283811 - Her brother cheated her and bought her share for a very low price, and is refusing to give her anything on the grounds that she agreed to the sale

the question

My father died and left behind a tannery; my brother took over running it and he was paying us rent. Two months ago, I asked him to buy my share, because I needed the money. I did not know the value of my share, and I did not ask anyone, because I trusted my brother. So he bought it for 60,000 pounds. Two weeks later, he bought from the rest of my sisters their shares in the tannery, paying each one 160,000 pounds, i.e., more than double (what he had paid me). I found out that the government estimated it at a higher price, because the business is going to be moved, and he knew and my sisters all knew, except me. Now he has cheated me, because he knew the real price, but when I asked him to give me the rest of the money, he said to me: You sold it and you agreed (to that price), and I bought it. Do I really have no right to ask for the rest of my dues like my sisters? Or will he bear a burden of sin, and is he obliged to give me the rest of what is due to me, because he deceived me?

Detailed answer

Praise be to Allah.

Firstly:

If someone sells something to another person who is unaware of its real price and did not bargain about the price, trusting the purchaser to be honest, then finds out that he was cheated, he has the choice to annul the deal.

He has the right to ask the purchaser for the rest of the price, and if the purchaser refuses, then the seller has the right to cancel the deal, take back the items sold, and give back to the

purchaser the price that he paid.

The fuqahaa' differed with regard to the percentage of the price that is regarded as cheating – whether it is one third or one fifth or what is regarded by traders as being unfair and cheating – but if your brother bought from your sisters their shares, which were the same as your share, for 160,000, and this was the market price, then what happened to you is cheating and is unfair according to scholarly consensus.

It says in Kashshaaf al-Qinaa' (7/435) regarding one who has the right to cancel a deal that is regarded as unfair and cheating: … the third case is one who entered into a transaction on the basis of trust. What is meant here is one who was unaware of the real value, whether he was a seller or a purchaser, and is not good at bargaining. He has the option of annulling the deal if he was cheated of the percentage mentioned above, i.e., by a percentage that is out of the ordinary, because that unfair deal took place because of his ignorance (of the real value). Therefore he has the right to annul the deal.

But in the case of one who has experience and is aware of the price of the item sold, but enters into a transaction knowing that the price is unfair, and one who accepts an unfair price because he was in a hurry to sell, and if he had paused to think and had not rushed, that unfair transaction would not have taken place – in these cases they do not have the right to annul the deal, because there was no cheating or deceit in this case. End quote.

Shaykh Ibn 'Uthaymeen (may Allah have mercy on him) said: If someone buys an item for 2500 riyals, when it is only worth 1500 riyals, if the seller knew that the price was 1500 riyals, but he knew that this man was a stranger who did not know prices, and he sold it to him for 2500, then he is sinning and it is not permissible for him to do that; if the buyer finds out, then he has the right to annul the deal, and this is described as an annulment due to an unfair deal, because 1000 out of 2500 is a lot. But if it was slightly unfair, such as a 10% difference, then that does not matter, because people commonly do deals that involve slight overcharging or undercharging.

But if the seller does not know – for example, if the price is 2500 but prices have fallen, and the

seller is unaware of the fall in prices, then the seller is not sinning, but the purchaser still has the right to annul the deal, because he has been subject to an unfair deal.

End quote from Liqaa' al-Baab al-Maftooh (56/14).

And he (may Allah have mercy on him) said: if someone were to ask: is it possible for the seller to enter into an unfair deal and be cheated?

The answer is: Yes, this happened a great deal, especially in earlier times. For example, a trader might know that sugar was rising in price, so he would go to people who had sugar and buy all that they had at the current price, when they did not know that its value had risen. This is undoubtedly unfair and is cheating, and the sellers were not being negligent when they sold it at that price, because when they sold it they thought that that was the correct value and that the prices were stable.

To sum up: just as the purchaser has the right to cancel the deal if he finds out that he got into an unfair deal, the seller also has the right, if he finds that he got into an unfair deal, to cancel the deal. There is no difference in that regard.

End quote from ash-Sharh al-Mumti' (8/303).

Secondly:

The right to cancel an unfair deal gives the one who finds that he has been cheated the choice between annulling the deal or going ahead with the deal without any compensation.

Some of the scholars said: he has the right to choose between cancelling the deal or going ahead with the deal with compensation, which is to make up for the difference in price.

According to the first view, you have the right to cancel the deal, then to sell your share for the price that you want.

According to the second view, you have the right to go ahead with the deal and to be given the difference, which is 100,000.

It says in Kashshaaf al-Qinaa‘ (3/212):

The purchaser has a choice between returning the goods or keeping them.

Ibn Rajab said in Sharh al-Arba‘een an-Nawawiyyah: The price should be reduced for the purchaser to a level that is fair, if he has been cheated, and the extra amount should be returned to him if he has already paid it.

And Allah knows best.