

Later אבי restated

הדר אמר אבי -

OVERVIEW

The גמרא first quotes אבי as saying (regarding the case where his master wrote כל נכסי קנויין לך) that (נכסי קנויין לך) מתוך שקנה עצמו קנה נכסים. Then אבי questions this statement. אבי retracts his original statement and says מתוך שלא קנה נכסים לא קנה עצמו. Our תוספות will explain why אבי changed his position.

פירוש¹ לא משום קושיא דרבא חזר בו -

The explanation of the גמרא is that אבי **did not retract his** original statement (that on account of s'רבא question - (מתוך שקנה עצמן קנה נכסים

דאבי לא חשיב ליה פירכא דסבר לא פלגינן דיבורא -

For אבי **does not consider** s'רבא question to be a **refutation** to s'אבי original statement **since** אבי maintains **we cannot divide a statement²**; to say we accept it only partially. We either accept the statement or reject it in its entirety.

will now explain why we cannot say that אבי retracted his original statement on account of s'רבא question:

דאקושיא דרבא לא משני מידי -

for אבי, in retracting his original statement and offering a different statement, is **not answering at all s'רבא objection**. According to either statement of אבי is equally invalid. Why then did אבי retract his original statement?

– רבא explains; it has nothing to do with תוספות

אלא נראה לו סברא לומר טפי דבתרוייהו לא קנה דיד בעל השטר על התחתונה -

Rather it appeared to אבי **logically** that it is **preferable to say that** the עבד **acquires neither** himself nor the possessions; as opposed that he acquires them both. The logic is **that the onus of proof is on the bearer of the note³**. It is the בעל השטר, in this case the עבד, who desires to change the status quo. Therefore he must prove his position beyond any doubt. According to אבי, since we do not say דיבורא, we either accept his claim completely or reject it completely. If the עבד cannot validate his entire position, the status quo remains. The עבד remains an עבד and the נכסים remain in the previous estate.

¹ The term פירוש usually indicates that תוספות is negating a simpler and more obvious explanation. תוספות states here the explanation which he is negating, namely that אבי retracted on account of s'רבא challenge.

² This is apparent from either of s'אבי statements.

³ Literally: 'The hand of the שטר holder is on the bottom'.

SUMMARY

According to אביי we do not say דיבורא פלגינן. Therefore, since the יד בעל השטר על נכסים, we would rather say קנה עצמו than the reverse.

THINKING IT OVER

1. Why did אביי originally maintain that קנה עצמו נכסים?⁴
2. Why was it necessary for רבא to repeat his question on אביי (that בשלמא וכו' אלא; it seems obvious that the initial question remains?!⁵

⁴ See אמ"ה # 204.

⁵ See אמרי בינה.