

אלא מעתה הלוהו ודר בחצרו - חצר

OVERVIEW

אין שביעית משמט the rule is that מלוה על המשכון explained that the reason if one is רבא according to you the same rule should apply to one who lent his friend money and lived in his חצר, that שביעית should not be משמט since תפיס ליה. Our תוספות explains what אביי meant with הלוהו ודר בחצרו.

אין לפרש דפריך מהלוהו שלא על חצרו¹ –

We cannot interpret that אביי was asking from a case where he lent him the money, but did not offer his חצר as collateral, but rather the מלוה was living in the חצר (from before); this cannot be the case אביי was referring to -

- הלוהו שלא על חצרו אביי was not discussing a case of תוספות

מדלא נקט הלוהו ויש לו משכון בידו² –

Since אביי did not mention חצר as the challenging case, instead of הלוהו ויש לו משכון בידו³ - הלוהו ודר בחצרו

אלא פריך הלוהו על חצירו ודר בחצירו

Rather אביי asked from a case where he lent him the money with the חצר as collateral and he dwelt in that חצר, where it is similar to המשכון -

דאפילו הכי משמט כדמוכח בפרק איזהו נשך (בבא מציעא דף סז, ב) –

- פרק איזהו נשך as is evident in משמט

דאמרינן האי משכנתא⁴ באתרא דמסלקי⁵ שביעית משמטת:

¹ The difficulty with this interpretation is that we cannot compare the case of מלוה על המשכון where the לווה granted the מלוה this משכון (and therefore it is not משמט since it is של אחיך בידך) to the case of הלוהו ודר בחצרו where the לווה did not give the מלוה the חצר as a משכון (and therefore it is משמט since it is not של אחיך בידך). See 'Thinking it over' #2.

² If אביי was discussing a case of חצר על חצרו, why was it necessary for אביי to mention a case of קרקע when he could have asked the same question regarding מטלטלין (as is the case of המשכון), that if the מלוה was already in the possession of an article of the לווה prior to the loan (not a משכון), it should not be משמט. Since אביי did not present his question in this manner it is understood that this is no question for we cannot compare a case of a משכון to a case where the מלוה was merely in possession of the לווה's article (see footnote # 1).

³ According to the מהרש"א this is referring to a case where the מלוה is in possession of a משכון from this לווה for a different debt; however the value of that משכון is greater than that other debt. We are discussing whether שביעית is משמט the loan without the משכון

⁴ A משכנתא refers to a case where the מלוה lends money and the לווה provides him with a field as a guarantee. There are different types of משכנתא; in some of them the מלוה eats the פירות for the duration of the loan.

⁵ The לווה can pay the מלוה the remaining (pro-rated) debt and remove the מלוה from his field. Then שביעית is משמט. However, in a place where לא מסלקי meaning that the מלוה lends the לווה money and in return the מלוה gets the use of the field for a predetermined amount of years. If half the years passed the לווה cannot come and pay back half the

Where the גמרא states, 'this משכון of קרקע in a place where the לווה can remove the מלוה from the field by paying the debt, this type of loan שביעית is משמט'.⁶

SUMMARY

When one offers a field as a משכון with recourse, שביעית is משמט (as opposed to a משכון of מטלטלין).

THINKING IT OVER

1. How are we to understand the answer of רבא that 'שאני משכון וכו''⁷ (according to תוספות that חצרו is also a משכון)?⁸
2. Is this more readily understood⁹ according to פירש"י in דתפס ליה (that he is not demanding payment) or according to פירוש תוספות in דתפס ליה (that ולא של אחיך בידך)?

loan and demand his land back. It remains by the מלוה for the entire time, even if the time included a שביעית year.

⁶ אב"י basically asked what is the difference between a משכון of מטלטלין (where it is not משמט) and a קרקע of משכון (where it is משמט). [רבא answered that the מלוה is קונה a משכון of מטלטלין (we derive this from ר' יצחק) but he is not קונה the קרקע of משכון (the פסוק of ר' יצחק from where we derive that משכון is discussing (only) בע"ח קונה משכון). (See 'Thinking it over' # 1.)]

⁷ See footnote # 6.

⁸ See תפא"י.

⁹ See footnote # 1.