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Issues of disputes between the imam abi hanifa and the imam al-shafi'preemption through the book the scholars' stereotype for the imam aladdin al-samraqandi (born 539): comparative study.

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Introduction

The Prophet Muhammad (Peace and blessings be upon him) urges us to learn in order to be the best people. He (P.B.U.H.) said: (Whom Allah wants him to be good, He acknowledges him in Islam). It is important to learn all the cases in our religion Islam, and learn jurisprudence particularly those concerning the trades which involve many issues from the market cases.

The current study is issues of disputes between the Imam Abi Hanifa and the Imam Al-Shafi' Preemption through the Book the scholars' stereotype for the Imam Aladdin Al-Samraqandi (born 539): Comparative Study. It encompasses a case in preemption, and the reason behind deserving preemption.

The Issues of Disputes: Reason behind Deserving Preemption

The Imam Aladdin Mohammed Al-Samraqandi (May Allah mercify him) said that (the reason of deserving preemption is one of three things; company in patch, company in rights, and neighborhood in terms of contact)). Preemption was known in Arabs that if the man wanted to sell a house or a wall, the neighbor, partner and the pal intervene to what he has sold and responded. He is made as prior in it after his nickname. Therefore, it is called preemption, and the person who wants it is named preemptor who is derived from preemption which is annexation to annex what is bought to the preemptor's estate which is confessed by Islam.

Al-Hanafia defines preemption as forcibly having a real estate from a buyer... .

Al-Shafiya defines preemption as the right of forcible ownership that proves for the past partner on the incident partner because company with compensation for the owner to which preemption is made behind taking – because it is forcibly taken. So, the exception is forbidding of taking money forcibly.

The scholars have gathered that preemption proves for the partner who does not take part in the division process. Whereas they become different in the neighbor who is not a partner according to three doctrines:

1- The first doctrine is for Abi Hanifa (May Allah mercify him). For him, the preemption is deserved for the estate, company, and neighbor. This saying is for Al-Thawri and bin Al-Mubarak. They are recited from the Prophetic Hadith that the Prophet Muhammad (Peace and blessings be upon him) made preemption for the neighbor which means that it is the one who is attached to the wall, which is the assessment. This is taken from neighborhood which is the attachment. For this reason, preemption is not allowed only for the attached one with neighbor. This does not encompass all the neighbors, but only the one who is attached to the wall so as to avoid generalization as for sector neighbors, land neighbor, village neighbor which is a must to pay it for the attached one with approval. When it is said that neighbor means the one who houses in the same place, and in one mosque because it is called neighbor traditionally and by the shara'. The Prophet (P.B.U.H.) said: (There is no prayer for the neighbor of the mosque only in the mosque). This is intended to do good, approve the neighbor, even the attached one to the wall. But the attached one is introduced to prevent the permanent harm.

Objection:

The Hadith is mentioned only by Abdulmalikbin Abi Suleiman about Ata'. Even Shu'bata has talked in Abdulmalik bin Abi Suleiman for this Hadith in which recitation is dropped.

I reply the following:

a- Abdulmalik is trustworthy in the Hadith reciting. Nobody has talked about him just the Imam Shu'bata (May Allah mercify him) for this Hadith.

b- The Imam Sufian Al-Thawri describes AbdulmalikbinAbi Suleiman as a scale which means in knowledge to accept it.

c- The scholars said about this Hadith: the man has the right of preemption even if he is absent. If he is introduced, it trespasses that.

2- Our master Samzata (May Allah be pleased with him) said: The Prophet (P.B.U.H.) said: (The neighbor of a house has the right in owing that house).

According to Hadith above, the attached one means for the one who has the same way in which his door is in that way to make him partner. This depicts a joint house between two in one house. If one of the two partners sells his portion, the other one has the preemption because they are partners in the house. If they do not preempt it, the attached neighbor in the house backward and his door in another way is closer to preempt, and etc. .

Objection:

Hadith is accounted by some scholars that it is recited by Imams from reciters about Qutada about Anas. Others have recited it about Al-Hasan about Samrata when they said that it is preserved.

I reply:

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This Hadith is correct as it is recited by some scholars, and corrected by the Imam bin Hayan.

The Imam Al-Hasan Al-Basri (May Allah mercify him) did not hear it from Samarta just the three Hadiths and this one is one not one of them.

I reply:

*The scholars inform about the Imam Al-Bukhari (mayAllah mercify him) that the Imam Al-Hasan heard from Samarta many Hadiths.

*The Imam Al-Hakim declared that the Imam Al-Bukhari protested about a Hadith recited by Samarta.

3- Al-Shareed bin Sueid (may Allah mercify him) said that the Prophet (P.B.U.H.) said: (The neighbor has the right that precedes what is precedent). There is a proof that a man wants to sell his house, he can firstly offer it to his neighbor due to the right of neighborhood even I thought that he would be heir).

There is no preemption in the Hadith above. The Prophet (P.B.U.H.) wants preemption or there is piety and mercy which may make the neighbor be a partner due to company in housing as for a woman who is named neighbor.

The Hadith is verbally asked by someone (Land which does not belong to anyone has no partner or portion just neighborhood). The Prophet (P.B.U.H.) replies that (the neighbor has the right to own due to his precedence). This may be intended as the assistance which may lead to the neighbor.

The second doctrine is for the Imam Al-Shafi' (may Allah mercify him).

Preemption is deserved only to the partner as recited by Omar bin Al-Khattab, Uthman bin Affan, and etc. They followed:

1- Our master Jabir (may Allah mercify him) said: (the Prophet (P.B.U.H.) made the preemption for the money which is not divided. If the boundaries are dropped, there is no way, there is no preemption).

According to the Hadith above, there is no preemption for those who are not partners because it is common for partners that each can gain his portion in order to take his right. If an estate is divided among partners, each will gain his right without trespassing others' portions.

Objection:

This Hadith does not signify that Jabir heard it from the Prophet (P.B.U.H.) when he says (the Prophet made the preemption in money which is not divided yet. This is judgment, thought, or he heard it from someone else.

I reply:

The Hadith is clear that appointing the preemption by the Prophet (P.B.U.H.) to signify that the preemption is not for the neighbor because if there is no boundaries, preemption may not be for the neighbor. It is negated for the possibility of division.

2- Amr bin Al-Shareed (may Allah mercify him) said... the Prophet (P.B.U.H.) said (The neighbor has the right in precedence).

Guideline:

This is to show that Rafi (may Allah mercify him) grants preemption to Sa'ad bin Abi Waqqas before he sells his house. Here, Rafi concedes the price of both houses in terms of applying Sunnah because his partner calls him to buy it.

I reply:

This means that Rafi' (may Allah mercify him) has two houses. He has no partner to apply Hadith on the partner which is possible for the attached one.

The third doctrine: Those belong to this one say that preemption is for everything which is unlimited if the boundaries are appointed in which Al-Dhahiriya think so.

1- Jabir (may Allah mercify him) said: the Prophet (P.B.U.H.) **makes** the preemption in indivisible properties. If there is boundaries and no roads, there is no preemption.

2- Jabir said that the Prophet (P.B.U.H.) appoints the preemption in everything.

3- Bin Malikiya said that the Prophet (P.B.U.H.) appoints the preemption in everything.

Guideline:

All the Hadiths denote that preemption is verified for the partner in every sale which is not divided among them yet.

Conclusions

1-Preemption is worthy of the property.

2-The company and the neighbor are more likely to have priority in selling their neighbor's property.

3- The adjacent neighbor is first, and then the next in the man's property.

4- The preemption of the neighbor is not absolute, but the company is required.

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