271816 - Ruling on selling an item that is not present on the basis of a description or without a description

the question

I work in one city, and I had to move to another city. One of my colleagues was working in the new city, and he wanted to travel to another country. We agreed over the phone that I would take over his position at work and also take over the rental house in which he was living. We agreed that I would buy the furniture of the entire house, which he told me that he had bought for thirteen million in the currency of that country, and he would give it to me for ten million. I said to him: Give me a discount, so he said: I will give it to you for nine million. I said to him: Is the house lacking anything? He said: Only a few things. So I bought the furniture before I moved. I asked him to send me pictures of some of the furniture, and he sent me some pictures but not all of them. All of this was done over the phone. I did not actually see the furniture; I only saw the pictures that he sent me of two or three things. I transferred all the money to him before I moved, but when I moved I found that this furniture was not worth this amount of money. I also found that some things were missing in the house, and I did not find some of the items of which I had seen pictures. I spoke to him and told him: This furniture is not worth this amount, and where are the things of which you sent me pictures? He said: I thought these things belonged to me, but they belong to my wife, and I will pay you back for their value; it is a debt that I owe you. As for the furniture, I left a lot for you, and the sale is concluded. I said: Brother, I did not see this furniture, and I thought it was better in quality and greater in quantity than that, but I did not find it to be as you described it to me. He said to me: I have sold it to you and you bought it. What should I do now? Especially since we are brothers in Islam, and he and I are both trying to resolve the matter fairly, but he does not want to accept that he has done something haram, and he thinks that he is in the right, and I feel the same way. We hope that you can tell us the Islamic ruling regarding that.

Detailed answer

Praise be to Allah.

Firstly:

In order for a sale to be valid, it is stipulated that the item must be known, and that is done either by actually seeing it or having a precise description that will remove any ambiguity.

In *Al-Mawsu`ah al-Fiqhiyyah* (9/100) it says: One of the conditions of a sale being valid is that the item and the price should be known in such a way as to prevent any dispute. Therefore if one of them is unknown to the extent that it could lead to a dispute, the sale is invalid. End quote.

It also says (9/16): What is meant by it being essential that the item should be known is that it should be known to the purchaser what it is, and its type and quantity. So for example, what it is may be wheat; its type may be that it is the produce of a known country, and its amount may be determined by measure or by weight, and so on.

If the item is not present at the time of making the sale, and it was not known on the basis of seeing it or having a description of it in the manner referred to above, then it should be described in such a way as to distinguish it from similar items, and the amount must be stated.

If it is real estate, then its boundaries must be known, because the value of real estate differs depending on its size and location.

If it is something that may be measured by volume or weight, or by length and quantity, then learning about it means learning the amount of it that is to be sold. End quote.

If the item was not present, it is valid to sell it on the basis of a description. In that case the one who buys it then does not find it to be as it was described has the choice between annulling the deal or going ahead with it.

If the buyer and seller disagree about it not being as described, meaning that the seller says: I did

not describe it like that, and the purchaser says: Yes you did, then the purchaser’s statement is to be regarded as valid, provided that he swears an oath.

Ibn Qudamah (may Allah have mercy on him) said: A sale on the basis of a description is valid according to the correct view, if he described it in the way in which the description is given in the salam transaction [payment in advance for goods to be delivered at a later date]. That is because, if the purchaser did not actually see the product, there must be a detailed description of it, as in the salam transaction.

Then if the purchaser finds it to be as it was described, the contract is binding.

But if he finds it to be other than that, he has the right to cancel the deal.

If they differ regarding the discrepancy between the description and the actual item, what counts is the word of the purchaser.(*Al-Kafi*, 2/9).

Based on that:

If your friend described the furniture clearly, similar to the way that is required in the salam transaction, the sale is valid, then if you found the items to be different from the description, you have the option of cancelling the deal.

Secondly:

With regard to what he sold to you without a description, or he described it but there was still some ambiguity, the sale is not valid according to the majority of jurists.

Some of the scholars are of the view that it is valid to sell something that is not present without a description, but in this case the purchaser has the option of cancelling the deal when he sees it. This is the view of the Hanafis and is one of the two views narrated from Ahmad, and Shaykh Ibn `Uthaymin regarded it is more likely to be correct.

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) said:

With regard to selling items that are not present, three views were narrated from Ahmad regarding that, one of which is that the sale is not valid at all, which is also the later view of ash-Shafa`i.

The second view is that the sale is valid, even if the item was not described, and the purchaser has the option of cancelling the deal when he sees it, as is the view of Abu Hanifah. It was also narrated from Ahmad that he does not have the option of cancelling the deal.

The third view – which is the most well-known – is that the sale is valid if a description is given, but it is not valid without a description. This is the view of Malik.(*Majmu` al-Fatawa*, 29/25).

Shaykh Ibn `Uthaymin (may Allah have mercy on him) said in *Ash-Sharh al-Mumti`* (8/152): The words “he described it in a manner that is not sufficient for a salam transaction” mean that it is not valid, because the item is not known.

We will discuss the salam transaction, in sha Allah, and which items can be described accurately and which cannot. If the item is described in such a way that is not sufficient for a salam transaction, the sale is not valid.

And it was said that it is valid if he sells something that he has not seen and was not described to him, and the purchaser has the option to cancel when he sees it.

For example, someone may say: I want to sell my car to you, and the potential purchaser says: What is this car like? He says: In sha Allah, I will show it to you and you will know about it. The other man asks: For how much? He says: For five thousand, and the potential purchaser says: Okay, I bought it.

According to our madhhab, this deal is not valid, because he did not see the car and it was not described to him.

According to the madhhab of Abu Hanifah (may Allah have mercy on him), it is a valid sale, and the purchaser has the option to cancel the deal when he sees it. This is the correct view, because if he has the option to cancel when he sees it, he will not lose anything.

If it is said: What is the way to correct the transaction according to the first view?

The answer is: when he sees the item, he can make a new deal. End quote.

Conclusion:

The seller has no right to force you to buy that which was not described to you clearly, because this sale is not valid according to the majority of scholars. According to the Hanafis, however, it is valid, but you have the option to cancel the deal. Therefore you can cancel the deal when you see the furniture, if you do not like it.

Thirdly:

What your colleague sold to you that he thought belonged to him, then it turned out to belong to his wife, is not a valid transaction, because he does not own those items and did not have permission to sell them.

As for the items of which he sent you pictures and they belonged to him, the sale is valid if you can agree on a price for the furniture of which the sale was not valid, and you can deduct it from the total price that was agreed upon.

But if you could be harmed if you agree to keep some items and reject others, which is what the scholars call splitting the transaction, and you have a valid reason for wanting to buy all of the furniture, or you are not able to reach an agreement on the price after deducting the price of that of which the sale was not valid, then you can cancel the deal altogether.

See: *Ash-Sharh al-Mumti`*, 8/180181.

And Allah knows best.