

There is the rule of גוד או אגוד

אית דינא דגוד או אגוד¹ –

OVERVIEW

The גמרא cites a dispute in a case where there are two partners in a item which cannot be divided (a חצר שאין בה דין חלוקה, etc.) can one partner force the dissolution of the partnership by invoking the principle גוד או אגוד or not. תוספות discusses whether there is a limitation to the rule גוד או אגוד.

נראה לרבינו יצחק דאפילו בדמים יקרים הרבה יותר משוייו יכול לומר לו או גוד או אגוד² –
It is the view of the ר"י that the תובע can say to the נתבע either גוד או אגוד, even if the quoted price is much more than the value of the item.

תוספות cites a dissenting opinion:

ואין נראה לרבינו יצחק בן אברהם דאם כן יוכל לסלק אחד את חבירו על ידי עילוי דמים³ –
However the ריצב"א disagrees, for if this were indeed so that the תובע can quote whatever price he chooses no matter how high above the market value, then one will be able – by raising the price - to remove his friend -

בחצר⁴ שאין בה דין חלוקה:
from [an item] (a חצר) which cannot be legally divided (forcibly).

SUMMARY

There is a dispute whether by גוד או אגוד the price may be set much higher than its market value (ר"י) or not (ריצב"א).

THINKING IT OVER

Can the נתבע set a price below market value but which the תובע cannot afford?⁵

¹ גוד literally means (you) pull (or assess), and אגוד means I will pull; The one who wants to terminate the partnership (the תובע) says to the other (the נתבע, who wants to retain the partnership), either you pull (גוד) the item to yourself by paying me this (specific) price for my share in this item, or (if you cannot afford (or want) to buy it at this price then) I will pull (או אגוד) the item to me by paying you this price for your share. The נתבע (but not the תובע) retains the option whether to buy out his partner or be bought out by his partner (at the price set by the תובע). However, the נתבע cannot say I wish to retain the partnership (if we maintain גוד או אגוד).

² The נתבע is not really losing out, for even though he may not retain the item (because it is not worth the money requested or he cannot afford it), nevertheless he will make a handsome profit when the תובע buys him out.

³ A person has an inherent right to keep an item which belongs to him (even if only in partnership). The תובע, by making the price prohibitive, denies the נתבע his right to continue owning this item. (If the price were to be set at market value then perhaps the נתבע will find someone who will be willing to lend him the money to buy out the תובע at market price [for the loan is collateralized by the item]; but not if the cost is prohibitive).

⁴ The מהר"ם amends this to read בדבר (instead of בחצר). See (however) מהרש"א (and מהר"ם).

⁵ See סוכ"ד אות ה and נח"מ.