

Answer to Question

Is it Permissible for Land to have a Financial Return?

To Saleh Natseh

(Translated)

Question:

As-Salaamu Alaikum, I have a question and it relates to the Hukm of when two people who have a co-partnership in the cultivation of land; the first owns the land whilst the second cultivates it. Is this permissible or is it *Muzara'ah* (sharecropping)? This is as I am confused about the matter and that is because there are from the Shabab the one who says that it is sharecropping whilst from them is the one who says that it is permissible in the case where the owner of the land can sell it within three years and this provides a period of time for it be cultivated. Barakallahu feekum.

Answer:

Wa Alaikum us Salaam Wa Rahmatullahi Wa Barakaatuhu,

Al-Muzaara'ah (sharecropping) is the leasing of land for it to be cultivated and numerous evidences have come indicating the prohibition of sharecropping. These include:

1- Bukhari narrated in his Saheeh on the authority of Abu Hurairah (ra) that he said: The Messenger of Allah (saw) said: **«مَنْ كَانَتْ لَهُ أَرْضٌ، فَلْيُزْرِعْهَا أَوْ لِيَمْنَحْهَا أَخَاهُ، فَإِنْ أَبِي، فَلْيُمْسِكْ أَرْضَهُ»**. **“Whoever has land, he should cultivate it or grant it to his brother. Then if he refuses, he should hold on to his land”**.

2- On the authority of Jabir (ra): **«أَنَّ النَّبِيَّ ﷺ نَهَى عَنِ الْمُخَابَرَةِ»** **“That the Prophet (saw) forbade Al-Mukhabarah”** (Narrated by Muslim). Al-Mukhabarah: Al-Muzara'ah.

3- In Saheeh Muslim it was related from Jabir that he said: **«نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنْ يُؤْخَذَ لِلأَرْضِ أَجْرٌ، أَوْ حَظٌّ»** **“The Messenger of Allah (saw) forbade for an Ajr (recompense) or Hazhzh (share) to be taken for the land”**.

4- On the authority of Raafi' Bin Khudaij: We were sharecropping (Al-Mukhabarah) at the time of the Messenger of Allah (saw) and he mentioned that some of his uncles came to him and said: 'The Messenger of Allah (saw) forbade a matter that was beneficial for us whilst obedience to Allah and His Messenger (saw) is more beneficial to us and more beneficial.' He said: 'We asked, and what was that?' He said, 'The Messenger of Allah (saw) said: **«مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيُزْرِعْهَا، أَوْ فَلْيُزْرِعْهَا أَخَاهُ، وَلَا يُكَارِبْهَا بِثُلُثٍ وَلَا بِرُبُعٍ وَلَا بِطَعَامِ مُسَمًّى»** **“Whoever has land, then he should cultivate it or let his brother cultivate it and do not lease it for a third, a quarter or a named amount of food”**. Extracted by Abu Dawud.

5- In the Sunan of An-Nisaa'i on the authority of Usaid Bin Zhuhair: «نَهَى رَسُولُ اللَّهِ ﷺ عَنْ كِرَاءِ الْأَرْضِ، قُلْنَا: يَا رَسُولَ اللَّهِ، إِذَا نُكْرِيهَا بِشَيْءٍ مِنَ الْحَبِّ، قَالَ: لَا، قَالَ: وَكُنَّا نُكْرِيهَا بِالتِّينِ، فَقَالَ: لَا، وَكُنَّا «The Messenger of Allah (saw) forbade the leasing of the land. We said: If we were to lease it for some grains (or seeds). He said: No. He said: We used lease it for straw. And so he said: No. And we used to lease upon Ar-Rabee'. He said: No, cultivate it (yourself) or grant it to your brother». And 'Ar-Rabee': The small river, i.e. the river bank (streambank). In other words, we used to lease it upon the cultivation of an allotment upon the Rabee' i.e. the area beside the water.

It is clear from these Ahadeeth that it is not permissible for the land to have a financial return or remuneration and in particular the Hadeeth of Muslim which is explicit when it stated «نَهَى رَسُولُ اللَّهِ ﷺ أَنْ يُؤْخَذَ لِلْأَرْضِ أَجْرٌ، أَوْ حَظٌّ» “The Messenger of Allah (saw) forbade for an Ajr (recompense) or Hazhzh (share) to be taken for the land” and likewise the Hadeeth of Al-Bukhari «مَنْ كَانَتْ لَهُ أَرْضٌ، فَلْيَزْرَعْهَا أَوْ لِيَمْنَحْهَا أَخَاهُ...» “Whoever has land, he should cultivate it or grant it to his brother...” and the Hadeeth of An-Nisaa'i «... أزرعها أو امنحها أخاك» “... cultivate it (yourself) or grant it to your brother”. Consequently, the land is not allowed to have a financial return or remuneration for it.

*** As such, that which was mentioned in your question ‘the first owns the land whilst the second cultivates it...’ then the land here is considered to be a property and has a Naseeb (dividend or share of profits) which means that the Hukm of Al-Muzaara’ah (sharecropping) applies to it and thus calling it co-partnership has no effect upon that. Rather, it is indeed sharecropping and it is impermissible. Similarly, the sharecropping being within the three years or after it also has no effect upon the Hukm Ash-Shar’i. That is because the Hukm Ash-Shar’i is based upon the contract itself and it is Baatil (invalid) as long as a remuneration (or financial return) is made for the land irrespective of its kind, as has been clarified in the above mentioned evidences...**

Your brother,

Ata Bin Khalil Abu Al-Rashtah

19th Sha’ban 1437 AH

Corresponding to 26/05/2016 CE

The link to the answer from the Ameer’s Facebook page:

<https://www.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/482010848662658/?type=3&theater>

The link to the answer from the Ameer’s Google Plus page:

<https://plus.google.com/u/0/b/100431756357007517653/100431756357007517653/posts/FQR3aQGx4mU>

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