

## The ruling is according רבי מאיר

## הלכה כרבי מאיר –

### OVERVIEW

כל נכסי קנויין לך stating עבד to his אדון writes a שטר; for we say רב אדא בר מתנא. Then רב אדא בר מתנא asked רבא, we know the הלכה is like ר"מ who argues against ר"ש and maintains ר"ש. The dispute between ר"מ and ר"ש is concerning an אדון who wrote a שטר to the עבד which stated לך קנויין, however the אדון retained (some of) the נכסים for himself. ר"מ maintains that לא יצא להירות and ר"ש maintains that יצא להירות. There may be two types of explanations what the dispute between ר"מ and ר"ש consists of; either whether we assume מדשייר בנכסים (or not); or whether we say דיבורא (or not); depending on the type of שוור. If the owner does not retain all the נכסים then the dispute is whether we say 'מדשייר בנכסים וכו', if however the owner retains all the property then the dispute may be whether we say דיבורא.

explains what is the relevance of הלכה כר"מ to our discussion of דיבורא.

**ולרבי מאיר סלקא דעתין דסבר דלא פלגינן דיבורא -**

**For we initially thought that ר"מ maintained that 'we do not divide a statement' -**

will now explain where do we find ר"מ addressing the issue of דיבורא:

**דמדקאמר רבי שמעון לעולם משמע אפילו באותו ענין דלדידך לא יצא להירות -**

**For since ר"ש said in his dispute with ר"מ that the slave goes free 'always', this means that even<sup>1</sup> in such a situation that according to you ר"מ, the slave does not go free -**

**דלא פלגינן דיבורא כשאין לו אלא אותה העיר אפילו הכי יצא להירות -**

**For you, ר"מ, maintain that we do not 'divide a statement'; in a case where the אדון only owns that city which the אדון is retaining for himself,<sup>2</sup> nevertheless, ר"ש maintains that the עבד goes out free. The 'לעולם' of ר"ש refers back to ר"מ with**

<sup>1</sup> There may be two types of reasons why the עבד is not freed; either because we assume מדשייר בנכסים שייך נמי, or because we assume דיבורא. When ר"ש says 'לעולם', which תוס' explains to mean 'even', ר"ש is teaching us that not only is he (ר"ש) disagreeing with ר"מ concerning 'וכו' בנכסים, but he is disagreeing with him even when according to ר"מ he is יצא להירות, not on account of מדשייר, but on account of דיבורא. [It would seem that accepting דיבורא is more difficult than rejecting 'וכו' בנכסים.]

<sup>2</sup> In the case where the owner does not retain all the property for himself, then the issue of דיבורא is not relevant. The s' freedom will then depend on whether we say 'וכו' בנכסים.

whom ר"ש is arguing. If ר"ש teaches us that even in the aforementioned case he is יוצא לחירות it is inferable that according to ר"מ he is not יוצא לחירות. We are now assuming that the reason why according to ר"מ he is not יוצא לחירות is because ר"מ maintains דיבורא <sup>3</sup>. This in turn would pose a difficulty for רבא who maintains דיבורא, which would seem to be in opposition to the opinion of ר"מ.

**ומסיק דטעמא דרבי מאיר לאו משום דלא פלגינן דיבורא אלא משום דלאו כרות גיטא הוא.**  
**And the גמרא concludes** in defense of רבא **that the reason ר"מ** maintains that the עבד does not go free in the abovementioned case **is not because ר"מ** maintains דיבורא, which in turn would present a difficulty for רבא, **rather** the reason why the עבד is not יוצא לחירות is **because it is not** considered a **document of severance**

**פירוש דאין זה כריתות כיון שיש שיור בדיבור שהוא משתחרר בו -**

**The meaning** of the term שחרור הוא לאו כרות גיטא is that **this** type of a שחרור **is not a severance** between the אדון and the עבד, **since there is a withholding in the statement by which he** is to receive his **freedom -**

**דאמר כל נכסי ואינו מתקיים כולו -**

**For** the master said **'all my properties** are to be yours', **and those words are not entirely fulfilled**; it is with these words of 'כל נכסי' that the עבד obtains his freedom. There is no other mention of freeing the עבד, except the words of 'כל נכסי'. The עבד is not receiving (any) נכסים. The words of שחרור must be without any reservations. Here however the words by which the עבד is being משוחרר, namely: 'כל נכסי' are not being fulfilled; the owner is not divesting himself of <sup>4</sup> כל נכסי.

**אבל בעבד שהביא גטו וכתוב בו כל נכסי קנויין לך פלגינן דיבורא שפיר דכרות גיטא הוא -**

**However in** the case where **the עבד brought his גט** and therein is written **'all my properties are given to you'**; the case that רבא is discussing, then **we rightfully 'divide his statement', for that is a severance document**; the עבד goes free and the נכסים require קיום חותמיו for the עבד to acquire them. The אדון in his statement of שחרור does not withhold anything. He is not retaining anything for himself. The fact that the עבד is not קונה the נכסים without קיום, is no reflection on the gift of the master; it is merely a דין in שטרות. So רבא, who maintains דיבורא can therefore agree with ר"מ that in a case where the אדון said העיר אותה לו אלא אדון העיר, he is not יוצא לחירות, since it is not a כרות גיטא. Similarly ר"מ who maintains לחירות in the

<sup>3</sup> Seemingly one may ask that perhaps ר"מ agrees to דיבורא. The reason he is not יוצא לחירות (even) in this case is (also) because נמי בעבד מדשייר בנכסים שייר. However, תוספות will state shortly that this reasoning is not applicable in this situation. See footnote # 6.

<sup>4</sup> If the אדון said פלוני לך חוץ מקרקע פלוני, it is not clear, according to תוספות why ר"מ maintains that לא יצא. Is it because this is also considered גיטא כרות; since כל נכסי is not being entirely fulfilled, or is it because מדנחית לשוירא שייר נמי עבד. See מהרש"א הארוך, קרני ראם, סוכ"ד.

previous case may agree with רבא that דיבורא, and in the case of רבא, even ר"מ will concur that קנה נכסים לא קנה.

will now present רש"י's interpretation and refute it:

**ורש"י פירש דלאו כרות גיטא הוא משום דאיכא למימר מדשייר בנכסים שייר נמי בעבד -**  
**And רש"י explains that the reason it is not a 'כרות גיטא' is because we can say that since he withheld some of the נכסים he also withheld the עבד.<sup>5</sup>**

**ולפי זה באין לו אלא אותה העיר דלא שייר למימר מדנחית לשוורא שייר נמי עבד -**  
**And according to רש"י's reasoning that what prevents the עבד from attaining freedom is the concept of נמי בעבד; then in a case where the אדון only possesses that city which he retained; thereby not leaving for the עבד any נכסים; in such a case where it is not applicable to say since the אדון is involved in retaining נכסים he is also retaining the עבד** (The logic of מדשייר נכסים (The logic of מדשייר נכסים only applies when the אדון is offering his properties to the עבד and simultaneously retaining some of the properties for himself. In such a case we say he is also retaining (part of) the עבד and does not intend to free him<sup>6</sup>. If however the owner initially offers the עבד his properties and then reneges on his entire offering, in such a case the logic of מדשייר בנכסים שייר does not apply. The אדון is giving the עבד nothing; neither his freedom nor his properties. There is no reason for the אדון to give such a שטר<sup>7</sup> if he is also being משייר the עבד. We must therefore conclude that he is not משייר the עבד.); Then in that case -

**מודה רבי מאיר דיצא לחירות דפליגין דיבורא -**

**רבא would agree that the עבד goes free, for ר"מ agrees with רבא that סברת רבא that מדשייר (רש"י), since we cannot say פלגינן דיבורא<sup>8</sup>; there is no חסרון of כרות גיטא (according to רש"י), since we cannot say יוצא לחירות וכו'. Therefore he is יוצא לחירות.**

has a difficulty with רש"י's interpretation and subsequent consequences that in a case where אין לו אלא אותה העיר, then ר"מ would agree that יוצא לחירות:

**ואין משמע כן בתוספתא כדפירשתי -**

**However it does not seem so in the תוספתא, as I explained.** In the previous תוספות אין לו ר"ש maintained that even in the case of אין לו ר"ש, nevertheless he is יוצא לחירות. The simple reading of the תוספתא would indicate that ר"מ certainly argues with ר"ש in this situation and would maintain that יוצא לחירות. This

<sup>5</sup> כל אדון said דיבורא is in a case where the אדון said כל (בד"ה עד הובא בתוס' ד"ה לעולם) נכסי קניין לך חוץ מבית כור. In this situation the עבד receives no נכסים at all. The only way he is משהחרר is if we say בית כור only one משייר. The reason the עבד receives no נכסים is on account of a 'technicality', that we cannot remove the אדון from any כור. See previous לעולם תוספות ד"ה לעולם.

<sup>6</sup> The אדון is (mistakenly) giving him this שטר so the עבד will think that he is receiving some נכסים.

<sup>7</sup> See 'Thinking it over' # 1.

<sup>8</sup> If we would maintain דיבורא then (even though we cannot say משייר וכו') the עבד would not go free. The statement of כל נכסי cannot be divided, since there are no נכסים for the עבד, there is no חירות for the עבד either.

contradicts understanding of רש"י that in the case of שדה, where the concept of מדשייר וכו' is not applicable then ר"מ would agree with ר"ש that יצא לחירות.

רש"י presents another difficulty with his understanding of תוספות

**ולשון אפילו אינו מיושב -**

**And the expression 'even' is not appropriate.** The תוספתא quotes ר"ש as saying -

**דאפילו אין לא אלא אותה העיר משמע דכל שכן יש לו שאר נכסים דיצא לחירות -**

**'Even if he only owns this field, nevertheless he goes free'.** This expression indicates that certainly when the אדון has other properties besides the one he is retaining, then for sure that the עבד goes free. That is the basic meaning of אפילו; even in this case and certainly in other cases. However, according to our understanding of רש"י –

**אדרבה רבי מאיר לא פליג אלא ביש לו שאר נכסים:**

**The contrary is true, that ר"מ does not argue with ר"ש unless when the אדון owns other properties.** This is the exact opposite of the logic inferred from the תוספתא. According to the תוספתא there is more reason to say יוצא לחירות when there are other נכסים. According to תוספות understanding of רש"י there is more reason to say יוצא לחירות when there is no other property.

## SUMMARY

Initially the גמרא maintained that the reason ר"מ argues with ר"ש concerning the case where שדה<sup>9</sup> is because ר"מ is of the opinion that לא פלגינן דיבורא. That is why he is יוצא לחירות. The conclusion of the גמרא is that ר"מ may maintain that פלגינן דיבורא and nevertheless argue with ר"ש in the abovementioned case; for he maintains that it is not a כרות גיטא.

There is a dispute between רש"י and תוספות as to the meaning of לאו כרות גיטא. תוספות maintains that since the אדון is reneging on his original offer of נכסי, by retaining the נכסים for himself, there is a retention in the statement that purportedly would free the עבד; namely כל נכסי. That retention invalidates the שטר שחרור. רש"י maintains that the reason it is not a כרות גיטא is because since he is משייר בעבד he is also משייר בנכסים.

תוספות understands רש"י to mean that if the מדשייר of סברא would not be applicable – as in the case of אותה העיר – then ר"מ would agree that יצא לחירות. תוספות finds this difficult to reconcile with the תוספתא, where the opposite seems to be true; that when it is אותה העיר, אין לו אלא אותה העיר, there is less reason to say יצא לחירות.

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<sup>9</sup> Or, according to רש"י, in the case where he was משייר a סתם בית כור.

### THINKING IT OVER

1. תוספות maintains that according to רש"י when אין לו אלא אותו שדה, there is no סברא of מדשייר וכו' since the אדון retains all the נכסים for himself.<sup>10</sup> However רש"י states clearly that when the אדון said חוץ מבית כור סתם then ר"מ and ר"ש would still argue; ר"מ maintaining that לא יצא לחירות. In this instance the אדון also retains all the נכסים for himself and yet ר"מ maintains that לא יצא לחירות, seemingly because מדנחית לשירא וכו'<sup>11</sup>.<sup>12</sup>

2. What is the difference between the two questions תוספות asks on רש"י from the תוספתא?<sup>13</sup>

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<sup>10</sup> See footnote # 7.

<sup>11</sup> See footnote # 5.

<sup>12</sup> See נח"מ (בד"ה ולפ"ז).

<sup>13</sup> See סוכת דוד אות י.