

ורב אמר בטלה מחלוקת – And רב says that the division is nullified

OVERVIEW

The גמרא presented a case where a creditor collected a debt from the property of one of the sons of the deceased debtor after the brothers divided the estate. According to רב, the disinherited brother does not have to bear the entire loss, but rather the entire previous division is nullified, and the brothers divide the estate anew (minus the property that was confiscated by the בע"ה). The גמרא explains the reason for this ruling is because the sons even after they divided the estate are still considered heirs of the deceased, and the burden of paying his debts lies equally on all the heirs. The issue at hand is, granted that all the heirs share in the responsibility; however is it necessary to nullify the entire division, or can the loss of the disinherited heir be made up by the other heirs paying him money equal to his loss, but the division should remain intact for the other heirs.

משמע דלא מצי לסלוקי בזוי מדקאמר בטלה מחלוקת -

The expression בטלה מחלוקת indicates that the brothers (whose inheritance remained intact) **cannot cancel** their disinherited brother's claim **with** (merely) paying him **money**; since רב stated **'the division is nullified'**. If the remaining brothers would be able to satisfy the disinherited brother by paying him off for the loss, then רב would not have said בטלה מחלוקת, but rather that the disinherited brother has a monetary claim against the remaining brothers. The expression בטלה מחלוקת indicates that the disinherited brother can demand that the estate, of the remaining properties, be entirely divided anew.

תוספות has a difficulty:

ותימה מאי שנא מדרב אסי דאית ליה שיכול לסלקו בזוי -

And it is astounding! Why does רב rule different from אסי, who maintains that his claim can be cancelled with money, at least pertaining -

באותו רביע שנטל מכח ירושה -

to that fourth which he took as part of the inheritance? רב אסי was not certain of the status of the heirs after the division. Whether they are still considered heirs (and all are responsible for the debt) or not (and who ever loses has to bear the loss himself). Therefore רב אסי rules that we divide the loss and (if there were two brothers initially), the disinherited son receives compensation for half his loss (his loss is half the debt, for he shares it with his brother) or one fourth of the paid debt.¹ This compensation however can be paid with money; it is not

¹ This seems to follow the first explanation of רש"י בד"ה אי. See however אמ"ה and בל"י. See רב אסי 'Thinking

necessary to divide anew. Why does רב maintain that he cannot be compensated with money but can rather demand to divide anew?

answers: תוספות

ויש לומר דרב אסי סבירא ליה דאפילו הוו יורשים מצי לסלוקי בזוזי -

And one can say; that רב אסי is of the opinion that even if they are definitely considered heirs (and there would be no doubt), the remaining son would be able to compensate the disinherited son with money (and he cannot be coerced to divide anew) -

- משום דאמר ליה אנא לבעל חוב נמי מסלקנא בזוזי -

בע"ה for the remaining brother can say to him, **'I would have removed even the בע"ה with money.** The heir has the option of paying off his father's בע"ה with money. Therefore he can argue with his brother, that you are not in a stronger position than the בע"ה. If I can compensate the בע"ה with money, I can compensate you as well with money. I wish to retain my half of the inheritance.

ורב אין חושש לאותה סברא -

However רב is not concerned with this reasoning. Seemingly רב maintains that since the בע"ה rightfully confiscated this field² (for the brother had no money); therefore the disinherited brother is entitled to own part of the inheritance proper.

anticipates a difficulty with the explanation of רב אסי, that the remaining brother claims, I could have pushed away the בע"ה with money:

ואף על גב דמיירי בשעשאו אפותיקי -

And even though the גמרא is discussing a case where the father assigned this confiscated field as an אפותיקי;³ so how can the remaining brother claim I could have pushed the בע"ה away with money, seemingly if there is an אפותיקי, the בע"ה can demand the אפותיקי?

explains: תוספות

לא מיירי כעין אפותיקי דהמקבל (בבא מציעא דף קי,ב) -

We are not discussing an אפותיקי similar to the one which is mentioned in פרק המקבל -

דמשמע התם דלא מצי מסלק ליה בזוזי -

Where it seems there that the לזה cannot deflect the בע"ה with money, but must allow him to confiscate the אפותיקי should the מלוה so desire. However our גמרא is not discussing

it over' # 1.

² And in addition, since it was an אפותיקי, therefore once the בע"ה took it, it became evident that the initial division was in error, for the disinherited son never actually inherited anything.

³ See previous תוספות ד"ה וטרף

this strict type of אפותיקי, but rather a loser type of אפותיקי, where the לווה (or his heirs) can pay with money instead of with the אפותיקי.⁴

תוספות asks:

ואם תאמר מכל מקום יתן מעות ויפדה הקרקע מבעל חוב -

And if you will say; in any event (why is it necessary to say מחלוקת **let him give the money to the בע"ח and redeem the field from him** and return it to the disinherited brother. He will retain his original inheritance, without nullifying the original division. Instead of dividing the estate anew; the money should be given to the בע"ח and the field should be forcibly redeemed from him.

דקיימא לן פרק המפקיד (שם דף לה,ב) דשומא הדרא לעולם -

For we have established the ruling in פרק המפקיד that as assessed property can always revert back to the owner.⁵ Why is it necessary to divide anew?!

תוספות answers:

ויש לומר דנפקא מינה היכא דזבנה או אורתא דאמר התם דלא הדרא:

And one can say; that there will be a difference in a situation where the מלוה sold this property or it was inherited by the heirs of the מלוה (who passed away),⁶ **where the גמרא there states** that in these instances the שומא **does not revert back** to the לווה (or his heirs). In this case we will say מחלוקת. However if it was not אורתא and it is still in the possession of the מלוה (and it is an אפותיקי סתם), then indeed there is no need to say מחלוקת, but rather if there is money available, the field can be redeemed from the מלוה and returned to the disinherited brother.

SUMMARY

רב maintains that since the brothers are יורשים the חלוקה becomes בטל and it must be divided anew; while רב אסי maintains that while the disinherited brother must be compensated, the division remains. However if the מלוה is still in possession of the field it can be forcibly redeemed from him.

⁴ The אפותיקי in פרק המקבל is known as an אפותיקי מפורש – an ‘explicit אפותיקי’, where the לווה committed a field to the מלוה, saying מזה לא אלא מזה – your payment will be only from this field. In this type of אפותיקי the מלוה can insist on taking the אפותיקי instead of money or any other type of payment. The גמרא of our אפותיקי is called an אפותיקי סתם, where the לווה guarantees the מלוה that if will need to collect from קרקע, he will be able to collect from this קרקע (even if it was sold to לקוחות prior to other fields of the לווה). In this type of אפותיקי, the לווה (or the לוקח) can force the מלוה to accept money instead of the אפותיקי.

⁵ When a בע"ח collects property as payment for his loan, that property must be assessed first to assure that it is the right amount for this loan. This assessment is called שומא. The ruling is that the לווה may always pay back the מלוה the amount of the loan in cash and take back this collected assessed property from the מלוה.

⁶ By the time that the money was raised the מלוה either passed away or he sold this property to others.

THINKING IT OVER

Let us assume that ראובן ושמעון each inherited a field worth one hundred dollars. The שמעון confiscated ראובן's field for their father's debt of a hundred dollars. שמעון has to divide his field and give half of it to ראובן. They now both have a field worth fifty dollars. last question seems to be that let us leave שמעון with his field and we will redeem the field from the בע"ה, with the money that שמעון owes ראובן. However שמעון owes ראובן only fifty dollars. Can ראובן forcefully redeem half the field from the בע"ה? Even if yes, cannot ראובן still argue, you have a field worth one hundred and I have a field worth only fifty; let us divide the fields worth one hundred and fifty anew, and we will each have a seventy five dollar field (after שמעון will refund twenty five dollars to ראובן)!