And to write a *Prusbul* on it - ולכתוב עליה פרוזבול

Overview

ר"ע ruled that in order to write a פרוזבול,[1] the לוה must have some קרקע, even a miniscule amount is sufficient. תוספות discuses this ruling

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אבל אמטלטלין אין כותבין פרוזבול מפני שיכול לכלותן והיא הלואה דלא שכיחא[2] -

However, if the borrower owns only movable items, **we do not write a פרוזבול, since** the לוה **can rid himself from them, so it is an uncommon** type **of loan -**

ועציץ נקוב[3] אף על פי שיכול לכלותו כותבין עליו פרוזבול דלא פלוג רבנן במקרקעי -

And regarding a perforated flowerpot, one may write a פרוזבול if the לוה owns one. **Even though it can be destroyed,** nevertheless **the רבנן did not distinguish** between different types of **קרקע –**

תוספות anticipates a difficulty:

והא דכותבין אפילו על קרקע כל שהוא[4] -

And the reason **we write** a פרוזבול **even on a miniscule amount of land –**

תוספות responds:

פירש רבינו שמואל בן מאיר בהשולח (גיטין דף לז,א דיבור המתחיל אלא) משום דאין אונאה לקרקעות -

The רשב"ם explained in השולח פרק**, since there is no 'cheating'[5] by קרקעות -**

והוי כאילו יש לו משכון בכל[6] -

So therefore, it is considered **as if he has collateral for the entire** loan –

תוספות disagrees:

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[1] See רש"י ד"ה פרוזבול, that this is a תקנה of הלל that the lender assigns his debts to בי"ד so that the מלוה should be able to collect them even after שמיטה.

[2] A מלוה is usually only willing to lend when the לוה owns קרקע, for then his loan is secured by the land, however if the לוה has only מטלטלין (but no land), the loan is not secured, for the מטלטלין can be lost or stolen or sold, etc. Therefore, since this is an uncommon case, the חכמים did not institute their תקנות by a מילתא דלא שכיחא. See 'Thinking it over'.

[3] Plants that grow in an עציץ נקוב are considered קרקע(מחובר ל) regarding many laws, since they nourish from the ground through the hole(s) in the (נקוב) עציץ.

[4] A קרקע כ"ש will (seemingly) not be sufficient to secure the loan; why is it different from מטלטלין?!

[5] The rule of אונאה is that if an item was overcharged (or undercharged) by a sixth or more, there is recourse; the sale is nullified if the difference was more than a sixth, or if it was exactly a sixth, the amount overpaid (or underpaid) must be returned to the buyer (or seller). However, by קרקע even if one was overcharged by more than a sixth, the sale is valid as is. This means that a piece of קרקע which has a certain market value, can be considered to be worth much more, since if you sell at a much higher price, the sale will be valid.

[6] The small piece of land, which the לוה has, can be considered to be worth much more (the entire amount of the loan), since the מלוה can collect it and sell it for a much higher price; therefore his loan is secured.

ואין נראה דנהי דאין להן אונאה ביטול מקח ביתר מפלגא יש להן[7] -

And this answer **does not appear** to be correct, **for granted that** קרקע **is not subject** to the regular rules of **אונאה, nevertheless the sale can be annulled** if it is sold **for more than half** its market value -

תוספות offers his interpretation:

אלא היינו טעמא משום דגבי והדר גבי כמעשה דקטינא דאביי[8] (כתובות דף צא,ב) -

Rather this is the reason that we write a פרוזבול on קרקע כ"ש, **because he can collect and collect again, like the story of אביי with a small** plot of land -

דעל ידי כך ראוי לגבות כל חובו וכענין זה איכא סוף פרק כל הגט (גיטין דף ל,ב) -

That through this process **it is possible to collect the entire debt. And there is something similar to this in the end of פרק כל הגט -**

גבי המלוה מעות את הכהן כולי[9] הניח מלא מחט גובה מלא קורדום:

Regarding one who lends money to a כהן, etc. that if **he left over land** even the **size of a needle, he can collect the size of an axe**

[ועיין תוס' גיטין לז,א דיבור המתחיל אלא ותוספות קדושין כו,ב דיבור המתחיל ולכתוב]:

Summary

We cannot write a פרוזבול for מטלטלין; however, we write for קרקע כ"ש either because אין אונאה לקרקעות, or because we can collect it repeatedly.

Thinking it over

תוספות writes that we do not write a פרוזבול on מטלטלין because it is a מילתא דלא שכיחא.[10] If that is the case, why can we write a פרוזבול on a קרקע כ"ש; seemingly there too it is a מילתא דלא שכיחא to lend money to someone who virtually has no קרקע?![11]

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[7] See כתובת צט,ב ואילך. This means that if land which was worth one hundred was sold for (more than) two hundred, the sale is void. Therefore, if the loan is much more than the value of this קרקע כ"ש how can it be considered as collateral, and so the פרוזבול should not be effective.

[8] The story there is that a לוה owed two hundred זוז, and he passed on and left over a small plot of land worth fifty זוז. The מלוה took that field as partial payment for his loan. The heirs of the לוה came and gave him fifty זוז and reclaimed the field. The מלוה went back and took the field again since his loan was not paid up and this land is משועבד for the loan. אביי ruled there that the מלוה has the right to do so, עיי"ש. Here too the מלוה can collect this small parcel for partial payment and then when the לוה will redeem his field (by paying the מלוה its value), the מלוה can go back and take the field again and again until his loan is fully paid.

[9] The משנה there (on ל,א) teaches that one may lend money to a כהן, etc. and receive payment by keeping the תרומה, which he is normally required to give to a כהן, and deduct it from the money owed to him by the כהן. The גמרא there states that if the כהן died and left over land (which is משעובד for his loan), he may (according to ר' יוחנן) continue to collect his full debt (by keeping the תרומה) even if the land was very small (כמלא מחט), since whenever the יורשים choose to redeem the field, he can again claim the field which is משעבד to him (so potentially he has a שעבוד for his entire loan).

[10] See footnote # 2.

[11] See נחלת משה.