

עשה עבדו אפוטיקי ומכרו כולי - He mortgaged his slave and sold him, etc.

Overview

רב ruled that if someone offered his slave as an אפוטיקי for his creditor and then the borrower sold the slave, nevertheless the creditor can collect his debt by repossessing the slave for himself. תוספות explains the need for רב to establish his ruling of a slave by an אפוטיקי.¹

אפילו אי סבר רבא דעבדי כמקרקעי דמי² נקט אפוטיקי לאשמועינן בין בשטר בין בעל³ פה :
Even if רבא maintains that slaves are considered land, nevertheless he mentions אפוטיקי to inform us that the מלוה can collect this עבד as payment for his loan, whether the loan was written in a document, or whether it was an oral loan

Summary

One can collect from a sold עבד who was an אפוטיקי even if it was a פ"פ מלוה.

Thinking it over

It seems from תוספות that an אפוטיקי is effective even by a פ"פ מלוה, only by an עבד, but not by קרקע.⁴ Why is there this difference; if there is a קול by an עבד, there should also be a קול by an אפוטיקי קרקע?⁵

¹ An אפוטיקי is similar to a mortgage; meaning that the לווה designates something of value (either קרקע or an עבד), from which the מלוה can collect his debt if the לווה defaults on the loan. The word אפוטיקי is a combination of three words אפה תהא קאי (the loan is based on this).

² It would seem from רבא's statement that if the לווה did not make the עבד an אפוטיקי, and sold him, the מלוה would not be able to collect the עבד as payment. However, if we assume that קרקע are like עבדים, then even if the עבד was not made an אפוטיקי, the מלוה should still be able to collect from the עבד, since all קרקע is משועבד to the loan, and an עבד is considered קרקע. Therefore it is not understood why רבא mentions אפוטיקי. [However if רבא would maintain עבדי כמטלטלי דמי, it is understood why רבא mentions אפוטיקי, for only by an אפוטיקי (of עבד) can the מלוה collect if he was sold, but not if he was not made an אפוטיקי.]

³ By an oral loan the מלוה cannot collect anything from משעבדים (sold properties), unless he made it for an אפוטיקי, in which case the מלוה can collect, [only] if the אפוטיקי was an עבד (but not anything else). The reason is (as the גמרא states) that if one makes his עבד for an אפוטיקי there is publicity (even though it was a פ"פ מלוה). See 'Thinking it over'.

⁴ See footnote # 3.

⁵ See ירושי הב"ח על הש"ס.