

לפי שאינו בתורת גיטין וקדושין -

Because he is not included in the laws of divorce and betrothal

Overview

The גמרא concluded that an עבד cannot receive a גט on behalf of a woman since he is not בתורת גיטין וקדושין.¹ Our גמרא reconciles our גמרא with a seemingly contradictory גמרא.

replies to an anticipated difficulty:

והא דמתגרשת בעבד שלה² היינו מטעם³ חצר:

And this that she becomes divorced through her own עבד; that it an account of קנין חצר, but not that he is a שליח.

Summary

A woman can be divorced if the גט is given to her עבד on account of קנין חצר.

Thinking it over

There is a dispute whether the קנין חצר is איתרבאי or משום ידה איתרבאי.⁴ How will we answer תוספות question if we maintain איתרבאי שליחות; for since the קנין חצר is on account of שליחות and an עבד cannot be a שליח?!⁵

¹ An עבד cannot be מקדש a woman; if he is מקדש her it is invalid; she is not מקודשת; it is self-understood that he cannot divorce a woman either.

² The גמרא previously on כא, א states that if the husband gave the גט to her עבד, she is מגורשת, but how can that be since he cannot become a שליח to deliver a גט.

³ The עבד is like her property (her חצר [courtyard]). The rule is that a person's חצר is קונה for him as if it was placed in his hand. Therefore if he gave the גט to her עבד, she acquires the גט through קנין חצר (but not through שליחות). If however he sends a גט with an עבד (not her עבד), which is not her חצר, she is not divorced since he cannot be a שליח.

⁴ See בבא מציעא י, ב.

⁵ See תפארת יעקב.