

אוקי ממונא בחזקת מריה –

We place the money in the possession of its owner

Overview

Regarding the status of a נישואין was קטנה שנתקדשה לדעת אביה, however the נישואין was not definitive, there are two rulings of רב; she may eat תרומה,¹ but he does not inherit her (if she dies before her father returns).² The reason for the latter ruling is that we place the money in its presumptive status. The money initially belonged to the wife. We do not know whether there was a נישואין,³ therefore the money remains in the possession of the wife's family (her father, brothers etc.). תוספות clarifies who is the מוחזק and why the law of ירושה is different than the law of תרומה.

ואפילו הוא מוחזק בנכסי מלוג⁴ שלה אינו בחזקתו אלא בחזקת יורשי האשה -

And even if the husband is in possession of her נכסי מלוג, it is not considered in his possession, but rather in the possession of the wife's heirs -

דתפיסתו שלא כדין היתה -

Since his seizing these assets of the נכסי מלוג was done illegally, for there was no definitive נישואין (since it was not מדעת אביה, and the father may not consent⁵) –

anticipates a difficulty:

ואף על גב דשרי לה רב לאכול בתרומה -

And even though רב permitted her to eat תרומה, which seemingly indicates that there was a definitive נישואין, so why is it a כדין?

replies; the reason she eats תרומה is not because the נישואין were definitive, rather -

היינו משום דמן התורה ארוסה בת ישראל אוכלת בתרומה⁶ כדפירש' בקונטרס:

It is because an ישראל eats תרומה as רש"י explained.

¹ This (seemingly) indicates that it is a valid נישואין.

² This indicates that there is no (definitive) נישואין; a husband inherits his wife after the נישואין, but not after the אירוסין.

³ The קטנה died before her father returned, we have no way of resolving the ספק. At this point we certainly cannot believe the father (for he has a vested interest [he inherits her if there was no נישואין]).

⁴ נכסי מלוג are assets which the wife brought into the marriage, for which the husband did not guarantee or take responsibility for them. During their marriage the husband receives any 'fruits' (profits) of these properties (i.e. actual fruit of the fields or rents for houses, etc.). If the husband predeceases his wife or divorces her, these properties go back to the wife and any increase or decrease in their value is her gain or loss respectively. See 'Thinking it over'.

⁵ There is a ספק whether the father would have consented to the נישואין; the husband took possession of the נכסי מלוג after this נישואין, this is considered a תפיסה לאחרי שנוולד הספק which is an ineffective תפיסה (see לפיכך).

⁶ It is only מדרבנן that she does not eat תרומה; by a ספק דרבנן we may be lenient and allow her to eat תרומה.

⁷ בד"ה ומודה.

Summary

The wife's heirs receive her נכסי מלוג, even if the husband seized them (for it was a תפיסא שלא כדין); the reason she eats תרומה is because מדאורייתא an ארוסה may eat תרומה.

Thinking it over

תוספות mentions that the נכסי מלוג go to her heirs.⁸ What is the rule concerning the נכסי צאן ברזל?⁹

⁸ See footnote # 4.

⁹ See אוצר מפרשי התלמוד # 156. [נכסי צאן ברזל] are assets which the wife brings into the marriage, which were evaluated and the husband guarantees this amount to be paid to the woman in case of a divorce (or death) no matter what the actual value will be at the later date (the increase or decrease of these assets is the gain or loss respectively of the husband. This indicates a greater ownership on behalf of the husband, since he stands to incur the profit or loss).]