

אם היה סלע שלה מקודשת – מקודשת If it was her boulder; she is

OVERVIEW

The ברייתא taught that if a man wanted to be מקדש a woman with a מנה and she told him to place it on a סלע, she is not מקודשת. However if the סלע belonged to her, she is מקודשת. The גמרא then posed a query; what is the ruling if the סלע belonged to both of them, is she מקודשת or not. רש"י and תוספות disagree as to why she is מקודשת by a סלע שלה.

פירש בקונטרס¹ דחצרה קונה לה² –

רש"י explained that her 'courtyard' acquired for her the מנה and therefore she is מקודשת.

פירש"י disagrees with תוספות:

ולא נהירא דאם כן מאי בעי סלע של שניהם מהו³ –

And this is incorrect, for if it were so (that she is מקודשת because of קנין חצר), why is there a query if the boulder belonged to both of them, what is the ruling -

פשיטא דאינה קונה כיון דהוא חצר של שניהם –

It is obvious that such a חצר cannot acquire anything for her since it is a חצר which belongs to both of them -

כדאמרין פרק המוכר את הספינה (בבא בתרא דף פד,ב) אמר רבי ינאי –

As the גמרא states in פרק המוכר את הספינה, that ר' ינאי ruled that by a -

חצר של שני שותפין קונין זה מזה –

- חצר of two partners they may acquire items one from another in the חצר -

ומוקי לה במודד בתוך קופתו של לוקח⁴ אבל במודד על הקרקע לא –

And the גמרא establishes this ruling of ר' ינאי in a case where he measured the item to be sold into the basket of (his partner) the buyer, however if he measured it on the ground of their joint חצר the buyer does not acquire it. This proves that by a חצר של שני שותפין, neither can acquire from the other based on קנין

¹ בד"ה ואם.

² There is a general rule that one acquires ownership of an object (that is sold or gifted to him) if the object is (placed) in his possession; including in his property. The סלע is her property; therefore by placing the מנה on the סלע she acquires the מנה for קנין כסף through קידושין of קנין חצר.

³ The issue, according to (understanding of) רש"י, would be, whether it is a valid חצר קנין.

⁴ The קופה of the buyer is considered his possession. However the חצר, since it belongs to the seller as well, therefore it cannot be considered as if the sold item ever left the domain of the seller and entered into the domain of the buyer.

הצר. Why did the גמרא ask if she is מקודשת by a סלע של שניהם, when she is obviously not מקודשת?!

תוספות offers his interpretation:

– **ונראה לפרש דהכא הטעם אין תלוי בקנין חצרה**⁵ –

And the explanation seems to be, that the reason she is מקודשת here is not dependent on the קנין of her חצר; she is מקודשת regardless of קנין חצר -

אלא כשהסלע שלה סמכה דעתה ובשאינו שלה לא סמכה דעתה –

However, if the סלע is hers, there exists by her an acceptable trust that she wishes to be מקודשת, but if the סלע is not hers there is no סמיכות דעת on her part, for she shows no willingness to be מקודשת -

ובעי כשהסלע של שניהם אי סמכה דעתה או לא:

And they queried in a case when the סלע is jointly owned, is she סומכת or not.

SUMMARY

According to רש"י the issue of סלע שלה (or של שניהם) is concerning קנין; according to תוספות it is concerning סמיכות דעת.

THINKING IT OVER

According to תוספות if he (only) placed it on סלע שלה is she מקודשת?⁶

⁵ תוספות does not state explicitly how she acquires the קידושין הרא"ש. The תוספות interprets it that he actually threw the money to her and she received it (after he initially placed it on the סלע as per her request?), however if she said put it on a סלע, this indicates that she is not interested in the קידושין, but when it was שלה this indicates that she is interested. The query is by סלע של שניהם (whether or not she is interested), but in all cases she actually received the קידושין. See 'Thinking it over'.

⁶ See footnote # 360.