# 384876 - Is it obligatory to carry out the deceased’s instructions (wasiyyah) not to sell any of his property?

**the question**

My father died, and bequeathed ten percent of his estate to go to charity on his behalf. But he instructed us not to sell any piece of property, and if anyone sold anything, he would be angry with them. If any of the heirs insisted on taking his share, then no property was to be sold; rather the other heirs have to buy his share. So how can we give the ten percent that he bequeathed, when we are not able to sell any property? Did he have the right to stipulate that, and to oblige us not to sell the property? Furthermore, are we obliged to continue to give ten percent of any future income from rented properties?

**Detailed answer**

Praise be to Allah.

Firstly:

## Permissibility of bequeathing one third or less of one’s estate

A person may bequeath one third of his wealth or less, and his heirs must carry out his bequest, because Allah, may He be exalted, says in the verses on inheritance (interpretation of the meaning):

*{after any bequest he [may have] made or debt} [an-Nisa’ 4:11]*.

Al-Bukhaari (5659) and Muslim (1628) narrated from ‘Aa’ishah bint Sa‘d ibn Abi Waqqaas that her father said: I became very sick in Makkah, and the Prophet (blessings and peace of Allah be upon him) came to visit me. I said: O Prophet of Allah, I am leaving behind wealth, and I am only leaving behind one daughter, so can I bequeath two thirds of my wealth and leave one third? He said:

“No.” I said: Then can I bequeath half and leave half? He said: “No.” I said: then can I bequeath one third and leave two thirds for her? He said: “One third, and one third is a lot.”

If your father bequeathed ten percent of his wealth to go to charity on his behalf, and at the same time he forbade you to sell any property, then the way to carry out this bequest is to rent out one piece of property (such as an apartment, for example), the value of which is one tenth of the estate, and to give the rent in charity.

If one tenth of his wealth is less than the value of one apartment, then the one tenth may remain with one who does not want to sell his share of the apartment, and the commensurate amount should be deducted from the rent and given in charity, and whatever remains is his share.

Or one tenth may be sold, and an apartment or store in another place may be bought with the money, so that the purchased property may be rented out and its income be given in charity.

If there is a conflict about how to carry out this bequest, then you should refer to the shar‘i court.

Secondly:

## Ruling on the instructions (wasiyyah) of the deceased to his heirs not to sell any property

With regard to his instructions that his heirs should not sell the property, and his saying that he will be angry with the one who does that, he did not have the right to stipulate that, because when he died, his ownership of the property ceased and the wealth was transferred to his heirs. Therefore they have more right to it than him, and they have the right to dispose of it however they wish.

Al-Bukhaari (6442) narrated from ‘Abdullah: The Prophet (blessings and peace of Allah be upon him) said: “For which of you is the wealth of his heir dearer to him than his own wealth?” They said: O Messenger of Allah, there is no one among us but his own wealth is dearer to him. He said: “Then you should understand that his wealth is what he has sent on ahead, and his heir’s wealth is

what he leaves behind.”

This indicates that whatever the deceased leaves behind becomes the property of his heir, and once it becomes the property of the heir, then he may dispose of it in whatever way he wishes.

The heirs are not obliged to buy the share of the one who wants to sell the property. All of that is imposing strict guidelines that have no legitimacy.

It is known that he wanted the property to remain in their names, or he wanted them to come together in one place, and this is good, but it is not obligatory, and the son may see some benefit in going against that, and he may need to sell the property. So he cannot restrict him in this manner.

The instructions (wasiyyah) that should be carried out are those that have to do with the deceased donating some of his money, not those that prevent the heirs from disposing of their wealth.

Ibn Qudaamah (may Allah have mercy on him) said in *al-Muqni‘* (p.249): The instructions (wasiyyah) regarding wealth have to do with donating wealth after death. End quote.

Based on that, it is permissible for any of the heirs to sell his share, and if his brothers do not want to buy it, he may sell it to a stranger.

And Allah knows best