188488 - Division of property that forms part of the estate, if some of the heirs raise objections

the question

The father died three years ago, leaving behind a wife, four daughters, and six sons. He left behind 11 hectares of land, ten houses, and a shop. The mother lives in one house, two daughters each have a house, and three sons each have a house – and all of that is without paying any rent. The last house, in which the other children live, is located in the city, where its market value will be greater than the market value the rest of the estate. Most of the heirs have agreed to sell the house in the city so that the other heirs can pay the price of the houses in which they are living. Most of the heirs have agreed to sell the house in the city so that the heirs will be able to buy the houses they are living in. There was a deal for the two daughters and the wife to buy the houses they are living in for a particular price, and the other heirs would also have the right to buy the houses they are living in. But two of the sons who are living in the house in the city, which is composed of three storeys, have not agreed to sell it, because they cannot afford the price to purchase it, and they refuse to vacate the house on the grounds that they are demanding the sale of the entire estate, and to be given their shares before they will vacate it, and they cannot afford to rent. I should point out that some of the other heirs are benefiting every month from the rent from the other houses, whereas some of the others, both sons and daughters, not are benefitting from anything.

What is the Islamic ruling concerning that? Should the value of the rent of the houses since the death of the father be worked out and deducted from the share of those who are benefitting from it?

Detailed answer

Praise be to Allah.

Firstly:

Division of the estate must be done according to the laws of Allah, may He be exalted. If they have come to some agreement among themselves, there is nothing wrong with that, but if they differ then they must refer the matter to the sharee'ah courts.

The scholars of the Standing Committee were asked:

How are houses and movable inherited property, such as cars, tools and the like, to be divided, with or without agreement among the heirs? How is a rented business property to be divided (i.e., the deceased was renting it from someone else) if we say that the rental contract is to be inherited? Please note that the heirs cannot benefit from these things ?

They replied:

It should be divided among them according to the shar'i rulings on inheritance, with the help of experts in evaluation. If they have come to some agreement among themselves as to how it is to be divided, and they are of sound mind, then there is nothing wrong with that, but if there is a dispute, then the dispute should be referred to the sharee'ah court.

End quote from Fataawa al-Lajnah ad-Daa'imah (16/459)

It says in al-Mawsoo'ah al-Fiqhiyyah (33/215):

The partners may all want to divide the shared wealth, or some of them may decide on how to do that, and the others agree, in which case there is no need to resort to judicial intervention. In that case division of the estate is called division by mutual consent.

But it may be that one or more want to do that, but others refuse. If the one who wants to do that resorts to judicial intervention, then the qaadi (judge) should take charge of the division of the wealth in accordance with the principles approved of in sharee'ah, and in that case the division is imposed.

Division by mutual consent is that which is done with the agreement of all partners.

Imposed division is that which is done by means of judicial intervention, because the partners could not reach agreement. End quote.

Based on that, if there is mutual agreement among the heirs as to how the estate is to be divided, all well and good, otherwise the entire estate should be divided among them, each according to the share allocated to him in the Book of Allah, and that should be imposed by the judge.

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

If a person calls his partner to sell to him on the basis of a prior agreement, he should be forced to sell to him. If he refuses, then the entire property should be sold and the price divided between them. End quote.

It says in al-Mawsoo'ah al-Fiqhiyyah (33/215):

It is not necessarily the case that imposed division should be taken charge of by the judge himself or by someone whom he appoints to do that; rather it may be done by detaining the one who refuses until he agrees to that, and the judge may stipulate a reasonable time period for that to be completed in a just manner. End quote.

It is essential to pay attention to the state of inherited real estate, with regard to location, size, faciltities and other things that may affect the value and price of the property. No one of the heirs should be singled out to receive a house that is bigger than the others, or a house that is newer, or in a better neighbourhood, and the like. Rather what is essential is to be just in sharing out in all regards.

The value of the properties or other holdings should be worked out according to their value at the time of division, not according to their value at the time of the father's death, then the price of the properties and other holdings should be divided among the heirs, each according to the share allocated to him or her by sharee'ah.

If some of them are rented out and are not included in the division, and they cannot be sold, then the rent should also be divided among the heirs, each according to the share allocated to him or

her by sharee'ah even if the one who benefits from it is one of the heirs.

But if one of the heirs benefits from renting out some of the property in the sense that he gets more than the share allocated to him by sharee'ah, or he is the only one who benefits, to the exclusion of the other heirs, then what he has taken and benefitted from should be deducted from his share of the estate.

However we advise you to overlook such things that may have happened in the past, and divide what is received now, because that will be easier for you and more likely to bring harmony among you and bring a conclusion to this matter.

And Allah knows best.