96636 - She gave her house as a waqf (Islamic endowment) before she died; do the heirs have any right to it?

the question

A woman died leaving behind 4 daughters, 2 sisters, and a brother who has 6 sons and 6 daughters. She left a house but she endowed it for Allah before she died. Do the heirs have the right to consider it heritage and start dividing it?.

Detailed answer

Praise be to Allah.

If the deceased gave her house as a charitable waqf when she was in good health, then her heirs have no right to it, because it has become a waqf and it cannot be sold, given away or inherited. Al-Bukhaari (2737) and Muslim (1633) narrated from Ibn ‘Umar (may Allaah be pleased with him) that Umar was given a share of land in Khaybar, and he came to the Prophet (S) to consult him about it. He said: O Messenger of Allaah, I have been given a share of land at Khaybar and I have never been given any wealth that is more precious to me than it. What do you command me to do with it? He said: “If you wish, you can ‘freeze’ it and give it in charity.” So ‘Umar gave it in charity and stipulated that it was not to be sold, given as a gift or inherited, and he gave it in charity to the poor, relatives and slaves, for the sake of Allaah and for wayfarers and guests; there was no sin on the one appointed to look after it if he ate from it on a reasonable basis, and fed a friend without storing anything for the future.

But if she gave this house as a waqf during the illness from which she died, then it comes under the heading of a bequest, and a bequest can only apply to one-third of the estate; any more than one-third can only be given as a waqf if the heirs allow it.

If the house is no more than one-third of her estate, then the whole house is a waqf. If it is more than one-third, then the bequest should be executed with regard to the equivalent of one-third of

the estate, and with regard to the rest, that is dependent upon the consent of the heir. If they do not give consent, then they may share it out as an inheritance.

Ibn Qudaamah (may Allaah have mercy on him) said in al-Mughni (5/365): A waqf that is given during one's final illness is treated as a bequest with regard to one-third of the estate, because it is a donation. Therefore, if it is given during the final illness, then it is to be executed with regard to one-third of the estate, such as freeing slaves and giving gifts. If it is less than one-third then it may be done without the consent of the heirs and it is binding; if it is more than one-third, the equivalent of one-third should be made a waqf, and the additional amount may be made a waqf if the heirs give consent. We do not know of any difference of opinion concerning that among those who say that a waqf is binding, because the rights of the heirs have to do with the wealth that was present during the deceased's illness, and it is forbidden to give away more than one-third. End quote.