174421 - He bequeathed half of his land to his sisters; should his will be executed?

the question

Before my paternal uncle died, he brought a briefcase and showed me some papers in it, and he said to me that the papers had to do with his land and some contracts, but he did not show me his will, which I discovered after he died he had left in the briefcase.

After he closed the briefcase, in the middle of talking to my mother, he said: I have left my will to him, but I think that he meant his papers that I saw.

After he died, I opened the briefcase to see whether he had mentioned in those papers that he had left a will in some place, but I found a will with the title deeds of the land in the briefcase.

So should I give the briefcase to my uncle's wife first? Please note that when she found out that there was a will in it, she did not agree to it, and she wants to tear up the will without the knowledge of the other heirs. Please note that my uncle said that he did not accept for the briefcase to be left in his house or with his wife or with her father. Please note also that he wrote in his will that half of his land should go to his sisters, and that his retirement lump sum should all go to his sisters, after paying off his debts.

Detailed answer

It is not permissible to give the briefcase and papers to your uncle's wife, because of what you mentioned about the possibility of her tearing up the will and not showing it to the other heirs.

What you must do is show the will to all of the heirs, or give the papers to a trustworthy person to act to execute the will – if it is in accordance with sharee'ah.

The will that is in accordance with sharee'ah is that in which the bequest is within the limit of one third of the estate, and is made to people other than the heirs.

If the bequest is more than one third, or it is made to one of the heirs, then it depends on the agreement of all the heirs to the implementation of whatever is more than one third, or whether to implement it at all, if the bequest is to one of the heirs.

The basic principle concerning that is the report narrated by Abu Dawood (2870), at-Tirmidhi (2120), an-Nasaa'i (4641) and Ibn Maajah (2713) from Abu Umaamah who said: I heard the Messenger of Allah (blessings and peace of Allah be upon him) say: "Allah has given each person who has rights his rights, and there is no bequest for an heir."

The hadeeth was classed as saheeh by al-Albaani in Saheeh Abi Dawood.

It was also narrated by ad-Daaraqutni from the hadeeth of Ibn 'Abbaas: "It is not permissible to make a bequest to an heir unless the other heirs agree."

Classed as saheeh by al-Haafiz Ibn Hajar in Buloogh al-Maraam.

Al-Bukhaari (5659) and Muslim (1628) narrated from 'Aa'ishah bint Sa'd that her father said: I fell sick in Makkah and was very ill, 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 leaving no one behind except one daughter, so I want to bequeath two thirds of my wealth and leave one third. He said: "No." I said: Then I will bequeath half and leave half. He said: "No." I said: Then can I bequeath one third and leave two thirds to her? He said: "One third, and one third is a lot."

Shaykh Ibn 'Uthaymeen (may Allah have mercy on him) said: It is not permissible for the testator to bequeath anything to an heir, whether it is small or great, because the Prophet (blessings and peace of Allah be upon him) said: "Allah has given each person who has rights his rights, and there is no bequest for an heir." And because if a bequest is made to an heir, it will lead to him taking more of the wealth than Allah has allocated to him, and this is a transgression of the limits set by Allah. In the case of someone other than an heir, it is permissible to bequeath to him one third or less, because the Prophet (blessings and peace of Allah be upon him) said to Sa'd (may Allah be pleased with him): "One third, and one third is a lot."

With regard to his saying: “unless the heirs give their consent to that after his death, in which case it is valid and may be executed”, the apparent meaning of his words is that if the heirs give their consent to it, then it becomes permissible. But this is subject to further discussion; the correct view is that it is forbidden, but execution of the will depends on the consent of the heirs; in that case it becomes valid, but it is not valid to make a bequest to an heir in the first place.

End quote from ash-Sharh al-Mumti‘, 11/139

And Allah knows best.