



## **193143 - How should they divide the house that they have inherited? They worked to complete it, some of them spent on construction and some spent on finishing it**

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### **the question**

A man left behind a two-storey house; each storey was an apartment that was not completely finished. The heirs are his wife, four sons and two daughters. The first son and the mother finished the first floor and he got married and moved in. The third son finished the second floor, and got married and lives there with his mother. Then the second son built an apartment on top of the house (a third floor) without any help from anybody. Then the mother built an apartment on the top of the house (a fourth floor), where the fourth son now lives, so that there would not be any problems. The fourth son did some of the finishing. Please note that the older daughter got married when the father was still alive and the younger daughter got married after he died. Also, everything that the mother did of construction was paid for from the husband's pension.

How should this house – including the apartment that was built by the second son and the apartment that was built by the mother – be divided?

### **Detailed answer**

Praise be to Allah.

Firstly:

The scholars are unanimously agreed that ownership of the estate passes to the heirs as soon as the deceased dies. It says in al-Mawsoo'ah al-Fiqhiyyah (24/76): The fuqaha' are unanimously agreed that the estate passes to the heir, if there are no debts, from the moment the deceased dies. End quote.



Secondly:

If a man dies and leaves behind a wife, four sons and two daughters, and he did not leave behind any other heir, then the wife gets a share of one eighth, because there are descendants who inherit. Allah, may He be exalted, says (interpretation of the meaning):

“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”

[an-Nisa' 4:12].

The rest goes to the sons and two daughters, with each male getting the share of two females, because Allah, may He be exalted, says (interpretation of the meaning):

“Allah commands you as regards your children's (inheritance); to the male, a portion equal to that of two females”

[an-Nisa' 4:11].

Thirdly:

If the heirs have agreed among themselves to some way of dividing the estate, there is nothing wrong with that and it is called “division by mutual consent.” But if they disagree then the way to deal with it is to refer to the sharee'ah courts.

The scholars of the Standing Committee were asked:

How should inherited houses and movable possessions such as cars, tools and so on be divided, when there is mutual consent and when there is no mutual consent among the heirs? How should a rented store be divided (i.e., the deceased used to rent it from someone else)? If we say that the rental contract is inherited, please note that the heirs are not able to benefit from these things because they cannot all benefit from these things.

They replied: It should be divided among them according to the shares of inheritance prescribed in



Islam, with the help of experts in evaluation of the estate. If they agree amongst themselves to this division and they are mature adults, there is nothing wrong with that. But if they disagree, 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 all want to divide the shared wealth, or some of them want to do that and the others have agreed to the division and the manner of implementing it, so they do not have any need to go to the judge. In that case the division is called division by mutual consent.

One or more may want to do that but others may refuse. If the one who wants to do it refers the matter to the court, and the judge takes charge of dividing the wealth in accordance with Islamic principles, in this case the division is called compulsory division.

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

Compulsory division is that which is done through the court because there is no agreement among the partners. End quote.

On the basis of the above:

If you have agreed to divide the wealth amongst yourselves in a certain manner, then praise be to Allah, and the matter is as you have agreed, no matter what form it takes.

But if you disagree, then the way to deal with it is to refer the matter to the sharee'ah court to judge between you.

If there is no sharee'ah court, or you refuse to refer the matter to the court, then the current value of the house, with all its floors and finishings, should be worked out, then each heir should be given back what he spent on construction or finishing, or an amount in addition to his share should be worked out for him. The value of the apartment where he is living should not be given to him in full, even if he built it independently, because the value of the apartment includes a share of the



value of the land. What he spent should also not be given to him in full because the value of the structure he built or the finishing usually depreciates with use, and he originally spent it for his own benefit.

Whatever is left of the value of the house should then be divided among all the heirs, as described above.

For example, what the mother spent on construction or finishing may either be returned to her possession, and she may dispose of it however she wants, or it may be included in the estate and be divided among all the heirs according to their shares.

In this case, either the house should be sold and each one can take his share of the inheritance along with what he spent on construction or finishing, or each one can stay in the apartment he built on the basis that he will pay what he owes to the other heirs, or it may remain a debt that he owes to them, if the one who is entitled to that agrees to it.

And Allah knows best.