

**476858 - He died and left behind a wife and children; some of his children died during his lifetime and some died before his wife died. How should the estate of the spouses be divided?**

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### **the question**

My question is on family inheritance (a farmhouse with rented income) left by my paternal grandfather and grandmother who were blessed with 9 children, Their order of birth and number of their children (i.e. grandchildren) are defined below:

- Uncle #1 (2 sons & 3 daughters)
- My Father #2 (1 son i.e. me & 2 daughters)
- Aunty #3 (4 sons & 4 daughters)
- Aunty #4 (2 sons & 2 daughters)
- Aunty #5 (3 sons & 1 daughter)
- Aunty #6 (1 son & 1 daughter)
- Uncle #7 (did not marry)
- Aunty #8 (1 son & 2 daughters)
- Aunty #9 (1 son & 1 daughter)

Aunty #3 passed away in 1984 living behind both of her parents (i.e. my paternal grandparents). My grandfather passed away in 1991 and was survived by the remaining children including my grandmother. My Uncle #7 passed away in 2000 followed by my father in 2001. My grandmother passed away in 2012, followed by my Uncle #1 in 2014 and my Aunty #4 in 2022 (may Allah have mercy on all the departed Muslim souls, amiin).

Aunty #5, Aunty #6, Aunty #8 and Aunty #9 are still alive and benefitting from the farmhouse income, which sometimes is distributed to other needy family members. The family decision is not to liquidate the farmhouse and to keep it for good, Insha a Allah.

Please advise us on (a) Who is entitled to the inheritance from my grandparents and (b) What is their respective shares?

### **Detailed answer**

Firstly:

The one who has the right to inherit from your grandfather is one who was alive at the time of your grandfather's death. As for the one who died before your grandfather, he does not inherit, and his children are barred from inheriting by their paternal uncles.

The same applies to the estate of your grandmother; no one can inherit from her except those who were alive at the time when she died.

It says in *al-Mawsu'ah al-Fiqhiyyah* (3/22): There are three conditions for inheriting:

-1-

Ascertaining that the testator has indeed died or is legally presumed dead, as in the case of one who is missing, if the judge rules that he is to be presumed dead; or is expected to have died, as in the case of a foetus who is miscarried due to an attack on the mother for which the attacker is liable.

-2-

Ascertaining that the heir was still alive after the death of the testator or he is deemed to still be alive, as in the case of a pregnancy in which the foetus was delivered alive and remained stable up to the time when it was ascertained that he was alive at the time of the testator's death.

-3-

Knowing the reason why someone is entitled to inheritance, such as being a spouse, blood relative or connected to the testator through wala'. The type of relationship should be known, such as being a child, father, mother, brother, or paternal uncle. And the degree of the relationship which connects the testator to the heir should be known. End quote.

See: *adh-Dhakhirah* by al-Qarafi (13/6); *Mughni al-Muhtaj* (4/10); *Kashshaf al-Qina'* (4/404).

Based on that, the following do not inherit from your grandfather: the children of Aunty #3, because she died before her father.

And the following do not inherit from your grandmother: the children of Aunty #3 and the children of Uncle #7, and you and your two sisters, because your fathers died before their mother.

Secondly:

Those who inherit from your grandfather are all of them except the children of Aunty #3.

Regarding how his estate is to be divided, we may say:

He died and left behind a wife, three sons and five daughters.

The wife gets one eighth, and the rest is to be divided between the eight children, with each male getting the share of two females.

If any of them dies, his share passes to his children.

So when dividing the estate, it should be divided into 88 equal parts.

The share of the wife will be: the estate  $\times 11 \div 88$

The share of each male: the estate  $\times 14 \div 88$

The share of each female: the estate  $\times 7 \div 88$ .

Thirdly:

Those who inherit from your grandmother are the rest of her children except Aunty #3 and Uncle #7, and your father.

The way to divide her estate is as follows:

She died and left behind one son (Uncle #1) and five daughters.

The estate is to be divided between them, with the male getting the share of two females. So it should be divided into seven shares, of which the son gets two shares, which his children take, and each daughter gets one share.

Fourthly:

If all the heirs agreed not to divide the estate, there is nothing wrong with that, and in that case the income from the farm is to be divided among them according to the shares of inheritance, unless some of them forfeit their share and they are adults of sound mind, in which case there is nothing wrong with that.

If someone demands his share of the inheritance at any time, he has the right to do that. So he should either be given his share, or the others should buy it from him, giving him its price, or the farm may be sold and its price divided among them. It is not permissible to delay giving to the one who wants to take his share.

And Allah knows best.