

ואי משום שליחות אם כן מצינו שליח לדבר עבירה – And if it is because of שליחות; so then we have found a עבירה

OVERVIEW

maintains that the rule that a חצר is קונה (for its owner) is because the חצר is considered as if it is the hand of the owner (and therefore a קטנה who has a 'hand' to receive her גט, can also receive her גט through her חצר or through her אמות (ד' אמות לקיש. maintains that the חצר is considered as an agent of the owner (and therefore a קטנה who cannot assign an agent¹, cannot acquire her גט through חצר or אמות; ד' אמות but only if it is placed in her hand). The גמרא challenges the view of ר"ל that חצר משום שליחות אתרבאי. We find that, regarding גנבה, the תורה holds him liable (for כפל) even if the גניבה is found in his חצר. We derive this from the פסוק of (הגניבה) תמצא בידו; this includes גגו וחצירו. If we assume that חצר is מטעם שליחות, it will turn out that there can be a שליח (the חצר) for an עבירה (הגניבה) and the rule is that אין חצר on ר"ל who maintains חצר מטעם שליחות. Our תוספות explains why the גמרא could not have proven that חצר is not מטעם שליחות (but מטעם יד) in a simpler manner.

asks: תוספות

ואם תאמר מה צריך להוכיח מכח דאין שליח כולי –

And if you will say; why is it necessary for the גמרא **to prove** that חצר was included (because of יד and) not because of שליחות, **based on** the ruling of שליח, etc. which would contradict the concept that חצר is מטעם שליחות –

אמאי לא מוכיח מדאתרבאי חצר מקרא דידו³ –

Why did not the גמרא **prove** that חצר משום יד אתרבאי (and not שליחות) **since** חצר was included from the פסוק of ידו; indicating that חצר is an extension of ידו.

proves that we can know that חצר משום יד אתרבאי based on the לימוד of the פסוק:

כדבסמוך גבי גט מוכיח דחצר משום ידה איתרבאי מדאתרבאי מקרא דידה –

As the גמרא will shortly prove by גט that חצר **since it was** ידה איתרבאי

¹ See עמוד on רש"י ד"ה וכי.

² If a person appoints a שליח to steal for him; the משלה is not liable. Why is he חייב if the גניבה was acquired by his חצר, if his חצר is (merely) his שליח.

³ We derive חצר by קנין חצר from the פסוק of (הגניבה) תמצא בידו meaning that חצר is an extension of ידו (especially according to the previous ת"ל ת"ל, תוספות ד"ה ת"ל, that חצר is derived from a כולל ופרט and we include חצר as כעין הפרט of ידו, so it should be obvious that חצר משום יד אתרבאי). See 'Thinking it over # 1.

included based on the פסוק of ידה⁴ -

ולא עביד שום הוכחה –

And the גמרא did not use any additional proof. The same should apply by גניבה.

answers: תוספות

ויש לומר דבסמוך מכח התנא מוכיח⁵ –

And one can say; that later the גמרא proves that חצר משום ידה (and not משום) based on what the תנא rules (but not based on the fact that חצרה was included from ידה; for that proof is insufficient, as evident by the גמרא here) -

דמרבה גגה וחצרה כידה להתגרש אפילו בעל כרחא או אפילו היא קטנה⁶ –

For the תנא includes חצרה וגגה to be like ידה that she should be divorced even against her will or even if she is a קטנה by her חצר as well as by her יד, this proves that חצר משום ידה -

ואי מטעם שליחות לא היתה מתגרשת בעל כרחא ולא קטנה⁷ –

בע"כ she would not be divorced מטעם שליחות חצר would be included חצר for if and not when she is a קטנה. This proves that חצר מטעם יד.

אבל הכא אי אפשר להוכיח מכח זה –

However here (by גניבה) we cannot derive that חצר is based on the מטעם יד חצר - חצר of ריבוי

דאפילו בידו אינו קונה הגניבה בעל כרחו ולא אם הוא קטן⁸:

for even when the גניבה is בידו, he cannot acquire the כ"כ and not if he is a קטן.

SUMMARY

We derive that חצר is משום יד from the fact that חצר accomplishes all that יד accomplishes by גירושין בע"כ and גירושין קטנה; including גירושין. It could not

⁴ assumes that the גמרא maintains (on the bottom of this עמוד) that by גט the חצר קנין ידה is based solely that the חצר of ריבוי is from the פסוק of בידה (and not as רש"י explains it there תלמוד). (בד"ה תלמוד)

⁵ no longer presumes that since the חצר of ריבוי was made from יד, that this means that חצר is משום יד. See 'Thinking it over' # 1.

⁶ The ברייתא does not mention explicitly that חצרה is בע"כ קונה or that it is קונה by a קטנה. Rather תוספות is saying that the ברייתא teaches us that by גט all the laws that apply to ידה apply to חצירה as well. We know that a woman can be בע"כ מגורשת and that one can be מגרש a קטנה (with ידה); these גירושין can take place through חצירה as well as through ידה. This is the לימוד of בידה.

⁷ A שליח cannot be appointed against the will of the משלה, and a minor cannot appoint a שליח. We must therefore assume that if חצר effects גירושין in these cases, it cannot do so as a שליח, but rather as a יד of the woman.

⁸ The ריבוי (of המצא תמצא) teaches that חצר can accomplish whatever יד can accomplish. However a גנב is not liable if the גניבה is placed in his hand בע"כ, and similarly a גנב who is a קטן is also not liable. A גנב is liable only when he steals willingly and is a גדול. In these cases he will be liable by חצר as well; however it can be (אין שליח לדבר עבירה) מטעם שליחות (if not for the rule of עבירה).

accomplish this if חצר were שליחות.

THINKING IT OVER

1. משום יד is חצר since maintained in his question that we know that חצר is derived from יד.⁹ In the answer תוספות does not assume that anymore.¹⁰ Why indeed do we not assume that חצר משום יד¹¹ since it is derived from a ריבוי of יד?¹²

2. חצר משום ידה אתרבאי תנא that later we derive from the תנא. However, the question remains how did the תנא know that חצר is משום יד, perhaps it is שליחות משום and indeed a גט בע"כ or by a קטנה will not be effective if he places it בחצירה?¹³

⁹ See footnote # 3.

¹⁰ See footnote # 5.

¹¹ This question is (seemingly) even stronger if we assume (as תוספות does) that the inclusion of חצר is based on a כלל ופרט וכלל (see footnote # 3).

¹² See בל"י אות שלה.

¹³ See גאון צבי.