198227 - His father wants to take back his gift after he was successful in doing business with it

the question

A father gave his son a gift of money, approximately 50,000, to start a business, and establish himself.
This was after he had finished high school. He started the business and continued with it, and the business has been going for fifteen years and is growing. A while ago the father asked the son to give him the entire business and everything in it, and he quoted as evidence for that (the hadiths) “The slave and everything he owns belongs to his master” and “You and your wealth belong to your father.” The son was upset by that, and did not agree. Things were quiet for a while, but now the father has again demanded his rights in the business, and now he is demanding half of everything that the son owns, not just the business. Please note that when the father gave the money to the son, he did not make any stipulations, and he did not even ask for it to be a partnership between them, and he did not even stipulate that the business was his, except in the early days of the business.
So how can this matter be resolved?

Detailed answer

Praise be to Allah.

The fuqaha’ differed concerning a case where the father gives something to the son then decides to take it back; is it permissible for him to ask for what he gave to be returned to him? There are two opinions:

The first opinion:

It is permissible for the father to take back what he gave to his son. This is the view of the majority

of fuqaha’ among the Maalikis, Shaafa‘is and Hanbalis.

They quoted as evidence for their view the hadith of Ibn ‘Umar and Ibn ‘Abbaas (may Allah be pleased with them), according to which the Prophet (blessings and peace of Allah be upon him) said: “It is not permissible for a man to give a gift then take it back, except a father with regard to what he gives to his son.” Narrated by at-Tirmidhi in al-Jaami‘ as-Saheeh (2132). He said: It is hasan saheeh. It was also classed as saheeh by Ibn ‘Abd al-Barr in al-Istidhkaar (6/244) and by Ibn Hajar in Fath al-Baari (2/251). Classed as saheeh by al-Albaani in Irwa’ al-Ghaleel, no. 1624

They also quoted as evidence the hadith of an-Nu‘maan ibn Basheer (may Allah be pleased with him), when his father singled him out for a gift, to the exclusion of his siblings. The Prophet (blessings and peace of Allah be upon him) said to him: “Fear Allah and treat your children fairly.” So he went back and took back his gift. Narrated by al-Bukhaari in his Saheeh (2587).

An-Nafraawi al-Maaliki (may Allah have mercy on him) said:

The father has the right to take by force what he gave to his son, whether the son is a child or an adult, if he did not give it to him to uphold ties of kinship or because of the son’s poverty, or with the aim of seeking reward in the hereafter; rather he gave it to him (the son) for his own sake.

End quote from al-Fawaakih ad-Dawaani (2/155)

Al-Khateeb ash-Sharbeeni (may Allah have mercy on him) said: The father has the right to take back at any time what he gave to his son, which includes both gifts and charity, without a verdict from a judge, according to the most well-known view, regardless of whether the son took possession of it or not, or whether he was rich or poor, a child or an adult.

End quote from Mughni al-Muhtaaj (3/568)

Ibn Qudaamah (may Allah have mercy on him) said:

The father has the right to take back what he gave to his son. This is the apparent meaning of the view of Ahmad. That applies whether by taking it back his intention is to establish fairness

between his children or not. This is the view of Maalik, al-Awzaa‘i, ash-Shaafa‘i, Ishaaq and Abu Thawr. End quote from al-Mughni (6/55)

The second opinion:

The father does not have the right to take back what he gave to his son. This is the view of the Hanafis.

They quoted as evidence for that the words of ‘Umar ibn al-Khattaab (may Allah be pleased with him): “Whoever gives a gift for the sake of ties of kinship, or by way of charity, he should not take it back. Whoever gives a gift thinking that he is seeking something in return, then it is up to him whether he wants to take it back in the event that he is displeased with what he gets in return.”

Narrated by Maalik in al-Muwatta’ (4/1091)

Imam as-Sarkhasi (may Allah have mercy on him) said:

This is evidence that if the father gives his son a gift, he does not have the right to take it back, as is the case if the son gives a gift to his father. That is because the prohibition on taking it back is in order to attain the objective – namely upholding ties of kinship – or because taking it back or disputing concerning it leads to severing ties of kinship.

End quote from al-Mabsoot by as-Sarkhasi (12/49)

The more correct view is that of the majority of fuqaha’, who quoted as evidence the unambiguous saheeh hadith. With regard to the evidence quoted by the Hanafis, it is open to interpretation and is not unambiguous. The words of ‘Umar ibn al-Khattaab (may Allah be pleased with him), ““Whoever gives a gift for the sake of ties of kinship…”may be understood as referring to relatives and kin apart from the father and his son. Even if we assume that this is what he was referring to, the marfoo‘ hadith that is attributed to the Prophet (blessings and peace of Allah be upon him) takes precedence over the view of a Sahaabi, according to the consensus of the fuqaha’.

Secondly:

Despite the fact that the view of the majority of fuqaha', that it is permissible for a father to take back that which he has given as a gift to his son, is more correct, nevertheless these fuqaha' stipulated important conditions for it to be permissible for the father to take back his gift. One of these conditions is that the property should still be in the son's possession. If he has sold it or used it to buy something or has disposed of it, then the father's right to take back the gift is waived.

It says in ash-Sharh al-Kabeer (4/111), which is a Maaliki book, in the context of discussing impediments to taking back a gift: If it has not been disposed of by the recipient by way of selling it, giving it away, manumission, turning dinars into jewellery, and the like. End quote.

An-Nafraawi (may Allah have mercy on him) said:

It is permissible for the father to take back his gift to his son so long as nothing has happened to the gift, that is something that would detract from its essence or increase it, in which case he loses his right to it and it is not permissible for him to force his son to return it.

End quote from al-Fawaakih ad-Dawaani (2/155)

Al-Khateeb ash-Sharbeeni (may Allah have mercy on him) said:

The father's taking back of the gift is conditional upon the gift remaining in the possession of the recipient, namely the son. It is not allowed to take back a gift if he has lost control of it, whether or not he lost control of it by means of losing possession of it, through selling all of it, or designating it as a waqf or manumission, and the like… If the son sowed the seeds or the eggs hatched out, he cannot take back the original item, because the original item no longer exists.

End quote from Mughni al-Muhtaaj (3/570)

Al-Bahooti (may Allah have mercy on him) said:

If the exact item that was given passes out of the possession of the son, by being sold or given away or dedicated as a waqf (endowment) or otherwise, then the father does not have the right to take it back.

End quote from Kashshaaf al-Qinaa‘ (4/313)

The point of all the above is that it is not permissible for your father to take back what he gave you after you have spent the money and bought with it what you needed for your business or your work. That is according to the consensus of the fuqaha’, the majority because the conditions of it being permissible to take it back no longer apply, and the Hanafis because it is not permissible for the father to take back what he gave to his son in the first place, as explained above.

Thirdly:

On our website we have previously explained the meaning of the words of the Prophet (blessings and peace of Allah be upon him), “You and your wealth belong to your father,” and that this is limited to cases in which the father has need of some maintenance from his son and does not have sufficient wealth of his own to be independent of means and have no need of what his son owns. Then in that case he may take from his son’s wealth enough to meet his needs only and not to become wealthy or save up money.

For more information, please see the following fatwas: 4282, 9594, 104298

To sum up:

Our advice to the father is to fear Allah concerning his son and not let what he has seen of his son’s success in business prompt him to fall into wrongdoing and transgression, thus devouring his son’s wealth unlawfully, quoting as evidence for that Prophetic hadiths and Islamic rulings of which he does not understand the wisdom. The son has the right to separate financial standing, and it is not permissible for the father to transgress against his son’s wealth or to help himself to it unlawfully. The reckoning before Allah will be difficult, and on that day a person will flee from his father, his wife and his sons, and requital between people will be in terms of hasanaat and sayi’aat.

On the other hand, our advice to the son is to treat his father kindly as much as possible, and to give him some money so as to please him, and to be kind to him,so as to avoid division and

conflict with him. He should express his gratitude to him and thank him for helping him with his money in the past.

And Allah knows best.