

What is the Ruling on Selling a House with the Condition of Buy-Back?

Darulifta Ahlesunnat (Dawateislami)

Question

What do the noble scholars and jurists of Islamic law say about the following: I needed Rs. 5 million to repay my debts. So, I sold my house, which is located in Sector 11F Karachi, valued between Rs. 6 million and Rs. 6.5 million, to my cousin for Rs. 5.5 million. There was also an agreement stating, "when I give you back the Rs. 5.5 million to you, you will return the house to me; however, you may live in it for now." This took place approximately three months ago. Recently, I attended an online session about the sharī'ah rulings about business, in which I found out that this method is impermissible. So, I wanted to know, is this actually impermissible? If so, why? Please provide some guidance about this.

Answer

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
الْجَوَابُ بِعَوْنِ الْمَلِكِ الْوَهَّابِ اللَّهُمَّ هِدَايَةَ الْحَقِّ وَالصَّوَابِ

In the situation described, the agreement that you made with your cousin was impermissible and sinful. It is clear from the details of the contract that your purpose was not to sell the house to your cousin; instead, it was to get the required amount of money to pay off your debt, and you temporarily gave the house to your cousin for this purpose. From a sharī'ah point of view, this is [بيع الوفاء] 'Bay' Wafa' which, according to the Sahih and reliable opinion, is a Rahn, i.e., a collateral. Since this is Rahn, it was not permissible for your cousin to reside in the home and derive benefit from it, because benefiting from Rahn is impermissible, sinful, and classified as riba. Therefore, because of this, the contract is also declared impermissible and a sin.

Furthermore, even if this were to be declared a general transaction, it would still be impermissible because the agreement to return the house upon paying back the money is contrary to the nature of the transaction, and neither is this part of the 'urf, i.e., the common practice of the people. Therefore, because of this, the transaction is fasid (void) and both parties must terminate it.

It is stated in al-Durr al-Mukhtar and Radd al-Muhtar regarding 'Bay Wafa':

(وبيع الوفاء أن يبيعه العين بألف على أنه إذا رد عليه الثمن رد عليه العين) وجه تسميته بيع الوفاء أن فيه عهداً بالوفاء من المشتري بأن يرد المبيع على البائع حين رد الثمن -- وفي الكفاية عن المحيط: هو أن يقول البائع للمشتري بعت منك هذا العين بمالك علي من الدين على أني متى قضيته فهو لي

(Al-Durr al-Mukhtar Ma'a Radd al-Muhtar, Vol. 5, p. 276, Publ. Dar al-Fikr)

Mentioning its rulings, 'Allamah Shami رحمه الله states:

وفي حاشية الفصولين عن جواهر الفتاوى: هو أن يقول بعت منك على أن تبعه مني متى جئت بالثمن فهذا البيع باطل وهو رهن، وحكمه حكم الرهن وهو الصحيح

(Radd al-Muhtar, Vol. 5, p. 276, Publ. Dar al-Fikr)

A'la Hazrat, the Imam of Ahl-us-Sunnah رحمه الله writes:

والذی تقررو تحریران بیع الوفاء رهن لا یزید علیہ بشیء ولا یخالفہ فی شیء قال العلامة خیر الدین رملی فی فتاواہ: الذی علیہ الاکثرانہ رهن لا یفترق عن الرهن فی حکم من الاحکام۔ فاذن لا یجوز لہذا الذی ہو مشتر صورۃ مرتہن معنی الانتفاع بمشریہ المرہون مطلقاً علی ماہو الفتوی الآن للعلم بمقاصد اہل الزمان وقد علم شرعاً ان المعہود عرفاً کالمعہود شرطاً

Translation: It is established that 'Bay' Wafa' is Rahn, neither is it anything more, and in no way contrary to it. Allamah Khair-Uddin Al-Ramli states in his Fatawa: The majority of the jurists hold the view that it is Rahn and it does not differ from Rahn in any ruling. Since it is Rahn, it is therefore not permissible for the apparent 'buyer', who in reality is the 'Murtahin', to derive any benefit from the Marhoon, i.e., the bought item. Considering the intention of the people of this era, fatwa is given according to this view. Through research, it is known in shari'ah that whatever is common in 'urf is as if it is an implied condition. (Fatawa Razawiyah, Vol. 17, p. 644, Publ. Raza Foundation, Lahore)

It is stated in Bahar-e-Shari'at:

بیع الوفاء حقیقت میں رہن ہے لوگوں نے رہن کے منافع کھانے کی یہ ترکیب نکالی ہے کہ بیع کی صورت میں رہن رکھتے ہیں تاکہ مرتہن اُس کے منافع سے مستفید ہو۔ لہذا رہن کے تمام احکام اس میں جاری ہوں گے۔ فقیر نے صرف اُس قول کو ذکر کیا کہ یہ حقیقت میں رہن ہے کہ عاقدین کا مقصود اسی کی تائید کرتا ہے اور اگر اس کو بیع بھی قرار دیا جائے جیسا کہ اس کا نام ظاہر کرتا ہے اور خود عاقدین بھی عموماً لفظ بیع ہی سے عقد کرتے ہیں تو یہ شرط کہ ثمن واپس کرنے پر بیع کو واپس کرنا ہوگا یہ شرط بائع کے لیے مفید ہے اور مقتضائے عقد کے خلاف ہے اور ایسی شرط بیع کو فاسد کرتی ہے جیسا کہ معلوم ہو چکا ہے اس صورت میں بھی بائع و مشتری دونوں گنہگار بھی ہوں گے اور بیع کے منافع مشتری کے لیے حلال نہ ہوں گے۔

Translation: Bay' al-Wafa', in reality, is a Rahn (collateral). People have devised this method to derive benefits from the Rahn. The method is that people give Rahn in the form of 'Bay' (a transaction) so that the Murtahin (the one who holds the collateral) can attain benefits from it. Therefore, all the rulings of Rahn will apply here. I have mentioned only the opinion that this is truly Rahn, because the intent of both parties indicates this. But even if we declare this to be a 'Bay' (as is clear from the name and because both parties commonly use the word Bay' when carrying out the transactions), the condition that "when the price is returned, the sold asset must be returned" benefits the seller, and it is contrary to the nature of the transaction. Such a condition causes the transaction to become fasid as you have already come to know. In this case, both the seller and the buyer are sinful, and the benefits attained from the asset will not be permissible for the buyer. (Bahar-e-Shari'at, Vol. 2, p. 835, Publ. Maktaba-Tul-Madinah, Karachi)

وَاللّٰهُ اَعْلَمُ عَزَّ وَجَلَّ وَرَسُوْلُهُ اَعْلَمُ صَلَّى اللّٰهُ تَعَالٰی عَلَیْهِ وَاٰلِہٖ وَسَلَّم

(Allah Almighty knows best and His Messenger صَلَّى اللّٰهُ عَلَیْهِ وَاٰلِہٖ وَسَلَّم knows best.)

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