

פרוזבול¹ חל על הקרקע – A פרוזבול is effective if there is land

Overview

The ברייתא states that a מלוה may write a פרוזבול if the לווה owns land, but not if he owns only עבדים (and no קרקע). This seemingly contradicts the view that עבדי כמקרקעי דמי². Our תוספות seemingly deals with this issue³.

אין כותבין פרוזבול אלא על דבר שאי אפשר לבלותו –

A פרוזבול is not written unless the לווה possesses something which cannot be destroyed; such as קרקע (but not עבדים)⁴.

anticipates a difficulty:

ואף על גב שכותבין על עציץ נקוב (גיטין לז, א) –

And even though a פרוזבול is written for a perforated flower pot; which can (easily) be destroyed;

responds that nevertheless -

כיון דחשיב קרקע לא פלוג רבנן:

Since it is considered as קרקע the רבנן made no distinction, between actual קרקע and an עציץ נקוב which has all the דינים of קרקע concerning תרומות ומעשרות, etc.

Summary

A פרוזבול is written on something which cannot be destroyed (such as קרקע [and an עציץ נקוב which has all the דינים of קרקע]).

Thinking it over

What is the difference between an עציץ נקוב which (since it is חשיב קרקע) is כשר for a פרוזבול and עבדים (which are כמקרקעי דמי and nevertheless) are not כשר for a פרוזבול (according to some opinions)?⁵

¹ A פרוזבול is (usually a document or) a statement in which the מלוה transfers his debts to a ב"ד, (or in this case on the קרקע [see רש"י ד"ה חל] which enables him to collect them even if a שמיטה transpired during the debt period.

² It is not clear whether ר"נ derives his proof that עבדי כמטלטלי דמי from the סיפא of the ברייתא (which states that פרוזבול אינו חל על העבדים exclusively, or his proof is also from the ruling concerning העבדים).

³ Alternately תוספות may be explaining how ר"נ infers from this ruling that פרוזבול אינו חל על העבדים, that עבדי כמקרקעי דמי. [According to this view if we maintain עבדי כמקרקעי דמי, then a פרוזבול is effective on עבדים.] See חידושי ר"נ אות תלד בד"ה אמנם.

⁴ The reason the effectiveness of a פרוזבול is only if the לווה possesses קרקע is either because it is considered כגבוי or it is a מילתא דשכיחא where the רבנן are inclined to make a תקנה. According to either reason, עבדים are not capable of supplying this qualification, since it is not כגבוי for it is אפשר לבלותו and it is not שכיח for the same reason (people do not depend on it).

⁵ See סוכ"ד אות י'.