

The woman. If there are – אם יש עדים שיצאת בהינומא כולי – witnesses that she left her father's house with a ¹הינומא¹, etc.

OVERVIEW

The משנה states the case of a woman who is widowed or divorced and there is a dispute whether she was a בתולה when she originally married. If there are witnesses that she was יצאה בהינומא at the wedding, it is proof that she was a בתולה and receives a כתובה payment of מאתיים. Our תוספות will be discussing some details in this case.

There are places where the כתובה was written and used as a note to collect payment; however there are places where there was no written כתובה.² The woman collected her כתובה based on a מעשה בית דין. It is an enactment of בי"ד that a woman collects a כתובה (etc.), if she is widowed or divorced.

בדלא נקיטא כתובה איירי דאי איכא כתובה ניחזי כתובתה אם היא בתולה או אלמנה -
The משנה is discussing a case where the woman is not holding a כתובה;³ the widow or the divorcee has no כתובה in her possession for if there is a כתובה, why should there be an issue let us see what is written in her כתובה whether she was a בתולה when she married, and her כתובה is מאתיים; or if she was a widow (or a divorcee) when she married and her כתובה is only a מנה.

anticipates a difficulty if we assume that there is no שטר כתובה being presented here for collection; and rejects it:

ואפילו⁴ למאן דאמר הטוען אחר מעשה בית דין ואמר פרעתי⁵ נאמן -
And even according to the one who maintains, that one who argues with an enactment of בי"ד and he says I paid the debt that בי"ד placed upon me he is believed and does not have to pay, nevertheless there is no difficulty. Seemingly according to this מ"ד there is a difficulty. In our case since the ex-wife is not presenting a כתובה, the husband (or the יתומים) has the option of claiming that the כתובה was already

¹ The גמרא (דף יז, ב on) cites two opinions whether a הינומא is a wreath of myrtles or a type of veil.

² See the גמרא later on טז, ב.

³ It is either a מקום שאין כותבין כתובה or she lost her כתובה.

⁴ The term 'even' is to be understood that 'even according to this מ"ד' there is (ultimately) no difficulty, as תוספות continues to expound on the proposed question and subsequent answer.

⁵ There are those who maintain (ר' יוחנן) that one cannot claim פרעתי on a debt that בי"ד imposes on him (like supporting one's wife and daughters) for it is like a מלוה בשטר where פרעתי is not believed See יז, א. However there are others who maintain that פרעתי is נאמן against a מעשה בי"ד; see the marginal note.

paid in full.

Tosfos will first clarify the difficulty, and then answer it:

מכל מקום אין נאמן לומר כאן אלמנה נשאתיך מגו דאי בעי אמר פרעתי -

Nonetheless, even though that this option of פרעתי exists, **the husband is not believed in this case to claim, that I married you as a widow,** since he has a מגו **that he could have claimed I paid** the כתובה. If he would have claimed פרעתי he would be פטור from paying anything. Now that he is claiming אלמנה נשאתיך and is willing to pay a מנה, he should be believed.⁶ The question is why the woman receives the entire כתובה; there is a מיגו of פרעתי, which should support the claim of אלמנה נשאתיך.

Tosfos responds:

דמגו במקום עדים הוא:

For this is a מגו which contradicts עדים. A מגו במקום עדים refers to case where the claim (not the מיגו) contradicts the עדים. In our case the claim is that she was a widow at the time of marriage. The עדים claim that יצאה בהינומא; that she was a בתולה. A מיגו cannot justify a claim which contradicts עדים.

SUMMARY

If there are עדים that יצאה בהינומא, then even though the woman does not possess a כתובה, he is not believed to claim אלמנה נשאתיך, with a מיגו of פרעתי. This is considered a מגו במקום עדים.

THINKING IT OVER

The ruling that מגו במקום עדים לא אמרינן is well established. What was Tosfos question initially?

⁶ This seems to be even stronger than a regular מגו. If he would have used the מגו claim he would have been entirely פטור; certainly he should be believed with his actual claim where he is admitting to owing a מנה.