

For indeed **שכן אב מקבל גט לבתו קטנה בעל כרחה –** **The father can receive a גט for his minor daughter against her will**

OVERVIEW

The גמרא explained that by שליחות לקבלה (which generally can take place only (מדעתה), there is a case of שליחות לקבלה which can be בע"כ of the woman, where the father of an אשה קטנה can be מקבל her בע"כ גט. Our תוספות explains the meaning of בעל כרחה.

וּאִפִּילוּ בַעַל כְּרָחוּ שֶׁל אֲבִי¹ מִתְגַּרֶשֶׁת כְּשֶׁנִּתֵּן לוֹ בַּעַל כְּרָחוּ כְּדִמּוּכָה בִּפְרָק ב' דְּקְדוּשִׁין (דף מד, א) –
And she is divorced even against the will of the father, when the husband gives it to the father בע"כ as is evident in the second פרק of מסכת קדושין -

דאמר קדושין דמדעת אביה ולא היא גירושין דבעל כרחה בין היא בין אביה –
Where the גמרא states, regarding accepting קדושין for his בתו נערה, since it requires consent, only her father can accept קדושין, but not her; however regarding גירושין, which is בע"כ either the נערה or her father can receive the גט. This concludes the citation from the גמרא. Continues תוספות -

פירוש כיון דבעל כרחו של אב מתגרשת יכולה היא לקבל כמוהו וכן פירש שם בקונטרס² –
The explanation of the phrase היא בין היא בין אביה is, since she becomes divorced בע"כ of the father, therefore she too can receive the גט just like the father, and רש"י there also explained it in this manner.

בע"כ של אב even חל is גירושין the תוספות brings an additional proof that

ועוד אמרינן התם³ נערה מהו שתעשה שליח לקבל גיטה מיז בעלה –
And furthermore רבא queried there can a נערה make a שליח to receive her גט from her husband. The sides of the query are, is the נערה (who may accept the גט) -
כיז אביה דמיא⁴ או כחצר אביה דמיא⁵ –

¹ תוספות may be troubled if we were to assume that בע"כ here means merely בע"כ of the daughter. For if this is considered בע"כ, then there is בע"כ by קדושין as well, for also there the father can be מקדש his daughter בע"כ, yet we do not consider קדושין as being בע"כ (since the father consents), so why should we consider it בע"כ by גירושין.

² See ד"ה אביה רש"י there who states: אבל גירושין שישנה בעל כרחה בין היא בין אביה דמה לנו לדעתו כי מקבל ליה איהו נמי על כרחיה הוא.

³ מד, ב (on the very top).

⁴ The נערה may herself accept the גט, because she is considered as her father's hand, and therefore since she is like her father's hand she can also make a שליח, just like her father can make a שליח.

⁵ If the reason the נערה can accept the גט is because she is considered as the חצר of her father, then just as a חצר cannot make a שליח, similarly the נערה also cannot make a שליח.

Similar to her father's hand (and she can make a שליח) **or is she similar to her father's חצר** (and she cannot make a שליח) -

משמע דעל ידי חצר אביה מתגרשת שלא מדעתו –

Indicating that if she is divorced through her husband placing the גט in her father's חצר it is a divorce even without his consent -

כמו שהיא מקבלת שלא מדעתו אפילו אם כחצר אביה דמיא:⁶

Just as when she receives the גט without his consent even if she is considered her husband's חצר.⁷

SUMMARY

The husband can divorce his wife who is a קטנה or נערה by giving it forcibly to her father against his will.

THINKING IT OVER

assumes that the query of רבא is according to the חכמים of ר"י (who maintain that both the נערה and her father can receive the גט).⁸ However, why is it not possible to say that the query was also according to ר"י in a case where the father consented that she should receive the גט and the question is whether she can make a שליח or not?⁹

⁶ There is a מחלוקת in מגב, קדושין who may receive the גט for a נערה המאורסה, the חכמים maintain both she and her father can receive the גט, while יהודה ר' maintains only her father can receive the גט. We can establish that according to the חכמים she can receive the גט even without her father's consent, for if the חכמים maintain that she can receive the גט only with her father's consent, then why would ר"י argue, for (since she is a נערה) she is no different than any שליח that the father can make to receive the גט. Now רבא queries whether this right of the נערה to receive the גט (according to the חכמים [see 'Thinking it over']) is it because she is the יד of the father or the חצר of the father. We must therefore conclude that if the גט is placed in the hand or the חצר of the father she is divorced even against her father's will, for if we maintain that the father must consent, then we have an inherent contradiction; on one hand the נערה (who is either ידה or חצרה of the father) can receive the divorce without his consent (see previously) and on the other hand the father's יד or חצר (to which the נערה is compared) can only receive the גט with his consent! Therefore we must conclude that even if the father receives the גט without his consent, his daughter is divorced. (see מהרש"א) [see also קרני ראם and מהרש"ל, מהר"ם שי"ף]

⁷ Even if we say the נערה can receive the גט because she is (merely) considered her father's חצר (and not his יד), nevertheless she can accept it בע"כ של אב, therefore she will also be divorced if it is placed in her father's חצר or יד even בע"כ של אב.

⁸ See footnote # 6 [in the brackets].

⁹ See מהרש"א הארוך דו"מ אות ו.