196925 - When the testator dies, his estate is transferred automatically to his heirs, and it is not permissible for anyone to withhold division of the estate

the question

My husband’s father died 27 years ago, and his mother asked her children not to distribute the estate until her daughters got married. In fact her daughters got married years ago, and now her children have asked for their share of inheritance, but she refused to give it to them. She has a son who she is allowing to take care of the estate, to the exclusion of the others, and he is managing the land and property that they own. Their mother and this son have possession of the estate, and they dispose of its income to the exclusion of the rest of the heirs. A month ago my husband died, leaving behind the apartment we are living in, which we own, but there are some outstanding payments which were delayed, and they have not been paid yet. My question now is: does my husband’s mother have any right to this apartment in which we live? Please note that she did not give my husband his inheritance until now, meaning his share of the land and the property that they have rented out and they have been making money from for all these years. Moreover, she has never asked me whether I and my five children need anything; the children are still in school, in different grades.

Detailed answer

Praise be to Allah.

Firstly:

In the answer to question no. 97842 we explained that when the testator dies, his wealth is transferred automatically upon his death [to his heirs]. The mother is entitled to her share of her son’s estate, and her son is entitled to his share of his father’s estate; he becomes entitled to it from the time of his father’s death, and it is not permissible for the mother to prevent any of the

heirs from taking his rightful share of the estate in full – to which he is entitled according to the Book of Allah – on the grounds that she wants to marry off her daughters, or other such excuses that ultimately boil down to consuming the rights of others.

Moreover, fathers and mothers are also obliged to treat their children equitably in terms of gift giving, and not to single out one of them for a gift to the exclusion of the others, without a legitimate reason for doing so.

For more information on that, please see the answer to question no. 36872 .

Secondly:

Regarding the mother's right to the estate of her son: if what he left behind was this apartment only, then the mother's right is connected to the status of the apartment on the day her son died, and not what its status is after paying off the instalments. So if the entire value of the apartment on the day when your husband died was 100,000, for example, of which 50,000 is still outstanding, then the value of the estate that he left behind is 50,000 only. Moreover, you have the right to withhold her share of her son's estate from her. If her share is less than her son's share of his father's estate, you can keep her share and she will still owe the rest of the heirs their dues that are still outstanding. If the two are equal, then you are even and the matter is settled.

If her share of her son's estate is greater than her son's share [of his father's estate] that she was withholding from him, then you must give her the difference between the two shares, so you have to deduct your share, then give her the rest.

What we advise you to do is to adopt a gentle approach to this matter, and asks some people who are known for their religious commitment, rational thinking and fairness to intervene to solve the problem and give each person his or her due, and put an end to any wrongdoing and transgression.

And Allah knows best.