אשה אינה גובה משאר נכסים לפי שאין דרכה לחזר אחר בתי דינין –

A woman does not collect from the other assets, since it is not her manner to search after courts

Overview

רשב"ג ruled in the ברייתא that a woman collects her כתובה from the אפותיקי (even if the husband sold it). רש"י and תוספות qualify this ruling.

פירש בקונטרס[1] דווקא הטילה אחריות על שדה זו ועל מנת כן ניסת -

רש"י explained that this rule is **specifically if she placed the responsibility** for her כתובה **on this field** (the אפותיקי) **and she married him with this stipulation -**

ולא שיהיו כל נכסיו אחראין לה ולא תדע על איזה לחזור מי קנה ראשון ומי אחרון[2] -

And she did **not** want **that all his assets should be responsible for her** כתובה, **for then she will not know who bought first and who** bought **last -**

ותצטרך לדון עם כל אחד ואחד -

So she will need to litigate with each one. This concludes פרש"י -

ונראה[3] דאם מכר מכרו בטל לגמרי דאפילו בעל עצמו שמכר יכול לחזור ולבטל המכירה[4] -

And it is the view of תוספות **that if** the husband **sold** the אפותיקי, **the sale is completely nullified, so that even the husband himself who sold the** אפותיקי **can go back and nullify the sale** (even while they are still married and no כתובה payment is due) -

דהכי אמרינן ביבמות[5] בפרק אלמנה (דף סו,ב) גבי מכנסת שום[6] לבעלה -

For this is what the ברייתא **states in יבמות** מסכת **regarding** a woman **who brought in assessed** items **to her husband -**

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[1] בד"ה אינה.

[2] If all the husband's assets are אחראי for her כתובה, and the husband sold his assets, she will have to determine which assets were sold last, for she will not be able to collect from the purchasers who bought the assets first, for they will rightfully claim, when we bought, your husband still had assets of his own, and the אחריות of the כתובה shifted to those assets (for אין נפרעין מנכסים משועבדים במקום שיש בני חורין). So she will need to litigate with each of the buyers to determine who bought last so that she will collect from the last (ones).

[3] From פרש"י it may seem that if the husband sold the אפותיקי the wife has the right to collect her כתובה from the אפותיקי even if it was sold first (before the other assets [see footnote # 2]), however until the time of the collection of the כתובה the sale may be valid; however תוספות negates this.

[4] This of course means that he will return to them any monies they paid and he will receive the אפותיקי back in return.

[5] This proof from יבמות is (only) according to פר"ת cited later in this 'תוס, but not according to פרש"י there.

[6] The assets the woman brought into the marriage were assessed and the husband guaranteed that in the case of a divorce or his death she would receive from his estate this assessed value. This is also referred to as נכסי צאן ברזל (since she is guaranteed to receive the principal). In case of divorce or death of the husband where the woman insists on taking back this שום, instead of being paid its value (as agreed), she has the right to do so (משום שבח בית אביה). Therefore this שום is similar to the אפותיקי, where it is agreed that the debt be paid with this item.

דתניא מכרו שניהם לפרנסה[7] זה היה מעשה לפני רבן שמעון בן גמליאל -

For the ברייתא **taught, if both** (the husband or the wife) **sold** the שום **for their sustenance; this incident was** brought **before רשב"ג -**

ואמר הבעל מוציא מיד הלקוחות ופירש שם בקונטרס[8] מכרו שניהם או זה או זה -

And he ruled that the husband can take back the שום **from the possession of the buyers; and רש"י explained there** that when the ברייתא states, **'מכרו שניהם',** it meant **either** the husband **or** the wife (but not both of them), and רש"י explains[9] -

דאם מכר הבעל האשה מוציאה ואם מכרה האשה הבעל מוציא -

That if the husband sold the שום, **the woman can extract it** from the לקוחות (if he dies or divorces her), **and if the woman sold it the husband can extract it** from the לקוחות (if she dies). This concludes פרש"י. According to רש"י if the husband sold it, the sale is valid unless the wife dies so the husband can be מוציא מיד הלקוחות (and the wife can certainly be מוציא if the husband die or divorces her)[10] –

תוספות disagrees with פרש"י:

ורבינו תם[11] פירש דאפילו אם מוכר הבעל הוא עצמו מוציא -

And the ר"ת explained that even if the husband sold the שום, the husband **himself can be מוציא** from the לקוחות -

דתקון רבנן שלא יתקיים המקח כלל ובטל לאלתר שלא תטרח האשה לטרוף מהם[12] -

For the רבנן instituted that sale should not take effect at all, and it is nullified immediately so that the woman should not need to bother to collect it from them for her כתובה –

דרבן שמעון בן גמליאל לטעמיה דאמר הכא שאין דרכה של אשה לחזר אחר בתי דינים -

For רשב"ג in that ברייתא **follows the reasoning which he states here** (in our גמרא) **'that it is not the manner of a woman to go searching for courts'** to litigate for her כתובה -

ולא דמי לשאר נכסים של בעל שהמקח קיים עד שתבא האשה ותטרוף -

And the case of שום (or אפותיקי) **is not similar to other assets of the husband where the sale is valid until the woman comes to collect** her כתובה -

דהתם אין כתובתה מיוחדת עליהן יותר משאר נכסים ואי איכא בני חרי לא גביא ממשעבדי -

For in those cases the liability **of** paying her כתובה **is not specifically designated**

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[7] See רש"י there בד"ה לפרנסה that לאו דוקא is לפרנסה.

[8] בד"ה מכרו.

[9] בד"ה הבעל.

[10] See also תוס' there בד"ה הבעל.

[11] Others amend this to read רבינו חננאל (as opposed to רבינו תם).

[12] Once the rule is that המקח בטל לאלתר, so no one will buy it, therefore the woman will have no trouble to collect it from her husband's estate.

on these sold properties **more than on the other properties, so** therefore **if there are unsold properties** (בני חרי) which the estate still has, she **cannot collect from the sold** properties (משעבדי) -

אבל הכא אפילו איכא בני חרי יכולה היא לומר לא שקילנא אלא הני שנתייחדו לי -

However here by an אפותיקי/שום, **even if there are בני חורי,** the wife **can say, 'I am not taking** the בני חרי, **but** I rather take **from those** properties **which were designated for me** as payment for my כתובה' -

על כן הפקיעו חכמים כח המוכר לאלתר שלא תהא צריכה לחזר אחר בתי דינין -

Therefore since the wife can collect the אפותיקי משועבד even if there are בנ"ח, **the חכמים invalidated the power of the seller** (the husband) **immediately** (at the point of sale that it does not take effect) **so that she will not need to search for בתי דינין -**

וכן מוכח בירושלמי (יבמות פ"ז ה"א) **דפליג רבי יוחנן ורבי אלעזר בנכסי צאן ברזל[13] -**

And so it is evident in ירושלמי תלמוד **where ר''י ור''א argue regarding צאן ברזל** slaves **-**

רבי יוחנן אמר מכרו אינן מכורין –

ר''י said if he sold the עבדי צאן ברזל**, they are not sold** (the sale is invalid) -

אמר ליה רבי אלעזר אוכלין בתרומה מכחו[14] ואת אמרת אינן מכורין -

ר''א said to ר''י; these עבדי צאן ברזל **are eating תרומה on account of** the master (the husband), **and you say they are not sold!**

והדר קאמר במאי פליגון במכרן לעולם או במכרן לשעה[15] -

And then the ירושלמי **asks in which** case **are they arguing; when the** עבדים were **sold permanently or** when **they were sold temporarily -**

ומסיק דאתיא דרבי אלעזר כרבנן דאמרי הכא גובין משאר נכסים -

And the ירושלמי **concludes that ר''א agrees with the רבנן who rule here that** the woman **collects from the other assets** (not from the אפותיקי), meaning that it is a valid sale -

ורבי יוחנן כרבן שמעון בן גמליאל –

And ר''י agrees **with רשב''ג** that she collects from the אפותיקי, for the sale is invalid -

הוי[16] כשמכרן לשעה אינון קיימין אבל מכרן לעולם דברי הכל אינן קיימין -

The ירושלמי concludes; **that is when they were sold temporarily,** that is when there is the מחלוקת between ר''י ור''א, and ר''א maintains that **it is a valid** sale,

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[13] See footnote # 6.

[14] The עבדים eat תרומה (only) because they are קנין כספו of the master, if they are קנין כספו he can surely sell them. See נחלת משה that this is a case where they cannot eat on account of the woman She is a חללה.

[15] This (seemingly) means that if the argument is by מכרן לשעה, then according to ר"א the sale is valid temporarily, and according to ר"י it is not valid at all.

[16] The ירושלמי concludes that based on the בני הישיבה who established that the מחלוקת of ר"י ור"א is based on our מחלוקת between the רבנן ורשב"ג, and ר"י agrees with רשב"ג, this proves that their מחלוקת is only לשעה (but not לעולם) since רשב"ג maintains that the sale is nullified immediately it is not valid even לשעה. See 'Thinking it over'.

however if he sold them permanently all agree that the sale **is not valid**[17] -
ומתיישב בהך פירוש הקונטרס[18] **דהאשה שנפלו** (כתובות דף פא,א):
And with this interpretation, **רש"י explanation in האשה שנפלו** פרק **will be understood.**

Summary

There can be no sale of an אפותיקי for כתובת אשה (and שום).

Thinking it over

Why did the ירושלמי assume[19] that ר"א ור"י maintain that according to רשב"ג it is not a מכירה even לשעה?[20]

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[17] The conclusion of the ירושלמי is that the מחלוקת is where מכרן לשעה (see footnote # 14), and ר"י (who maintains אין מכורין) follows the view of רשב"ג; indicating that (according to רשב"ג) it is not a sale even לשעה, for it is בטל immediately as תוספות argued previously.

[18] See רש"י and תוס' there ד"ה מגרשה. The rule is that the כתובה of a יבמה is collected from her first deceased husband's estate, and when the יבם is מייבם her he cannot sell any of those assets, however after the יבום he can divorce her and take her back as a wife, and then he can sell all his assets or of his deceased brother (עיי"ש הטעם). רש"י there asks how can you say that he can sell, when there is a משנה (גיטין נה,ב) that if someone bought a field from the husband and the wife subsequently agreed to the sale, nevertheless the sale is בטל, because the woman can say the reason she agreed to the sale is because I wanted to please my husband (נח"ר עשיתי לבעלי), for if I would refuse, he would be suspicious that the wife is preparing for a divorce (עיניך נתת בגירושין) and therefore does not want him to sell any of the assets. So how can we say (in כתובות) that the husband can sell as he pleases. רש"י answered that the משנה in גיטין (which states מקחו בטל is only by the specific cases (where he was מייחד the field for her כתובה, or צאן ברזל etc.), however in other cases he may sell. תוספות there asks, the concern of עיניך נתת בגירושין [certainly] applies to the other fields as well, so why is there this distinction between the three fields and all other fields. However according to תוספות here that by these three fields the sale is nullified immediately, we understand the difference. Regarding the three fields there cannot be a sale at all (מקחו בטל), but by all the other fields the sale is valid, and pending, and if the woman is owed the כתובה she can eventually collect it from the לקוחות, but until then it is a valid sale ועיי"ש בתוס'.

[19] See footnote # 16.

[20] See נחלת משה.