

192234 - He died and left behind a wife, sons and daughters, and some of his children died before him. Do his grandchildren inherit the shares of his children who died before him?

the question

My father died and left us a house, and we want to sell the house. How should we share out (the price)? We are six males and two females, in addition to our father's wife. Please note that two of my brothers died (before our father), and they left wives and children, both male and female.

Detailed answer

Those who are entitled to a share of the estate, which comprises the price of the house after it is sold, are the wife and children of the deceased.

As for the wife, she gets one eighth, because there are descendants who inherit. Allah, may He be exalted, says (interpretation of the meaning): "their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave" [an-Nisa' 4:12].

The remainder of the estate goes to the children, with each male getting the share of two females, i.e., each male gets double what each female gets, because Allah, may He be exalted, says (interpretation of the meaning): "Allah commands you as regards your children's (inheritance); to the male, a portion equal to that of two females" [an-Nisa' 4:11].

With regard to your brothers who died whilst their father was still alive, their children and wives are not entitled to any share of the estate, because one of the conditions of inheritance is that the heir should still be alive after the death of the testator, and this condition is not applicable to your two brothers who died whilst your father was still alive. Therefore they are not entitled to a share of the estate, and their children are not entitled to a share of the estate either, because they are blocked from inheriting by their paternal uncles.

Shaykh 'Abdullah ibn Jibreen (may Allah have mercy on him) was asked: Do grandchildren inherit from their grandfather if their father died before their grandfather? If the answer is no,

then why?

He replied: Grandchildren [for the purpose of inheritance] are the children of sons, not the children of daughters. If their father died before his father, they do not inherit from the grandfather if he had another son or sons, because a son is closer than a son's son. If the grandfather did not have any sons, not even one, and he only had daughters, then the grandchildren inherit what remains after the daughters are given their share of inheritance. Similarly, they inherit from their grandfather if he did not have any sons or daughters; in that case they take the place of his children, with each male getting the share of two females.

End quote from Majallat al-Haras al-Watani (issue no. 264, dated 1/6/2004)

But it is recommended for you and your siblings not to deprive your brothers' children of anything of the estate, so as to make them feel better, and so that the pain of their father's death will not be compounded by being deprived of wealth. Allah, may He be exalted, says (interpretation of the meaning): "And when the relatives and the orphans and Al-Masaakeen (the poor) are present at the time of division, give them out of the property, and speak to them words of kindness and justice" [an-Nisa' 4:8]. So agree amongst yourselves to give them something in a way that will benefit them and not harm you, uphold your ties of kinship with them and make them feel better.

Al-Qurtubi (may Allah have mercy on him) said: Here Allah, may He be exalted, explains that those who are not entitled to any share of the inheritance but are present when the estate is divided, and they are relatives or orphans or poor people who do not inherit, should be honoured and should not be deprived, if the wealth is plentiful, and apologies should be given to them if it is real estate or is too little and cannot be divided. Even if what is given is small, it will bring a great reward; one dirham given in charity may bring a greater reward than one hundred thousand. End quote.

And Allah knows best.