

רב אסי is unsure, etc.

רב אסי מספקא ליה כולי -

OVERVIEW

In the three way מחלוקת רב אסי maintains that the disinherited brother receives רביע [and/or] בקרקע¹. The גמרא explains the reason for רב אסי is because he is in doubt whether שחלקו דמי or כיורשים דמי. רש"י offers two interpretation of this reason. תוספות will cite and reject the first and accept the second.

בלשון ראשון פירש הקונטרס² שנוטל חלקו בקרקע או במעות -

רב אסי explains in his first interpretation that the disinherited son takes his portion (one fourth of his loss) from the remaining son, either in land or in money.³ The reason why he takes (only) a quarter of his loss, is -

משום דמספקא ליה אי כיורשין הוּא אי כלקוחות שלא באחריות הוּא -

because רב אסי is unsure whether the brothers are like heirs (and the disinherited brother should receive half his loss), or whether they are like purchasers without any guarantee (and he does not receive anything).⁴ Since we do not know, therefore we divide the difference and he receives one quarter of the loss.

תוספות has a difficulty with this explanation:

וקשה מנא ליה לגמרא שמספקא ליה לרב אסי כלל כיורשים -

And it is difficult! How does the גמרא know that רב אסי is at all inclined to think that the brothers are כיורשים -

דלמא פשיטא ליה דלאו כיורשים נינהו -

Perhaps רב אסי is certain that the brothers are not considered as כיורשים -

אלא מספקא ליה אי הוּא כלקוחות באחריות או כלקוחות שלא באחריות⁵ -

But rather the reason why the remaining brother receives a רביע בקרקע כו' is because רב אסי is doubtful whether the brothers are like purchasers with a guarantee (in which case the disinherited brother is entitled to receive half his

¹ The disinherited brother can claim at most only half his loss (for he shares the loss with the remaining brother). A רביע is a compromise between his claim (for half) and his brother's claim (to pay nothing).

² See רש"י ד"ה רביע.

³ The remaining heir can give the disinherited brother either קרקע or money as he pleases. The meaning of רביע is to be understood as רביע במעות or בקרקע.

⁴ See previous תוספות ד"ה ורב וד"ה כיורשים.

⁵ This would also avoid the difficulty that רב אסי maintains מחלוקת רב אסי and בטלה מחלוקת רב אסי, even if we assume כיורשים דמי. See תוס' ד"ה ורב.

loss), or whether they are **like purchasers without a guarantee** (and the disinherited brother receives nothing).⁶

לכך נראה כלשון אחרון:

Therefore, the last interpretation of רש"י, seems preferable. The ל"א of רש"י maintains that the disinherited son receives his entire due⁷ (half the loss); half of which must be in קרקע, since perhaps the brothers are like יורשים (and בטלה מחלוקת)⁸, and the other half may be given in מעות since perhaps they are (merely) כלקוחות באחריות (where there is no מחלוקת).

SUMMARY

The fact that there is a ספק if כיורשים דמי forces us to assume that רביע בקרקע means that he may insist on רביע בדמים (in addition to רביע בקרקע).

THINKING IT OVER

1. What is the (seeming) contradiction between this תוספות (which maintains כל"א of רש"י) and the תוספות ד"ה ורב אמר?⁹
2. According to the ל"א why does the גמרא assume that רב אסי is מספקא ליה whether כיורשים דמי or not? perhaps רב אסי maintains כיורשים דמי, however he is מסופק if מצי לסלוקי בזוזי or not?¹⁰
3. The גמרא cited this three-way מחלוקת to prove that רב אסי already taught us the דין of מספוק if (ל"ק) that רב אסי may be מספוק (according to the תוספות). כספים הרי הם כקרקע or not (but not if כיורשים דמי). However if that is the ספק, then what is the meaning of תשלומין here; there is only חיוב קרקע! Obviously the remaining heir can pay with whatever he chooses!¹¹

⁶ If רב אסי would have ruled that he must receive רביע בקרקע (similar to רב), then it is understood why he is מסופק whether כיורשים דמי. For since כיורשים דמי then בטלה חלוקה and he is entitled to קרקע. However since רב אסי does not maintain בטלה חלוקה; the remaining brother only owes a monetary obligation (payable בקרקע or במעות), then there is no reason to assume that רב אסי is מסופק whether כיורשים דמי.

⁷ According to this לשון, the expression רביע בקרקע ורביע במעות is to be taken literally; a רביע בקרקע and a רביע במעות.

⁸ This explains why we must say that רב אסי is מספקא ליה אי כיורשים הוּוּ for this is the only explanation why the disinherited son may insist on receiving קרקע, since (perhaps) מחלוקת.

⁹ See מהר"ם וכו' א, מהר"ם in the ד"ה ורב. See there footnote # 1.

¹⁰ See מהר"ם שי"ף.

¹¹ See חי' ר"נ.