

**מאי שנא מבור דקוצץ ונותן דמים אמר רב כהנא<sup>1</sup> קידרא דבי שותפי כולי –**  
**Why is this different from a pit, where he chops it down and pays money? Rav Kahana said, a pot of partners, etc.**

## OVERVIEW<sup>2</sup>

The משנה ruled that if a tree was planted within twenty-five אמות of an established city, the tree may be chopped down without any compensation to the owner. The גמרא asked why is this different from the case where one planted his tree within twenty-five אמות of a pit (which he is [also] not permitted to do), where the rule is that the owner of the pit may chop down the tree but he must compensate him for the value of the tree. רב כהנא responded (with a folk-saying) that a pot which belongs to partners is not hot and not cold.<sup>3</sup> Therefore, if we would obligate all the people of the city to pay him for his tree, no one will step forward to do so and the tree will remain blighting the city.

תוספות asks:

**תימה לרבינו שמשון בן אברהם אם כן כשהאילן קדם נמי אמאי נותן דמים מהאי טעמא<sup>4</sup> –**  
**It is astounding to the רשב"א, if indeed it is so (that a 'שותפי כו'), so for the same reason, even when the tree preceded the city, why do we give money for the tree in order to chop it off –**

תוספות answers:

**ויש לומר דכשהאילן קדם כיון דסמך בהיתר אין לחוש<sup>5</sup> אם יתעצלו וישאר האילן עומד –**  
**And one can say; if the tree preceded the city, since he was permitted to plant near the future city, there is no concern if the people will be lazy and the tree will remain standing –**

תוספות asks:

<sup>1</sup> See (כהנא קידרא (instead of היינו דאמרי אינשי קידרא) הגהות הב"ח אות ג'.

<sup>2</sup> See 'Overview' to previous תוספות ד"ה מרהיקין.

<sup>3</sup> Today we would say, 'too many cooks spoil the broth'.

<sup>4</sup> The קידרי דבי שותפי will hold them back from giving money to chop down the tree, so the tree will remain and blight the city. Therefore, just as by העיר קדם (even though he should be paid, however) on account of שותפא he does not get paid, the same should be if אילן קדם.

<sup>5</sup> In the case of סמך באיסור (where it was קדם), we cannot allow the tree to remain standing, since he violated the איסור; however, we cannot make them pay on account of שותפי קידרי; however, if he was סמך בהיתר (the אילן was קדם), we cannot have them chop down the tree without paying him; he did nothing wrong. If it turns out that (on account of קידרי דבי שותפי) they will not pay him, it is their issue if their city is blighted.

אבל עוד קשה לו דמאי שייך הכא קידרא דבי שותפי והלא קוצץ תחלה קודם שיתנו דמים<sup>6</sup> -  
However, the רשב"א has another difficulty; how does the concept of קידרא דבי apply here; for do they not chop down the tree first, before they give money?!

answers: תוספות

ואומר רבינו יצחק דהכי פירושו דמשום קידרא דבי שותפי לא חיימא ולא קרירא -  
And the ר"י says that this is the explanation; that since the communal pot is not hot and not cold -

לא רצו לתקן שיתנו דמים דאף על גב דקוצץ תחלה -  
The חכמים did not want to institute that they should be required to pay money, for even though they can first chop down the tree, nevertheless -

פעמים שלא ישמע להם לקוצץ תחלה אם לא ידע מי יתן לו הדמים<sup>7</sup> -  
Occasionally the tree owner will not listen to them and allow them to first chop down his tree, unless he knows who will pay him the money -

וכל אחד ואחד יתירשלא ולא יקוצץ כדי שלא ליתן דמים כי בעל האילן ידרוש מעמו:  
And each one will be reluctant to commit himself, and he will not chop it down, in order that he should not be required to pay the money, since he knows that the tree owner will demand payment from him.

## SUMMARY

We are not concerned for קידרי דבי שותפי, when he was סומך בהיתר; since he did nothing wrong, we are not concerned that they will leave the tree. If there would be a requirement to pay (even if באיסור), they would not chop down the tree because the owner would demand to know who is paying him.

## THINKING IT OVER

Can we explain what is the pivotal difference between the ריצב"א (who asks the question) and the ר"י (who answers it)?

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<sup>6</sup> In the case where קוצץ ונותן דמים, the order of things are first the tree is chopped down and then he is compensated for the tree. Why do we therefore say in a case of העיר קדם that we do not pay, because if we would be required to pay, there would be the issue of קידרי דבי שותפי, but why should that be an issue. Let the ruling be that even if העיר קדם they have to pay (just as it is by בור). They will first chop down the tree; there should be no problem with that, and then let the tree owner claim compensation from the city in a בי"ד. Let it be his problem; the rule should be קוצץ (first, and then) ונותן דמים (later)!

<sup>7</sup> We are now assuming that the rule is קצץ ונותן דמים. The tree owner will argue, since you are obligated to pay me, you have no permission to chop down my tree unless I know who takes upon himself the obligation to pay me.