פשיטא האי ברא והאי לאו ברא –

It is obvious! This one is a son and this one is not a son?!

Overview

The גמרא presented a case where two sons inherited their father's estate, and one took all the money and the other took all the land (the two were of equal value). The rule is if their father's creditor came and confiscated the field;[1] the son that inherited the field is to be compensated (half) by the son who inherited the money. The גמרא challenges that this ruling is obvious; both sons bear equally the responsibility of repaying their father's debt. תוספות challenges this assumption of פשיטא.

תוספות asks:

ואם תאמר ואמאי פשיטא ליה -

And if you will say; and why is it so **obvious to** the גמרא that the loss is on both sons equally -

והא שמואל אמר בסמוך[2] בא בעל חוב ונטל חלקו של אחד מהם ויתר -

For שמואל will shortly rule (in a case where the two sons divided the estate) **that when the creditor comes and takes the portion of one of** the sons for his debt; that son **relinquished** his rights, and cannot claim compensation from his brother. We derive from that ruling that the responsibility (of repaying the father's debt) does not lie equally on both brothers. Rather, from whomever the creditor collects, he alone suffers the loss and not the other brother. Why then is the גמרא here so certain that the one brother must be compensated for his loss by the other brother.

תוספות answers:

ויש לומר כשחלקו קרקע דוקא אית ליה דויתר דשניהם עומדים בספק זה כמו זה[3] -

And one can say; that it is only **specifically when** the brothers **divided קרקע, does שמואל maintain that he relinquished his rights; for** when they divided the land, both brother **were equally in doubt, one as much as the other,** as to whom the creditor will collect from -

ועל דעת כן חלקו דמי שיפסיד יפסיד[4] -

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[1] The בע"ח can only collect from the קרקע, but not from the (כסף) מטלטלין of the יתומים.

[2] See 'Thinking it over'.

[3] See following תוספות ד"ה וטרף [TIE footnote # 1]. See אמ"ה here.

[4] They did not explicitly request a guarantee of compensation; therefore they are willing to take the risk of losing their property.

And it was with this understanding that they divided the property; **that whoever will lose, will lose,** and he has no recourse -

אבל הכא דבעל הקרקע בספק ולא בעל הכספים דמטלטלי דיתמי לא משתעבדי לבעל חוב[5] -

However here where one inherited money and the other land, **where only the owner of the land is in jeopardy** of losing his land, **but not the owner of the money;** he is in no jeopardy al all**, for the movable** assets (including money) **of orphans are not indentured to the creditor;** the creditor cannot collect from the מטלטלין, only from the קרקע, therefore -

פשיטא דעל דעת כן חלקו[6] שאם יפסיד בעל הקרקע שיחזור על בעל כספים:

It is obvious that they divided the estate in this manner **with the intention that if the landowner will lose** his land to a creditor, that he will have the recourse **to return** and be compensated **by the money owner,**

Summary

When the sons inherited property, then whosever property is taken away by their father's creditor, suffers the loss. However where one son inherited land and the other money, the landowner must be compensated by his brother, if the land is confiscated by their father's creditor.

Thinking it over

תוספות challenges the פשיטא of the גמרא from the ruling of שמואל.[7] Why did not תוספות ask how can the גמרא say פשיטא (that he needs to be compensated), when the איכא דאמרי says the exact opposite (that he is not to be compensated)?!

[5] פסחים לא,א.

[6] The son, who agreed to take the land, obviously did so with this implicit understanding that he will not suffer the loss due to the בע"ח by himself. Otherwise he never would have agreed to such an arrangement where he alone stands to lose.

[7] See footnote # 2.