184120 - He built an apartment over his father’s house with his own money; do the heirs have any right to it?

the question

My father died in 1991 and left behind a house composed of three floors and a tailor’s shop. I have a brother, three sisters and my mother. My father promised the third floor to my brother and he promised the shop to me, but these words were not written down. I came out of the Army in 1992 and I had some money, approximately 10,000 pounds, with which I built an apartment on the fourth floor, and I helped my sisters to finish their education and get married. My mother and one of my sisters help me in the shop by making buttonholes, sewing on buttons and so on. My question is: how should the estate be divided, based on the above information

Detailed answer

Praise be to Allah.

Firstly:

Fathers are obliged to treat their children fairly in terms of giving gifts; it is haraam for a father to show preference to one of his children in any way. Based on that, it would not be permissible to fulfil the promise that he made to you and your brother if he were alive. As he has died, what is required is to divide the estate according to the shares stipulated in sharee‘ah. The scholars of the Standing Committee were asked:

Is it permissible for a father to register a piece of farmland in the name of one of his sons and ignore the rest of his children? My father registered a piece of farmland in my name and ignored my sister and little brother. Should I sponsor these children or ignore them?

They replied:

The father is obliged to treat his children equally in terms of giving gifts, in accordance with the shar‘i guidelines on inheritance. It is not permissible for him to single out some of them and not others, because the Prophet (blessings and peace of Allah be upon him) forbade that. It was narrated from an-Nu‘maan ibn Basheer (may Allah be pleased with him) that his father brought him to the Messenger of Allah (blessings and peace of Allah be upon him) and said: I have given this son of mine a slave I owned. He said: “Have you given a similar gift to all your children?” He said: No. He said: “Then take it back.” Agreed upon.

Based on that: your father must be fair in the gifts that he has given to some of his children by giving each of his children something like that which he gave to the one mentioned, or else he should take back the gift from him. As your father has died, you should divide the estate between you and the rest of the heirs in accordance with the shar‘i ruling.

Shaykh ‘Abd al-‘Azeez ibn Baaz, Shaykh ‘Abdullah ibn Ghadyaan. Shaykh Saalih al-Fawzaan, Shaykh ‘Abd al-‘Azeez Aal ash-Shaykh, Shaykh Bakr Abu Zayd

End quote from Fataawa al-Lajnah ad-Daa’imah, 16/216

Secondly:

With regard to the apartment that you built with your own money, it belongs to you and the heirs have no right to it. When the estate is divided, this apartment should be evaluated on the basis that it is a separate apartment, with no share of the value of the land, and is your property. In other words, experts should work out the value of this structure without including any part of the value of the land on which it is built.

And Allah knows best.