52724 - Their father left instructions that a waqf be set up, but they have not carried it out

the question

My father died and left property to his heirs, except for one house which he said was to made a waqf for the sake of Allah, and its income was to be spent on the poor and needy (as an ongoing charity). But the heirs did not follow the instructions left in his will and they sold their shares to the youngest brother. I am the oldest brother and I did not sell my share out of fear of Allah. But my young brother is putting a lot pf pressure on me and he wants me to sell my share as well. Is it permissible for me to get rid of this problem by selling my share and donating the money to a charitable cause or building a mosque (as an ongoing charity) for my father?.

Detailed answer

Praise be to Allah.

Making a will is prescribed according to the Quran and Sunnah, and scholarly consensus. Allah says (interpretation of the meaning):

“It is prescribed for you, when death approaches any of you, if he leaves wealth, that he makes a bequest to parents and next of kin, according to reasonable manners. (This is) a duty upon Al-Muttaqoon (the pious)”

[al-Baqarah 2:180]

And the Prophet (peace and blessings of Allah be upon him) said: “Allah has given you authority over the disposal of one-third of your wealth, at the time of your death, so that you may able to add to the record of your good deeds.” Narrated by Ibn Maajah 2709; classed as hasan by al-Albaani in Saheeh Ibn Maajah.

A waqf (Islamic endowment) is a kind of ongoing charity from which the donor may benefit after his death, as the Prophet (peace and blessings of Allah be upon him) stated when he said: “When a man dies, all his good deeds come to an end except three: ongoing charity, beneficial knowledge, and a righteous son who will pray for him.” Narrated by Muslim, 1631.

It is not permissible to bequeath more than one-third of one's wealth, because the Prophet (peace and blessings of Allah be upon him) said to Sa’d ibn Abi Waqqaas (may Allah be pleased with him) when he wanted to bequeath all of his wealth: “One-third, and one-third is a lot.” Narrated by al-Bukhaari, 2742; Muslim, 1628.

If this house is equivalent to one-third of the estate or less, then all of it is a waqf. If it is more than one-third, then the part of it that is a waqf is whatever is equivalent to one-third of the estate.

Secondly:

It is not permissible to sell a waqf, or to take possession of it or seize it. It is not permissible for the heirs to include it with the rest of the estate and share it out.

According to the hadeeth of ‘Umar ibn al-Khattaab (may Allah be pleased with him), when he wanted to give some land in Khaybar as a waqf, the Prophet (peace and blessings of Allah be upon him) said to him: “It is not to be sold, given as a gift or inherited…” Narrated by al-Bukhaari, 2764; Muslim, 1633.

Based on this, it is not permissible for you to agree to your brother’s demand to sell to him; rather this house is not your property that you can sell. Now you are standing in their way, so do not give in to them. Carry on refusing, and may Allah guide them.

Your brother’s selling it before is an invalid transaction.

You have to advise them to fear Allah and advise your youngest brother to give the money back, and make it a waqf as instructed by your father.

Scare them with the punishment of Allah and the punishment for consuming forbidden wealth, for

every body that is nourished from haraam earnings, the Fire is more fitting for it.

We ask Allah to guide you and help you to do that which is best for you in this world and in the Hereafter.

And Allah knows best.