

בדיתמי דלאו בני פרעון נינהו –

By orphans, who are not subject to payment

OVERVIEW

The גמרא explained that the buyer cannot force the נזיק to receive בינונית with the claim of שתקת, for we are discussing a situation where the seller (the debtor) passed on, and we are dealing with the יתומים of the seller. Even if the לוקה would return the זיבורית to these יתומים, none of the creditors would collect from the יתומים, for the יתומים are exempt from payment (since their father left them no assets when he died). תוספות will clarify when the יתומים do and do not take responsibility for their father's debts.

אף על גב שזה מחזיר להם קרקע -

Even though that the לוקה is returning the קרקע to the יתומים, nevertheless there is no obligation upon them to pay the debt of their father with this קרקע, but rather the creditors collect from the sold עידית (which was purchased last). The reason is, because -

הו להו כיתומים שקנו קרקע לאחר מיתת אביהן דאין בעל חוב חוזר וגובה אותה מהן¹ -

These orphans are comparable to orphans who bought land after their father's demise, where the ruling is **that their father's creditor cannot return and collect this newly bought property from these יתומים**. The property which the יתומים buy is not subject to any lien of their father's בע"ח.

תוספות dispels a difficulty:

ואף על גב דכשגבו קרקע בחובת אביהן -

And even though that concerning יתומים who collected קרקע for a debt which was owed to their father, the גמרא -

אמרינן ביש נוחלין (בבא בתרא דף קכה,א) דבעל חוב חוזר וגובה² מהן:

In יש נוחלין פרק יש נוחלין rules that their father's creditor can return and collect it from them; however this is only if they acquired the property by collecting a loan that was due to their father (in a sense it was part of their father's assets), then their father's בע"ח can collect it

¹ The rule is that only the קרקע of the father is subject to collection from the יתומים. However, מטלטלין cannot be collected from the יתומים. The בע"ח can certainly not collect from the יתומים if they bought property with their own (not inherited) funds. In our case it seems that the father had no assets at all; otherwise the creditors would have to collect from the father, not from the לוקה. See 'Thinking it over'.

² שמעון owed money and שמעון died without any tangible assets, so לוי cannot collect from שמעון. However eventually the בני שמעון collected a property from ראובן for the debt he owed to שמעון. Now לוי can collect this property from the בני שמעון for the debt that שמעון owed him (לוי).

from them,³ If however they purchase a newly acquired field which was never part of their father's assets, the בע"ח has no right to collect from their own assets. Similarly here too, when the father sold these fields to the לוקח, he divested himself from any rights in those fields. When the לוקח will return it to the יתומים, they are receiving new assets which are not part of their father's estate and these assets cannot be attached as their father's properties.⁴

SUMMARY

יתומים who buy new property are exempt from paying their father's בע"ח with this property. However יתומים who collected property for a debt owed to their father are obligated to pay it to their father's creditor. Our case is similar to the first case.

THINKING IT OVER

מיתת אביהם compares our case to a case where the יתומים bought קרקע after מיתת אביהם; where the בע"ח cannot collect from it.⁵ In our case however it is seemingly very different; for the יתומים are receiving a קרקע which the ניזק or the בע"ח had a שיעבוד on it previously. It is as if the first לוקח sold the property to a second לוקח; in which case the creditor can certainly collect from the second לוקח (if the first לוקח has no properties left). Here too, the creditors have a שיעבוד on this קרקע. Why does תוספות imply that it is as if the יתומים bought new קרקע, and are exempt from paying?!⁶

³ There are two explanations for this. If we maintain that בע"ח למפרע הוא גובה, then it is considered as if the מלוה (the father) owned this property from the time he loaned the money. Even if we maintain that גובה הוא ולהבא הוא, nevertheless the בע"ח of the father has a right to this property (of ראובן) on account of שיעבודא דרבי נתן. In a case where a owes b, and b owes c; then c may collect directly from a. Therefore it is considered here as if לוי is collecting directly from ראובן (and the יתומים are merely his agents).

⁴ See previous תוספות on the מכר ד"ה מכר, 'Thinking it over'. See (here) 'Thinking it over'.

⁵ See footnote # 1.

⁶ חי' ר"נ אות רעט (ובהערה 230). בל"י. See also