

He is always a free-man

לעולם הוא בן חורין -

OVERVIEW

The גמרא quotes the משנה of נכסיו וכו' to prove that ר"ש maintains פלגין דיבורא; we may divide a statement. A statement is valid (if we maintain פלגין דיבורא) even if the statement cannot be fulfilled in its entirety. We will validate the part of the statement that is applicable, regardless that we reject the full meaning of the statement. The quote from ר"ש concerns the case where the master confers all his possessions to his עבד, but he retains something for himself. The עבד, according to ר"ש, will go free. There is a dispute between רש"י and תוספות how we derive from this statement of ר"ש that he maintains פלגין דיבורא. Superficially there is no need for דיבורא to explain the עבד's freedom. The עבד acquires all the possessions of the master, besides the exclusion, and acquires himself as well, as one of the possessions. We are seemingly not dividing the master's statement at all.

interpretation: רש"י's quotes תוספות:

פירש הקונטרס מדקאמר רבי שמעון לעולם משמע דלא שניא היכא דקנה שאר נכסים -
explained¹ since ר"ש said: the עבד goes free 'always', it means that
there is no difference whether the עבד acquired the rest of the
possessions (this would be in a case where) -

כגון שפירש השו"ר -

For instance the owner specified the exclusion; then the עבד would receive all the possessions, except what was excluded, and goes free -

ולא שניא היכא דלא קנה כגון שלא הזכיר קרקע ששייר -

And there is no difference whether he does not acquire the rest of the
master's possessions, for instance where the master did not mention
specifically the land he excluded -

דכתב ליה חוץ מבית כור קרקע דהשתא לא קנה שום קרקע -

That the master wrote in the שטר to the עבד, all my possessions belong to
you besides one בית כור of land², that now, in this case, the עבד does not
acquire any land at all -

דכבל חד וחד איכא למימר דהיינו הוא ששייר -

¹ בד"ה עד.

² A בית כור of land is a parcel where one can plant 30 סאה. A בית סאה is a parcel of land 50x50 אמות or 2500 square אמות. A בית כור contains 75,000 square אמות. It is a square approximately 273.86 אמות on each side.

For on each בית כור that the master possesses we can say that this is the בית כור that he retained for himself -

ואפילו הכי הוא בן חורין אלמא פלגין דיבורא -

And nevertheless the עבד is a free man; regardless of the fact that he receives no possessions, **this proves that we 'divide the statement'**

דהא כל נכסיו קאמר ליה ולא קנה אלא את עצמו -

For the owner said to the עבד 'all my possessions are granted to you, except for a בית כור' and he only acquires himself to be free; but does not acquire any possessions; even those in excess of the בית כור that the master retained for himself. If we were to maintain דיבורא לא פלגין then only if the עבד would acquire the נכסים (in excess of a בית כור) can he go free. If he does not acquire the נכסי האדון, then the statement כל נכסי cannot free the עבד, since the statement is not being adhered to completely. The עבד is not receiving חוץ מבית כור. However if we do maintain דיבורא then at least part of כל נכסי is acquired by the עבד; namely himself. This concludes רש"י's interpretation.

Tosfos takes issue with רש"י's assumption that if the master is משייר a בית כור without specifying which בית כור, then the עבד will receive no קרקע at all, since on every בית כור we can say that the אדון meant to retain this בית כור for himself. Tosfos will argue that this is not so³.

וקשיא אף על גב דלא הזכיר שם קרקע מכל מקום קנה כל קרקע דאית ליה -

And it is difficult to accept what רש"י is saying, for even though the owner did not mention the name of the land that he is retaining for himself, the rule is that nevertheless the עבד acquires all the land that the owner possesses besides a בית כור -

אלא שיד העבד על התחתונה⁴ ויקח האדון לעצמו בית כור מעידית שבנכסים -

However the עבד is in the weaker position relative to the owner, and the master may take for himself a בית כור from the best fields of his properties. The עבד cannot claim, prove that you meant to retain this best field for yourself, perhaps you only meant to retain for yourself an inferior field. The עבד cannot claim this. The אדון is the original owner of all the fields; we cannot remove him from any field unless we have adequate proof. On the other hand the אדון is entitled to only one בית כור; any בית כור he chooses. The rest of his נכסים go to the עבד.

Tosfos proves his point that the אדון may retain only one בית כור; whichever he desires:

³ Tosfos, however, agree as to what constitutes a situation where דיבורא is applicable. In this case of the עבד, it is where the אדון says כל נכסי, and the עבד receives no נכסים (only himself).

⁴ Literally, the עבד has the 'underhand'; instead of the 'upper hand'.

כדתנן בפרק בית כור (בבא בתרא דף קז,ב) חצי שדה אני מוכר לך יניח לו חצי שדהו -
as we learnt in a משנה in פרק בית כור; if an owner of a field says to a
prospective buyer, 'I will sell to you half of the field'; the owner must
leave to the buyer half his field -

ומפרש התם דלוקח נוטל כחוש דיד בעל השטר על התחתונה -
And the גמרא there explains the משנה to mean that the buyer is only
entitled to take the inferior half of the field; while the owner retains the
better half. The reason is because the bearer of a שטר is in a weaker
position. We see from that גמרא that even though the בעל השטר is התחתונה, nevertheless he does receive half the field, albeit the inferior half. The owner cannot claim that since I did not specify which half, therefore I can renege on the whole deal. On each half that you will want to take I will claim that for myself. The seller cannot do this. Here too, even though the אדון did not specify which בית כור he is retaining, that entitles him only to retain whichever בית כור he desires. The rest of his properties, however, belong to the עבד.

According to this refutation of ר"ש we seemingly do not have a case where ר' שמעון maintains חוץ מבית כור אדון ר"ש. In the case which ר"ש mentioned, that the אדון said, the עבד does receive all the נכסים minus that בית כור; which is what the אדון said. פלגין דיבורא is not relevant to this situation. תוספות will now present to us a different case in which the עבד receives no נכסים in spite of the fact that the אדון said לך. This will be the case of דיבורא.

ואומר רבינו יצחק דלעולם דרבי שמעון בא להוסיף אפילו -
And the ר"י says that when ר"ש said 'לעולם' – 'Always', he comes to
include even such a situation where –

אין לו אלא אותה העיר או אותה שדה -
He does not own anything besides this city, that he is retaining for himself
or that field that he is retaining for himself -

כדקתני סיפא בתוספתא דבבא בתרא⁵ ובפרק קמא דפיאה⁶ -
As it says in the סיפא in the תוספתא of ב"ב and in the first פרק of the
תוספתא of פיאה -

רבי שמעון אומר לעולם הוא בן חורין -
ר"ש says he is always a free-man -
עד שיאמר כל נכסי נתונים לפלוני עבדי חוץ מאחד מריבוא שבהן -
Unless the אדון says 'all my possessions are given to so and so, my slave

⁵ פרק ט, ד.

⁶ תוספתא פרק א, טז.

besides one ten thousandth of them'. In this latter case he does not go free for we assume that this phrase 'אחד מריבוא שבהן' refers to the עבד. The תוספתא continues, if the אדון אמר חוץ מעיר פלוני חוץ משדה פלוני אפילו אין שם אלא אותה העיר או אותה שדה - **said 'all my possessions are given to so and so, my slave, besides that city or besides that field'**; which the owner is retaining for himself **even if all that the אדון possesses is that city or that field**, the דין is -

זכה עבד בנכסים וקנה עצמו בן חורין ואין מתקיים דבור כל נכסי אלא בעבד לבדו -
The עבד acquires the possessions of the אדון, namely that he acquires himself as a free-man⁷, and the statement of 'כל נכסי' (all my possessions are given to my servant) is not fulfilled only concerning the עבד himself, since he does not acquire anything else at all besides himself; he receives no possessions since the owner retained all the possessions (the city or the field) for himself.

והוה⁸ אמינא כשאמר חוץ מבטל דבורו מה שאמר כל נכסי -
And I might have said, that when the אדון said 'besides this city, field, etc.' **he is nullifying his statement that he previously said 'all my possessions are given to you'.** The initial statement 'כל נכסי' implies that he is giving the עבד something, besides himself. When he subsequently says 'besides all my possessions', he is seemingly nullifying his previous statement, and he is not granting the עבד anything, not even his freedom -

קא משמע לן דאפילו הכי יצא לחירות דפליגין דיבורא:
comes to teach us that nevertheless the עבד goes out free for we divide the statement of the אדון. He may not be giving him any property, but he is granting the עבד his own freedom. He will receive part of the כל נכסי.

SUMMARY

There is a dispute between רש"י and תוספות in the case where the אדון wrote כל נכסי קנויין לך חוץ מבית כור. According to רש"י the עבד cannot acquire any קרקע at all. תוספות maintains that the עבד acquires all the קרקע except for the בית כור the owner chooses to retain.

רש"י can prove that תוספות maintains דיבורא פליגין from this case, that even though the עבד receives no נכסים, nevertheless יוצא לחירות.

According to תוספות we prove that רש"י maintains דיבורא פליגין from the case where the property that the אדון retained was all the property he owned. This will leave the עבד without any property at all and nevertheless he is יוצא

⁷ The עבד is the (only) possession acquired. See נח"מ for an alternate interpretation.

⁸ In the ודו"א.... נכסי תוספות הרא"ש there is no mention of the entire phrase. See 'Thinking it over # 2.

לחירות.

THINKING IT OVER

1. Can we find an advantage in the manner רש"י formulates the need for פלגינן דיבורא; the case of חוץ מבית כור, כל נכסי קנויין לך חוץ מבית כור, as opposed to how תוספות presents it (כל נכסי קנויין לך חוץ מאותו עיר ואין לו אלא אותו עיר)?⁹
2. When תוספות says ¹⁰ מבטל דיבורו והו"א כו' is this א"ה related to דיבורא or is it a general א"ה that he is reneging on his offer, irrelevant to the issue of פלגינן דיבורא?¹¹

⁹ See אמ"ה # 121.

¹⁰ See footnote # 8.

¹¹ See בית לחם יהודה אות קפז.