

בין היא בין אביה יכולין לעכב - Either she or her father can prevent

Overview

The Gemara cites the ruling of רב regarding a אביה שלא לדעת אביה, that either the אביה or her father can prevent the קידושין from taking effect. There is a dispute between רש"י and תוספות how to explain this ruling.

תוספות anticipates a difficulty:

ואף על גב דאמר רב לעיל (דף מד, ב) חיישינן שמא נתרצה האב¹ -

And even though רב ruled previously regarding a אביה שלא לדעת אביה that she requires גט (ומיאון) because **we are concerned perhaps the father consented**, so how can we say here that (she and) her father can prevent the קידושין from being effective –

תוספות responds:

היינו בסתמא ששמע ושתק אבל היכא דמיחה גילה בדעתו² -

This ruling of האב is in an indeterminate situation where the father heard of the קידושין and remained silent; however in a case where he protested when he heard about the קידושין, he revealed his view that he opposes the קידושין (initially) and he prevents it from becoming effective

תוספות now discusses the עיכוב of the אביה:

ולא מיבעיא אם לא נתרצה האב³ שיכולה היא לעכב אלא אפילו נתרצה האב יכולה לעכב -

And it is unnecessary to say that she can be מעכב if the father was not נתרצה, but even if the father was נתרצה, she can still be מעכב.

תוספות asks:

ואם תאמר מה יועיל שתעכב אחרי שיתרצה האב הא בידו לקדשה בעל כרחא -

And if you will say; what will it help that she is מעכב after the father was נתרצה, since the father has the right to be מקדש her against her will, and he approves of the קידושין, so her protest in this case is seemingly meaningless?!

¹ Presumably תוספות assumed in this question that the father can be מעכב later, even if initially when he became aware of these קידושין he did not react. The question is that since initially he did not protest, and רב previously ruled that she requires גט because שמא נתרצה האב, how is it possible that afterwards he can nullify the קידושין. See 'Thinking it over' # 1.

² תוספות maintains (in this answer) that the father can be מעכב only if he protested initially, but not if he was silent initially (for then he might have been נתרצה and at that point the קידושין become effective and she requires a גט).

³ here, means the father took no action; either he was silent or did not yet know about it; in these two situations she can be מעכב, as רש"י maintains (see footnote # 7). [It would be difficult to interpret here לא נתרצה האב that he protested, for then, her עיכוב is immaterial.]

answers: תוספות

ויש לומר היינו דוקא בתחילת הקידוש⁴ -

And one can say; this the that father can be מקדש her בע"כ, is only by the initial קידושין -

אבל היכא דנתקדשה שלא לדעת אביה ואחר כך נתרצה האב -

However in a case where she was נתקדשה שלא לדעת אביה, and the father was later נתרצה -

ואתה רוצה לומר דמקודשת מטעם זכות⁵ הוא לו אמרינן כיון דבתו מעכבת דחוב הוא לו⁶ -

And you wish to say that she is מקודשת, because it is a זכות for him; however, we say that since the daughter is מעכבת it is a חוב for him -

ולא היה מתרצה אם היה יודע דמעכבה -

And he would not have consented if he would have known that she is מעכבה.

פרש"י cites תוספות

ומיהו לפירוש הקונטרס לא קשיא מידי דפירש⁷ הואיל ובשעת קבלת הקידושין לא נתרצה האב -

However according to פרש"י there is no difficulty at all, for רש"י explained 'היא' explained רש"י, because it is a זכות for him; however, we say that since the daughter is מעכבת it is a חוב for him; therefore -

אם באתה לחזור קודם שיתרצה האב חוזרת ולא מהני תו רצוי האב:

If she comes to retract the קידושין before the father consents, she may retract, and the father's consent afterwards would not be effective and there would be no קידושין.

Summary

According to תוספות she can be מעכב even after נתרצה האב, according to רש"י she can be מעכב only before נתרצה האב.

Thinking it over

⁴ The father can be מקדש her בע"כ, when he is agreeing to the קידושין at the moment of קידושין.

⁵ זכות means it is advantageous or beneficial; while חוב means it is detrimental or damaging.

⁶ At the moment when these קידושין took place, it cannot be effective since the father did not consent to these קידושין. When later we find out that the father consents to the קידושין, we assume that at the point of קידושין the father implicitly consents, for it is a זכות for him that the daughter should marry this person, and even though he is not aware of the קידושין, we say לאדם שלא בפניו. However if (even after the father consented) he realizes that his daughter does not want these קידושין, then retroactively we must say that it is no זכות for the father (to marry his daughter to someone she does not want); but rather it is a חוב for the father. Therefore the קידושין never took place, because at the moment of קידושין there is no consent, either explicit or implicit.

⁷ בד"ה יכולין. See footnote # 3.

1. What is תוספות first difficulty?⁸ Perhaps the ruling of שמא נתרצה האב is in a case of שידכו, and the ruling of יכולין לעכב is by לא שידכו?⁹
2. What 'forced' תוספות to learn that she can be מעכב, even if נתרצה האב; why did not תוספות learn like רש"י?!

⁸ See footnote # 1.

⁹ See מהרש"א.