

קרייה רחמנא מעשרו ומוסיף חומש –

The *Torah* call it his tithe and he adds a fifth

Overview

One must add a fifth if he redeems his own מעשר שני (and bring it to ירושלים), however if he redeems another's מע"ש he is not required to add a fifth. ר"מ maintains that מע"ש is גבוה (it belongs to הקדש, not to the 'owner'), and nevertheless one is required to add a fifth for his מע"ש, which proves that one can redeem מע"ש even if it does not belong to him, for the תורה placed it in his domain.¹

תוספות asks:

תימה לרבינו יצחק דבלא חומש יכול לדקדק דאוקמיה רחמנא ברשותיה -

The ר"י is astounded; without the ruling regarding adding a fifth, we can infer that the תורה placed the מע"ש in his domain, even though it is גבוה -

מכיון שיכול לפדותו ואין שום אדם יכול לעכב עליו אבל אחר אין יכול לפדות בעל כרחו -

For since (only) he can redeem it, and no other person can prevent him from redeeming it, however another cannot redeem it against his will, so we see that even though it is גבוה, nevertheless it is ברשותו, that only he can redeem it but no other, so why is it necessary to mention that he adds a חומש?!

תוספות answers:

ויש לומר דהא מה שהוא יכול לפדותו ולא אחר היינו לפי שהוא בידו² -

And one can say; that this aspect that only he can redeem it and no other, this can be explained that this is so because it is in his hand (in his possession) -

אבל כשהוא ביד אחרים כמו כרם רבעי דלעיל אז לא יוכל לפדותו -

However if the מע"ש would be in the possession of others, like the case of כרם רבעי, then he would not be able to redeem it -

אבל השתא דאשכחן שיהיה חשוב כל כך שלו שמוסיף חומש -

However now we have found that it is considered as belonging to him so much, to the extent that he is required to add a fifth -

ואחר אפילו כשפודה מדעתו אין מוסיף חומש³ -

¹ We wish to derive from this that regarding redeeming כרם רבעי (which is derived from מע"ש) that there too, even when it is not in his possession (the thieves took it), nevertheless he can still redeem it.

² The fact that he can redeem it (when it is in his possession) even though it is גבוה is not sufficient proof that he can redeem it even when it is not in his possession, as the case is by כרם רבעי.

³ Paying the fifth is not merely when it is בידו (he has the rights over it), for we see that another person who is פודה also has the right to be פודה just like the owner, and nevertheless he does not pay the fifth; it is only the owner

And someone else, even if he redeems it with the owner's consent, does not add a fifth -

שמע מינה דלגמרי אוקמיה רחמנא ברשותיה ואפילו הוא ברשות אחרים:

This teaches us that the תורה placed it entirely in his domain and even when it is by someone else's domain.

Summary

The proof that it is completely ברשותו, regardless of its actual state, is from the fact that he adds a חומש (and others do not).

Thinking it over

How can we explain the different level of ownership from the fact that only he can be פודה, versus the level of ownership derived from the fact that only he adds a חומש?

who pays the fifth. This teaches us that the תורה considered the מע"ש (and by extension the כרם רבעי) to be completely in the רשות of the owner, and he can redeem it, even though it does not really belong to him for it is ממון גבוה (by מע"ש) and כרם רבעי by ביד הגולן.