פשיטא מי ידעינן אבוה מנו –

It is obvious! Do we know who the father is!?

Overview

שמואל stated that if one of ten assembled כהנים was בועל a woman, the ensuing child is a שתוקי. The גמרא questioned; in reference to what do we consider him a שתוקי. It cannot mean that he cannot inherit his 'father'; that is obvious, for we do not know who his father is! תוספות will explain why indeed we cannot say that שמואל was discussing the inability of the child to inherit, even in special circumstances.

תוספות anticipates a possible solution to the s'גמרא question of פשיטא; it may be possible that שמואל does need to teach us concerning the inability of this child to inherit:

הכא[1] לא בעי לשנויי לא צריכא[2] דאי תפס -

Here, the גמרא **did not want to answer** that admittedly, the ruling of שמואל that the שתוקי child is deprived of the inheritance, is generally **not necessary;** except for the case **if he seized** the assets of his purported deceased father.[3] In that situation שמואל teaches us that even though the שתוקי is in possession of the assets,[4] nevertheless we remove him from them, since we are not certain that the deceased is his father. This would seemingly answer the s'גמרא question of פשיטא!

תוספות will initially attempt to prove why this may indeed be a proper explanation of s'שמואל ruling, for we find this explanation elsewhere –

כדמשני בפרק עשרה יוחסין (שם דף עה,א ושם) **גבי ארוסה שעיברה[5] -**

as the גמרא **answers in פרק עשרה יוחסין regarding a betrothed** woman **who was pregnant.** שמואל stated there that the child of this ארוסה שעיברה is denied the inheritance of the estate of his mother's ארוס. The גמרא asked that this is obvious; we do not know who the father of this child is. Why should he inherit the estate of the ארוס? The גמרא answered that שמואל is teaching us that even if the child seized the assets of the estate; nevertheless we remove him from it. We see from that גמרא that even in a case

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[1] This is meant to exclude elsewhere, where such an answer is given, as תוספות will shortly state.

[2] We do not even know who the father is.

[3] The 'child' claims that this person is his father.

[4] The child is the מוחזק. There is a ספק, that possibly this person is the father. Perhaps the ruling should be that המוציא מחברו עליו הראיה. The other heirs should prove that he is not the child of the deceased. See 'Thinking it over' # 1.

[5] An ארוסה is prohibited from having marital relations with anyone, including the ארוס, until the time of נישואין. The ארוסה, by being promiscuous, placed the paternal lineage of this עובר in question.

where it is פשיטא that the child does not initially inherit, nevertheless there is a necessity to teach us that (even) if he took possession of the estate he may not retain it. The גמרא could have answered the same in our case, that even though it is obvious that the child does not initially inherit the estate of any of these ten people, nevertheless שמואל is teaching us that even if תפס, he does not retain it.

תוספות answers that the case of an ארוסה is different than our case here:

דהתם רגלים לדבר דמארוס נתעברה ואיכא למיתלי ביה טפי מבאיניש דעלמא -
for there it is indicative; there are ample grounds to assume **that she was impregnated from the ארוס and we can assign** the pregnancy **to him**; the ארוס, **more than from another person.** It is more readily assumable that the child was fathered by the ארוס, since the ארוס וארוסה were close to each other, and preparing to marry each other. Therefore there is a חידוש, that even if the child was תופס, nevertheless we remove from him any assets which he took. We do not assume that he is the heir. However, in our case, where one person from ten was בועל this woman; there is no reason to even think that if the child was תופס the estate of any of these ten, that he has any right to it. This person is in the minority. It is more readily assumable that his father is from the other nine; the majority. Therefore it is פשיטא that even if the child was תפס, we dispossess him.

Summary

There is more reason to suspect that the ארוסה became מעוברת from her ארוס, than to assume that any specific one of the ten is the father of the child.

Thinking it over

1. Why indeed do we not say המוציא מחברו עליו הראיה if the child was תפס (both in our case and in קדושין)?[6] [especially if he was תופס שלא בעדים where he a מיגו that לא תפסתי.[7]]

2. How can we justify the הו"א of תוספות, that the child's claim in our case is equal to (or perhaps even stronger than) the child's claim in the case of the ארוסה שנתעברה?

[6] See footnote # 4. See (מ"ת) ח"ב, אילת השחר, סוכ"ד אות עז.
[7] See ריטב"א.