

בשלוה על מנת למשכנו כולי –

When he borrowed with the intent to collateralize it, etc.

OVERVIEW¹

The גמרא differentiated between עבד (where it is considered as if he was sold) and שדה (where it is not considered as if it was sold), in a case where he borrowed the money with the intent to use them (the עבד or the שדה) as security, but he did not collect the security as collateral. There is a dispute between רש"י and תוספות how to understand this answer.

פירש בקונטרס² שאם לא אפרע עד זמן פלוני בא ומשכנני מקרקע זו ותהא שלך -
explained (the case of שדה) that the נכרי said to the ישראל, 'that if I do not repay the loan by this date, come and take this field as collateral and it will be yours' (this is the meaning of ע"מ למשכנו - בשלוה) -

וכל זמן שלא בא ישראל ומשכנו הוי בחזקת עובד כוכבים -
So as long as the ישראל did not come and take it as collateral (this is the meaning of משכנו (ולא משכנו), the field is in the possession of the נכרי and it is פטור from מעשר -

וגבי עבד כי האי גוונא³ קנסוה רבנן לישראל הואיל ועבר הזמן ולא פרע⁴ -
And regarding an עבד in the same case, the רבנן penalized the ישראל, since the time of payment passed and he did not pay -

ואף על פי שלא משכנו עדיין -
So even though the נכרי did not take the עבד as collateral yet, nevertheless the עבד goes out free,

פירש"י asks on תוספות:

וקשה דהוה ליה למימר אידי ואידי דמטא זמניה⁵ -
And there is a difficulty with this explanation, for the גמרא should have said; 'that in both cases the time of payment has arrived' –

תוספות offers his explanation:

¹ See 'Overview' to previous 'תוס' on ד"ה הא.

² בד"ה הכי.

³ The ישראל told the נכרי, 'if I do not pay you by this date you may take the עבד as a משכון and he will be yours'.

⁴ By the ישראל not paying back the money it is as if he already sold the עבד to the נכרי, since at any time the נכרי can take possession of the עבד, for his loan was not paid up.

⁵ In the previous answer the גמרא states, 'אידי ואידי דלא מטא זמניה'; therefore in this answer where, according to רש"י, it is מטא זמניה; the גמרא should have clarified that according to the איבעית אימא both cases are by מטא זמניה.

לכך נראה דאתא לשנויי שנויא קמא הא דמטא זמניה והא דלא מטא זמניה -

Therefore it appears to תוספות that the גמרא is coming to reinforce the first answer, that by the עבד it is זמניה (and therefore it is considered a מכירה), and this case by a שדה is where לא מטא זמניה (therefore it is not considered a מכירה) -

והא דאקשינן גבי עבד דמטא זמניה צריכא למימר בשלוה על מנת למשכנו ולא משכנו -

And this which the גמרא asked on this answer; 'is it necessary for the ברייתא to teach us regarding an עבד that if מטא זמניה it is considered a מכירה;' it is obvious! The גמרא is answering this question; indeed it is מטא זמניה, but we are discussing a case where the עבד borrowed from the נכרי with the intent to be ממשכן his, but the נכרי did not yet take the עבד as a משכון -

דסלקא דעתין כיון דלא משכנו עדיין לא יצא לחירות -

So it may have entered our minds that since he was not ממשכן him yet, the עבד should not go free, because he is not yet הנכרי -

קא משמע לן דהואיל ובידו למשכנו' דיוצא לחירות:

The ברייתא informs us that since the נכרי has the right to be ממשכן the עבד, therefore the עבד goes out free.

SUMMARY

According to this רש"י (אידי ואידי דמטי זמניה and איבעית אימא) is a new answer, however according to תוספות (הא דלא מטי) this איב"א is explaining the first answer (מטי זמניה וכו') that even though it was למשכנו, the עבד is freed since it is זמניה.

THINKING IT OVER

What would be the ruling by a field if it is מטי זמניה and למשכנו, according to this? ⁷ would it be חייב במעשר or not? איבעית אימא

⁶ See footnote # 4.

⁷ See נחלת משה.