

דלא אתיא סימני נערות לא הוי זבינה זבינא –

One that does not bring signs of נערות the sale is not a valid sale

OVERVIEW

taught that if not for the פסוק (which alludes to בגרות), we may have assumed that an אילונית cannot be sold as an אמה העבריה. Our תוספות clarifies what this means, for seemingly when a girl is a קטנה (which is when she can be sold as an אמה), we do not as yet know whether she will become an אילונית or not.

asks: תוספות

ואם תאמר ובקטנות איך נדע שלא תביא סימני נערות –

And if you will say; but when she is a minor how can we know that she will not bring סימני נערות –

דסימני אילונית היינו כשהיא בת עשרים ולא הביאה שערות –

For the signs of an אילונית are that when she is twenty years old and did not grow pubic hairs –

כדאיתא פרק הערל (יבמות דף פ, ב) –

as it is brought in פרק הערל. How can we say that if a man sells his daughter while she is a קטנה that there is no sale if she is an אילונית; how can we know now, when she is still a קטנה, that she will become an אילונית later when she turns twenty?

anticipates a possible solution and rejects it: תוספות

ואף על פי שיש סימני אילונית שאפשר להכיר בקטנות –

And even though there are certain signs of an אילונית that are recognizable (even) when she is a קטנה –

כגון סימן דקולה עבה ואין שיפולי מעיה¹ כנשים –

For instance, the sign that her voice is thick or that she has no שיפולי like other women. Perhaps we can say if a קטנה exhibits these signs one cannot sell her for an אמה העבריה. However, תוספות rejects this solution –

הא אמרינן (שם) גבי סריס² עד שיהא בו כולן ומסתמא הוא הדין באילונית³ –

For the גמרא states there concerning a סריס, that he is not considered a סריס until he has all the signs of a סריס, and presumably the same rule applies by an אילונית. When the girl is a קטנה she cannot have all the סימנים of an אילונית, since one of the סימנים is that she did not grow שערות by the age of twenty. The question

¹ See "שיפולי" in רש"י that by women the lower abdomen curves (slightly) outward.

² A סריס is a eunuch; the male counterpart of an אילונית.

³ See 'Thinking it over'.

remains, what is meant that we cannot sell an אילנית as an אמה העבריה, if we do not as yet know that she is an אילנית.

replies: תוספות

ויש לומר דהכי קאמר⁴ לא הוי זבינה זבינא –

And one can say; that (indeed) this is what the גמרא means; that the sale is not a valid sale if later it is determined that she is an אילנית -

וצריך האדון להחזיר מעשיה והאב יחזיר הכסף וגם אין שייך בה דין ייעוד⁵ אם יעדה:

And the master must return all her work to the father and the father is required to return the money to the master, and also⁶ even if the master was מייעד her the rules of יעוד do not apply and she is not considered married to the master.

SUMMARY

The according to רב אשי הו"א was that if an אמה העבריה was subsequently determined to be an אילנית, the entire sale is invalidated retroactively; even the יעוד is disqualified.

THINKING IT OVER

asserts that just as by a סריס all the סימנים are required before he is deemed a סריס the same applies to אילנית.⁷ However, concerning a סריס there is a מחלוקת there in יבמות מס' between רב הונא who maintains all סימני סריס are required and ר' יוחנן who maintains even one סימן is sufficient, so perhaps רב סימני אילנית agrees with ר' יוחנן and is discussing a case where one of the אילניות was apparent.⁸

⁴ did not state that it one is not permitted to sell an אילנית (for indeed we do not as of yet know that she is an אילנית while she is a קטנה), but rather that the sale of an אילנית will be invalidated later when we determine that she is indeed an אילנית.

⁵ The process of יעוד is where the אדון informs the אמה that he is betrothing her [with the money he paid her father for her purchase]. Since the entire sale is invalidated, there was never any legal transfer between the אדון and the אב; therefore there is nothing on which the קידושי יעוד can be חל.

⁶ תוספות may not be satisfied with the first explanation, for in reality it may not be that significant if the sale is considered valid or not. We can assume that the money the father received for his daughter will be equal to the value of the work which the daughter produced (for this is the usual case monies are paid for value received). Therefore תוספות mentions the second explanation where there is a significant difference whether the sale is valid (and she is an איש אשת איש) or not (where she still is a פנויה). However the second explanation is only valid when there was יעוד, therefore תוספות offers the first explanations which is valid in all cases.

⁷ See footnote # 3.

⁸ See footnote # 139.