he still refuses, it should be sold on their behalf and the price divided between them. End quote.

Al-Maqdisi said in *al-‘Iddah Sharh al-‘Imdah* (2/239):

If one of the two partners asks for his share and the other refuses, the authorities should force him

to do that. End quote.

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) said:

Regarding everything that cannot be divided, it should be sold and its price divided, if one of the partners requests that, and the one who refuses to sell should be forced to sell. Some of the Maalikis narrated that there was consensus on that."(*Majmoo' al-Fataawa* 28/96).

Al-Bahooti said in *ar-Rawd al-Murbi'* (469):

Whoever calls his partner to sell [their shared property], but he refuses. He should be compelled, and if he still refuses, the authorities should sell it on their behalf and share the price between them according to their shares. End quote.

Based on that, the one who refuses to divide the house should be forced to sell the house, and each [heir] should take his allocated share of the price.

And Allah knows best.