259416 - Repentance from having taken his sisters’ share of the inheritance

the question

My grandfather had two pieces of land, one called al-Khamseen, which was 48 kirats [qiraat – 1/24 of a feddan, or 175 m²], and another called ad-Dalaalah which was 69 kirats. al-Khamseen was worth more than ad-Dalaalah, nearly double. My father had siblings, two brothers and four sisters. When the land was shared out, my paternal uncles did the following: they gave each son 16 kirats of al-Khamseen, and they did not give the daughters anything. With regard to ad-Dalaalah, they gave each daughter 12 kirats, and each son took 7 kirats. My father did not object to what they did. When we grew up, we said to our father: This division is not pleasing to Allah, and we want to return the extra part of our share of this inheritance to our paternal aunts. What is the number of kirats that we should return to them?

Detailed answer

Praise be to Allah.

Firstly:

One of the gravest of prohibited actions that many people take lightly is:

unfairness in division of inheritance and not paying attention to the justice and fairness that Allah enjoins. Allah, may He be exalted, has explained the rulings on inheritance and the share of each heir, then He warned against the one who goes against these rulings, as He says:

“These are the limits [set by] Allah, and whoever obeys Allah and His Messenger will be admitted by Him to gardens [in Paradise] under which rivers flow, abiding eternally therein; and that is the great attainment.

And whoever disobeys Allah and His Messenger and transgresses His limits - He will put him into the Fire to abide eternally therein, and he will have a humiliating punishment”

[an-Nisa’ 4:13-14].

Ash-Shawkaani (may Allah have mercy on him) said: The word “These” is referring to the rulings mentioned above [including the rulings on inheritance]. They are described as limits because it is not permissible to overstep them or transgress them.

End quote from Fath al-Qadeer (2/99).

With regard to this issue the prohibition is more emphatic and the sin incurred is greater because of what is involved of usurping the land – which in itself is a major sin – and because of what it involves of severing ties of kinship and wronging one’s sisters.

Al-Bukhaari (3198) and Muslim (1610) narrated from Sa‘eed ibn Zayd (may Allah be pleased with him) that the Messenger of Allah (blessings and peace of Allah be upon him) said: “Whoever seizes a handspan of land unlawfully, Allah will encircle his neck with it down through seven earths on the Day of Resurrection.”

You did well to help your father to repent and restore people’s rights; this is an act of kindness and generosity that you may do for your father, and we ask Allah, may He be exalted, to accept your efforts and reward you for them.

Secondly:

If a man dies, leaving behind three sons and four daughters, then the estate is to be divided into ten equal parts, with each son being given two shares and each daughter being given one share.

Based on that, then each son’s share of al-Khamseen is 9.6 kirats and each daughter’s share is 4.8 kirats.

Each son’s share of ad-Dalaalah is 13.8 kirats and each daughter’s share is 6.9 kirats.

Thus it becomes clear that your father took of the land of al-Khamseen 6.4 kirats more than he was entitled to, and he gave your aunts in return 6.8 kirats of the land of ad-Dalaalah, And you are saying that this is not a fair division, because the land of al-Khamseen is nearly twice as valuable as the land of ad-Dalaalah.

So the way to repent, attain fairness and restore rights is to do one of two things:

The first is to take from your three aunts the 6.8 kirats of ad-Dalaalah, and give them 6.4 kirats of al-Khamseen.

This is what you must do if your aunts ask for that, because that is their right to the land that their father (your grandfather) left.

The second is to find out the fair value of the land, so you should see how much 6.4 kirats of al-Khamseen is worth, and how much 6.8 kirats of ad-Dalaalah is worth, and the difference between the two prices is to be given to your aunts, either in cash or in the form of land.

If we assume – for example – that this area of land in al-Khamseen is worth fifty thousand, and the area mentioned in ad-Dalaalah is worth thirty thousand, then the difference between the two is twenty thousand, which should be distributed equally among your aunts, or they may take the equivalent in land.

But your aunts cannot be forced to accept the second solution; rather it is only permissible with their consent, because this will be akin to selling their share of the land, and it is not permissible to force someone to sell what he owns. Allah, may He be exalted, says (interpretation of the meaning):

“but only [in lawful] business by mutual consent”

[an-Nisa’ 4:29].

And the Prophet (blessings and peace of Allah be upon him) said: “Business transactions are only to be done on the basis of mutual consent.” Narrated by Ibn Maajah (2185); classed as saheeh by

al-Albaani in Saheeh Ibn Maajah.

Whatever you take or give is applicable to all three of them, because the right belongs to all of them, and not just to one of them.

We ask Allah, may He be exalted, to enable your father to repent and to accept it from you all.

And Allah knows best.