

Here is where he said; half – half

הא דאמר חצי חצי –

OVERVIEW

The גמרא is attempting to reconcile two contradictory ברייתות regarding one who delivered all his assets to his two slaves.¹ The ברייתא which states that the slaves acquire the assets is where he wrote over the entire assets to both slaves, and the ברייתא which states that they do not acquire the assets is where he wrote חצי חצי. There is a dispute between רש"י and תוספות as to the meaning of חצי חצי.

פירש בקונטרס² שכתב בשטר אחד חצי נכסיי לך וכן בשני לחברו - פירש רש"י explained that חצי חצי means that he wrote in one שטר, 'half of my assets are yours', and he wrote the same thing in the second שטר to the other עבד -

ואפילו מסר בבת אחת³ לא קנו דדלמא חד פלגא הוא דכתב לתרויהו⁴ ואיכא שיוור⁵ - So even if he delivered both שטרות simultaneously to both עבדים, they do not acquire his assets, for perhaps it is the same half of his assets that he wrote to both of his slaves, so there is a remainder, and therefore they are not קונה -

פרש"י asks on תוספות:

וקשה לרבינו שמואל דהא מדקאמר כל נכסיי משמע שמפרש בשטר - And the ר"ש has a difficulty with this explanation, for since the ברייתא of חצי חצי states 'כל נכסי נתונין לפלוני ולפלוני עבדי' - שטר -

שחציו שנתן לזה לא נתן לזה אלא הכל נתן לשניהם - That the half which he gave to this slave he did not give to the other slave, but rather he gave all his assets to both slaves, so how can רש"י state that he meant the same half, how would that fit with the expression כל נכסי?!

Another question on פרש"י:

ועוד מדמפליג בין אמר כולו לאמר חצי משמע דוקא אמר כולו קנו - And additionally since the גמרא differentiates whether he said כולו (where the

¹ This reconciliation is assuming that both ברייתות follow the view of the רבנן that קנה לא עבדו לא קנה.

² בד"ה הא.

³ See הכותב ד"ה רש"י that he was מוזה through a שליח both שטרות to both עבדים simultaneously.

⁴ He gave both slaves the same half of his assets (part A) but he gave none of them his other half (part B).

⁵ He only freed one half of each slave and the רבנן maintain that one cannot free half-a-slave (see footnote # 1). It seems from רש"י if we would be certain that each slave received a different half, then it would be effective if he was מוסר both שטרות simultaneously, for then each slave would be freed completely at the same time (one half is freed from the שטר he received and his other half is freed with the שטר the other slave received).

are עבדים (קונה) or whether he said חצי (where they are not קונה), **this indicates that the עבדים are קונה only if he said כולו** -

אבל חצי אפילו פירש שלא חצי אחד נותן לשניהם אלא הכל אפילו הכי לא קנה⁶ -

But if he said 'חצי', even if he specified that he is not giving them both the same half, but rather he is giving them everything, nevertheless they are not קונה, but according to רש"י if he gave them everything אהת בבת אהת even if he said חצי they would be קונה!
!קונה

תוספות offers his interpretation:

ונראה לרבינו שמואל דרבה לטעמיה דאית ליה⁷ בפרק שני דקידושין (דף נב, ב) -

And it is the view of the ר"ש that חצי חצי is never קונה even if he explicitly gave it all away, **for רבה follows his reasoning in the second פרק of קידושין** -

ובמי שהוציאוהו (עירובין נא, א) כל שאין בזה אחר זה אפילו בבת אחת אינו -

And in the פרק מי שהוציאוהו that anything which is not effective when it occurs consecutively, it is not effective even when it occurs simultaneously -

ובזה אחר זה לא קנה כיון דשייר⁸ -

And by חצי if it were done consecutively, the עבדים would not be קונה, since he left over part of the עבד, so therefore they will not be קונה even בב"א -

תוספות responds to an anticipated difficulty:

ולא דמי לשיחרר חציו ומכר חציו⁹ דהתם הוי בזה אחר זה אם מכר חציו תחילה -

And this case of חצי is not similar to a case where he freed half the slave and sold half the slave בב"א where it is effective; **because there it would be effective ז"א** if he first sold half the slave and then freed the other half, so he is not משייר in the שחרור, however here by חצי חצי it can never take effect ז"א therefore it cannot take effect by בב"א.

⁶ The way in which the גמרא distinguishes between the two ברייתות, that it depends whether he said כולו or חצי, indicates that חצי is never קונה, only כולו is קונה, for if there is a case where חצי is also קונה the גמרא should have been more clear and differentiate whether he gave away everything or not. The fact that the גמרא differentiates between כולו and חצי tells us that חצי is never קונה even if he gives it all away; not like רש"י (in footnote # 5)

⁷ The משנה there states that if one is מקדש two sisters אהת אהת, neither of them is מקודשת, because as רבה stated כל שאין בזה אחר זה אפי"ז בב"א אינו מקודשת. Once he is מקדש one sister he cannot be מקדש the other, therefore even בב"א they are not מקודשות.

⁸ All agree (according to the רבנן) that if he would first give half his assets to one עבד (and then the other half to the other עבד) that they would not be קונה, for he only freed half the עבד; he was משייר the other half, so therefore since it is not effective ז"א, בזה אחר זה, therefore it is not effective even בב"א.

⁹ Seemingly there too if he would first free half and then sell the other half it would not be effective, since he only freed half so he is משייר, we should therefore say since it is not effective ז"א, בזה אחר זה, it should not be effective even בב"א.

asks: תוספות

וקצת קשה לפירושו דאם כן כי אמר כולו נמי לא ליקני בבת אחת -

And there is a slight difficulty with the explanation of the ר"ש, for if indeed it is so that since it is not effective ב"ב"א it is not effective even בב"א, so even if he said 'כולו' it should also not be effective even בב"א -

כיון דבזה אחר זה שני לא קני כמו במקדש שתי אחיות דאינן מקודשות -

Since by עבד the second will not acquire anything, so it should be like one who is מקדש two sisters that both are not מקודשות -

כיון דבזה אחר זה לא תפסי קדושין בשניה¹⁰ -

Since in a case where he was מקדש them בזה אה"ז the קידושין does not take effect by the second one, the same should be here that since if he gave them his assets בזה אה"ז the second one receives nothing so (even) if he gave it to both of them בב"א neither should receive anything!

explains why the rule of 'כל שאין וכו' תוספות

אלא ודאי לא שייך כל שאינו בזה אחר זה אלא היכא שהראשון מונע את השני מלחול -

Rather the rule of 'כל שאין בזה אה"ז' is certainly not applicable unless the first act prevents the second act from taking effect -

כמו בשתי אחיות שמונעים קידושי הראשונה מלחול קידושי שניה -

As it is by the case of the two sisters that the קידושין of the first sister prevents the קידושין of the second sister from taking effect

אבל הכא הא דלא קני שני בזה אחר זה לאו משום דלא חזי לקנות -

However here by the עבד this that the second עבד cannot acquire the assets where it was בזה אחר זה is not because the second עבד is not fit to acquire the assets (as it is by the second sister who is now not fit to be מקדשת to her sister's husband because of her sister) -

אלא משום דכבר נסתלק הנותן ואין לו בהן כלום -

Rather the reason the second עבד is not קונה is because the grantor has already been removed from his assets and he owns nothing of them anymore; he has nothing what to give. The case of the two עבדים -

מידי דהוה אנותן כל נכסיו לשנים וכתב לכל א' נכסיי נתונין לך במתנה -

Is similar to a case where one gives his assets to two people and wrote to each

¹⁰ By קידושין if he was first מקדש one sister, she is מקודשת, and then if he is מקדש the other sister there is no קידושין and therefore we rule that if he was מקדש both together there is no קידושין at all (since אין בב"א אין), (כל שאין בזה אה"ז אפי' בב"א אין), the same should apply by the עבד, if he first gave all his assets to one עבד and later gave it to the other עבד, the second עבד has nothing, so it should follow that if he gave it to both בב"א, neither should become free because of the same rule that אין בב"א אפי' בב"א אין. Our תוספות is saying that this rule of 'כל שאין וכו' cannot be applied universally. See 'Thinking it over'.

of them my assets are given to you as a gift -

וזיכה להן בבת אחת דקנו כל הנכסים¹¹ -

And he was מזכה it to them בב"א that they both acquire all the assets equally -

ואין לדמות ממון הראוי לחלק ואיתיה לחצאין כדאמר התם¹² אמעשר:

For we cannot compare money which can be separated and divided, as the גמרא states there concerning מעשר.

SUMMARY

רש"י maintains that the reason they are not קונה by חצי is because it may be the same חצי. According to the ר"ש they are not קונה even if it is a different חצי, since כולו by קונה. The difficulty with this is why are they קונה by חצי. There is a need to differentiate between קידושין and ממון which is divisible.

THINKING IT OVER

According to the 'קצת קשה',¹³ what would be the ruling by חצי חצי where it was made clear that between the two of them they acquire everything, are they קונה or not?¹⁴

¹¹ We do not say here אינו בב"א כל שאין בזאח"ז אינו בב"א.

¹² נא,א. The גמרא there differentiates that by מעשר if instead of giving a tenth he gave a fifth (2/10) בב"א, the rule is that the פירות are מתוקן (they can be eaten) but the מעשר is מקולקל for only one tenth is מעשר but not the other tenth (but we do not know which part of the fifth is מעשר and which remains טבל). However we do not say that since if he would give first one tenth and then later a second tenth where the rule would be that there is no מעשר on the second tenth (it is not אח"ז בזה) so even if he gave both tenths בב"א, it should not be מעשר at all. The difference is that by מעשר (and similarly by money matters) we can separate and divide by saying half is מעשר and half not, but when one is מקדש two women we cannot say that half of the woman is מקודשת and not the other half; there is no such thing as a half woman being מקודשת.

¹³ See footnote # 10.

¹⁴ Can we say that even though that by חצי חצי they are not קונה (even if he gave all his assets to both of them [half to each]) because there, neither can be אח"ז בזה אח"ז, however by כולו since the first one can be קונה if it is אח"ז בזה, and it is ממון (which is אפשר לחלק) we do not say אינו בב"א אפי' בב"א אינו בב"א.