

What is Shariah ruling for a partner who wants to sell a co-owned plot while the other refuses to do so?

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What do the Islamic scholars say regarding the following:
I and a friend of mine contributed an equal amount and bought a plot in a housing society. My friend wants to sell it but I do not want to sell it now. As I do not have enough money to buy his share, he wants me to sell my share. What is the Shariah ruling in this situation? Is it incumbent upon me to sell my share as per his suggestion?

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الجواب بعون الملك الوهاب اللهم هداية الحق والصواب

In the scenario described, both parties co-own the plot through a partnership contract known as Shirkat-ul-Milk (Co-ownership of asset). Under Shirkatul Milk, each partner holds the right of disposal solely within his own share, and he is like a stranger to other's share. So, if a partner wants to sell his share, he has the right to sell it to anyone including his partner but he does not have the right of disposal in the share of his partner. Moreover, one partner cannot compel the other to sell his share.

Allamah Shamsudin Muhammad Bin Abdullah At- Tumurtashi رحمه الله تعالى عليه defines the Shrikatul Milk in following words in his book Tanveerul Absar:

”شركة ملك وهي ان يملك متعدد عينا او ديناً بارث او بيع او غيرهما“

Translation: Shirkatul Milk means multiple individuals co-own an asset or a Dayn (loan/ liability) through inheritance or sale or any other means.

(Tanveerul Absar Ma Durrul Mukhtar, Vol 04, Page 299, Beirut)

In Shirkatul Milk a partner has liberty to sell his share as it has been mentioned in the book “Durrul Mukhtar” by Allamah Alauddin Muhammad bin Ali bin Muhammad Al- Hiskafi Al-Hanafi رحمه الله تعالى عليه:

” (وكل) من شركاء الملك (أجنبي) في الامتناع عن تصرف مضر (في مال صاحبه) لعدم

تضمنها الوكالة (فصح له بيع حصته ولو من غير شريكه بلا إذن، إلا في صورة الخلط)“

Translation: Each partner in Shirkatul Milk is a stranger in terms of right of disposal in the share of the other partner because the contract does not include agency (وكالة). Therefore, one partner is allowed to sell his own share without obtaining permission from the other even though the buyer is other than his partner as long their assets are not mixed (as in the case of mixing, the ruling will be different).

(Durrul Mukhtar ma Raddul Muhtar, Vol 04, Page 300, Beirut)

Sadrush Sharia Badrut Tariqah Hazrat Amjad Ali Azami رحمه الله تعالى عليه writes in Bahar e Shariat:

”شركتِ ملك میں ہر ایک اپنے حصہ میں تصرف کر سکتا ہے اور دوسرے کے حصہ میں بمنزلہ اجنبی ہے، لہذا اپنا حصہ بیع کر سکتا ہے، اس میں شریک سے اجازت لینے کی ضرورت نہیں۔ اسے اختیار ہے شریک کے ہاتھ بیع کرے یا دوسرے کے ہاتھ مگر شرکت اگر اس طرح ہوئی کہ اصل میں شرکت نہ تھی مگر دونوں نے اپنی چیزیں ملا دیں یا دونوں کی چیزیں مل گئیں اور غیر شریک کے ہاتھ بیچنا چاہتا ہے تو شریک سے اجازت لینے پڑے گی یا اصل میں شرکت ہے مگر بیع کرنے میں شریک کو ضرر ہوتا ہے تو بغیر اجازتِ شریک غیر شریک کے ہاتھ بیع نہیں کر سکتا۔“

Translation: Each partner has the right of disposal in his own share in Shirkatul Milk but he is like a stranger in the share of the other partner. Hence, he has the right to sell his share without obtaining permission from his partner. Also, he has the liberty to sell his share to his partner or to anyone else. However, if they were not partners in an asset initially but at a later stage, they mixed their assets or they got mixed and now a partner wants to sell his asset to someone other than his partner than he has to obtain permission from his partner. And if they are partners in an asset and if one sells his share from it, it will cause loss to the other partner than he is not allowed to sell his share to a non-partner without obtaining the permission from his partner.

(Bahar e Shariat, Vol 02, Page 490, Maktabah Tul Madinah)

والله اعلم عزوجل ورسوله اعلم صلى الله تعالى عليه وآله وسلم

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