Right of Pre-emption

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Q1620. When two persons share in an endowed property and one of them sells his share — in a case he is allowed to do that, does the other enjoy the right of pre-emption? If two people rent some property — whether or not it is an endowment, then one of them transfers his right to the other through either a rent or ṣulḥ contract, does the other have the right of pre-emption? To give an example, one of the partners sold his share to a third party where it is sharʿī to do so. And is it permissible where renting is involved? To give an example, two people jointly rented some property or an endowment. Is it permissible for either party to transfer their share by way of sub-letting the property to a third party?

A: Pre-emption is confined to the partnership in things themselves [not in using something as in the rent] if it is sharʿī for one of the two partners to sell his share to a third party. Therefore, there is no right of pre-emption in an endowed property in which two people share even on the assumption that one of the two parties is allowed to sell his share to a third party. Nor is there such right in situations where some property was rented out to two people and one of tenants transfers his share to a third party.

Q1621. From Islamic texts one can deduce that pre-emption is a means for either party of a partnership to sell their share to a third party. Accordingly, could the encouragement, by one of the parties, of a potential buyer to buy the share of the other partner, making it known in the process that he is not going to exercise pre-emption if the third party bought the share of his partner, be considered a relinquishment of pre-emption?

A: The initiative taken by the partner to encourage the third party to buy the share of the other partner per se does not run counter to exercising pre-emption. Indeed, even his promise of not exercising it, by virtue of the transaction of sale between him [the third party] and his partner, does not necessarily take away pre-emption, after the transaction has gone through.

Q1622. Is dropping pre-emption right before one of the partners sells his share to a third party, perceived as unlawful?

A: Forgoing pre-emption is not valid unless it actually takes place, i.e. by the partner selling his share to a third party. However, there is no objection to the partner's giving an undertaking in an Islamically binding contract that he is not going to resort to pre-emption when his partner sells his share.

Q1623. A person rented one floor of a two-storey building. The property is owned by two brothers who are indebted to the tenant for a sum of money. Despite repeated requests by the creditor, the two brothers have been avoiding payment of the debt for the past two years. He concluded that it is within his right to retrieve his money by deducting it from the rent. The value of the property is higher than the value of debt. He assumed in so doing he became a partner in the property of the two brothers. Can he exercise pre-emption on the rest of the property?

A: As the question goes, there is no case for pre-emption. Pre-emption can be exercised by one of two partners who sold his share to a third person provided that the intention to sell was there. It cannot be acquired as a result of becoming a partner by virtue of buying the

share of one of the partners or owning it as a result of settling a debt. Furthermore, pre-emption cannot be activated unless one of the two parties sells his share. That is, in property owned jointly by two people only.

Q1624. Two people jointly bought some property whereby it was officially registered in their names. However, in a separate contract, they partitioned the property into two, each with its own boundaries. Has either party the right to exercise pre-emption over the property of the other partner, in the event of sale, by virtue of having an official document pointing to the joint ownership of the property?

A: If the sold share, at the time of sale, was clearly defined and demarcated as an independent one, the mere fact they are neighbors, it was one single property before, or they have only one legal document does not bring about the right of pre-emption.