Usurpation

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Q1864. A person bought a piece of land. He noted the sale on a piece of paper in which the name of his minor child is written as the buyer. After being mature according to *shar‘*, the child sold the land to a third party. The inheritors of the person laid a claim to the land to the effect that it was theirs. Are they justified in contesting the right of the third party, given the fact that the name of the father is not mentioned in the document?

A: Mentioning the name of the child in the document per se is not a yardstick for ownership. However, if it is established that the father bought the land with his own money, and then relinquished it to his son by way of gift or ṣulḥ, the land is rightfully his. If, after his shar‘ī puberty, he sold it to a third party in a proper way, no one has the right to contest the buyer’s ownership of the land or take it away from him.

Q1865. I have been among a chain of people who changed hands in buying the same plot of land. However, I built a house on the land. A person has come forward, claiming that the land is his. He produced a document, dating back to the days prior to the revolution, to this effect. Accordingly, he filed a lawsuit against me and a number of my neighbors.
Would my exercising the right of ownership over this land amount to usurpation?

A: Buying the land from the previous proprietor should, according to the sharī‘ah, be deemed correct, and so is the ownership of the land. So unless the claimant establishes his legal ownership of the land in court, he has no right to contest the ownership of the present proprietor of the land.

Q1866. In order to minimize the amount of tax levied on the property, the father made arrangements to put the name of his minor son as the owner in the official document. After his *shar‘ī* puberty, the son is now claiming that the property is his. It is a fact that, all along, the property has been at the disposal of the father and he says he has bought the land for himself with his own money. If the son takes control of the property and exercises the right of ownership over it without the permission of the father, would he be deemed a usurper?

A: If the father, who bought the property with his own money, still has the property at his disposal, i.e. even after the son became mature according to shar‘, the latter should have no right to contest the right of ownership of the property of his father, nor should he have it at his disposal. That is unless the son establishes that his father gave him the property by way of gift and transferred its ownership to him, for the presence of his name in the property deed per se is not a sufficient proof of ownership.

Q1867. Fifty years ago, a person bought a plot of land. Since the name of "The High Mountain" is mentioned in the property deed as the boundary of the land, he is claiming the ownership of millions of square meters of common land and scores of old houses built on it. It is to be noted, however, that the person did not use those lands and the houses. Furthermore, there is no evidence that could indicate the ownership of those lands for the last centuries. He further alleges that the prayer of the people conducted on this land and property is not shar‘ī because of the alleged usurpation. What is the view on this matter?

A: If the land that falls between the land that has been bought and the said mountain is

derelict land with no previous owner or some people had it at their disposal and transferred it to the present occupiers, any party who actually exercises the right of ownership over any part of the land or the properties is deemed the rightful owner of what they have control over. Thus, all the actions concerning the property they take are deemed correct and shar'ī. That is unless the claimant establishes, with a competent judicial authority and in accordance with the shar', that he owns the land and property.

Q1868. Is it permissible to build a masjid on a piece of land that had been confiscated by a court injunction without the consent of its previous owner? And is it permissible to hold prayers and other acts of religious worship in such a masjid?

A: If the land had been taken away from its previous owner by the order of a shar'ī court, or in accordance with law that is being enforced by the Islamic state, or the shar'ī ownership of the claimant is not proven, using the land is not contingent upon the permission of the person who is claiming ownership or the previous owner. Accordingly, there is no objection to building the masjid on the land. Nor is there an objection to holding prayer and other religious rituals there.

Q1869. Some property was in the hands of the heirs for generations on end. The property was usurped by someone who became the owner. After the triumph of the Islamic revolution, the property was taken away from the usurper. Should the ownership of the property revert to the inheritors or have they precedence over others to buy it from the state?

A: Having control over something by way of inheritance should not necessarily mean the actualisation of ownership. Nor should it give [the inheritors] the right to buy the property. Nevertheless, it is a shar'ī indication of ownership unless the contrary is proven. If it was proved that they did not own the property or, for that matter, it was proved that the property belongs to some other people, they [the inheritors] have no right to claim it back or ask for compensation. Otherwise, they should have the right to restore the very property or the compensation thereof by virtue of their being holders of the actual control.