375000 - Ruling on disposing of the father’s wealth if he has become mentally ill or is suffering from dementia

the question

Before my father became mentally ill – may Allah, may He be exalted, heal him and grant him well-being – he used to give money from time to time to my cousin who lives in Yemen. The money that he gave him reached a total of approximately 75,000 riyals. Every time, he would say to him: Do such and such with it, but his request was not specific. The last time he gave him money, he said to him: If I die, offer sacrifices with the money and give charity. I got in touch with this cousin of mine and asked him what happened to the money that he had in his possession. He told me that he had not disposed of it, and that he was prepared to return it to us. My father also has a small piece of land in Yemen, without any documentation to prove it; it was bought through my cousin at my father’s request. My question is: how should we dispose of this wealth? Is it better to spend it in Yemen or in our country? Is it essential to put a fence around this land, paid for from this money? Fencing off the land would be done at the request of my cousin, to protect the land from people who want to take it.

Detailed answer

Praise be to Allah.

Firstly:

The one who is affected by dementia, Alzheimer’s or other mental disorders may be deemed legally incompetent and thus should be prevented from disposing of his wealth, which should only be spent on him and his maintenance, and the maintenance of those on whom he is obliged to spend.

Ibn Qudaamah (may Allah have mercy on him) said: Ahmad said: The old man who becomes

mentally ill is to be prevented from disposing of his own wealth. In other words, if he grows old and develops mental illness, he may be deemed legally incompetent and thus should be prevented from disposing of his wealth, like one who is insane, because he has become incapable of disposing of his wealth in a manner that serves his own interests, and he is no longer able to take care of it. Thus he is like a minor or one who is irrational and foolish." (A*l-Mughni* 6/610).

The declaration of legal incompetence should come from the qaadi (judge); he is the one who should appoint a guardian to take care of the one who is deemed to be legally incompetent.

In the answer to question no. 202990 , we stated that if there is no Islamic court, then the person's children should choose someone to look after the wealth and protect it, for guardianship should only be undertaken by the closest of people to the one who has been deemed legally incompetent and by the one who is best able to take care of that person's interests.

Secondly:

The guardian must pay attention to what is in the person's best interests and take care of his wealth; he should not spend it except on the person and those on whom he is obliged to spend.

It says in *al-Mawsoo'ah al-Fiqhiyyah* (45/162): There is no difference of opinion among the fuqaha' regarding the fact that it is not permissible for the guardian to dispose of the wealth of one who has been deemed legally incompetent except on the basis of care and prudence, in a manner that serves his interests, because of the hadith, "There should be neither harm nor reciprocating harm."

From that, they concluded that the guardian has no right to do anything that does not benefit the one who has been deemed legally incompetent, such as giving gifts with nothing in return, making bequests, giving charity, manumitting slaves or doing favours in transactions (by paying more than the usual price), and he must reimburse anything that he donated of gifts, charity, manumitting slaves or doing favours in transactions, or spending more than is required on the person's maintenance, or giving something to someone who is untrustworthy, because this is giving the person's wealth away with nothing in return, thus it is harmful and brings no benefit at

all.

There is no difference of opinion among the fuqaha’ concerning the fact that the guardian may spend from the wealth of the one who is under his guardianship on him and on those on whom he is obliged to spend, on a reasonable basis, without being extravagant or stingy, because Allah, may He be exalted, says (interpretation of the meaning): *{And [they are] those who, when they spend, do so not excessively or sparingly but are ever, between that, [justly] moderate} [al-Furqaan 25:67]*.

The Shaafa‘is and Hanbalis added: If he is stingy (and spends too little on his ward) he is sinning, and if he spends extravagantly he is sinning, and he is liable for his negligence. End quote.

Based on that, the father’s wealth should be taken care of, and it should not be given in charity. There is nothing wrong with putting a fence around the land, because that serves the interest of protecting his property.

It says in *Manaar as-Sabeel* (1/388): It is haraam for the guardian of a minor, or one who is insane or irrational, to dispose of their wealth except in a manner that benefits them and serves their interests, because Allah, may He be exalted, says (interpretation of the meaning): *{And do not approach the orphan's property except in a way that is best} [al-An‘aam 6:152]*, and the one who is irrational and the one who is insane come under the same ruling as the orphan. End quote.

With regard to the bequest to offer sacrifices and give charity after his death, it is a valid bequest which should be executed – after he dies – with the last amount of money that he gave to your cousin, if that is within the limit of one third of the estate. If it is more than one third, then anything more than that depends on the consent of the heirs.

And Allah knows best.