

מי איכא עבדא דלא מזדבן לקנסא –

Is there a slave which cannot be sold for his fine

OVERVIEW

The גמרא cited a ברייתא, which stated that even a קנין כספו (a slave) which is not worth a פרוטה, can also eat תרומה. The גמרא asked if one can sell his slave for קנס, how can there be a slave (קנין כספו) who is not worth a פרוטה.¹ This proves that a slave cannot be sold (only) for his קנס. Our תוספות challenges and explains this proof.

תוספות asks:

ואם תאמר כי אמר נמי דאינו מכור תקשי ליה -

And if you will say; even if we assume that if an עבד is sold for his קנס it is not a valid sale, the גמרא can still ask -

מי איכא עבדא דלא מזדבן לקנסא שיוכל למכרו כולו לגמרי² -

‘Is there a slave who cannot be sold for his קנס; since he can sell the entire slave completely –

תוספות answers:

ויש לומר דלא ימצא קונים שיקנוהו לגמרי -

And one can say that he will not find buyers who are willing to buy the slave completely; they won't be willing to do it -

אפילו לא לפרנסו שיוכל לומר עשה³ עמי ואיני זנך⁴ -

Even if they will not feed him, for the rule is that the master can say to his slave, ‘work for me, but I will not feed you’ -

מכל מקום מימנעי אינשי לקנותו שלא יהא רגיל אצלם -

But nevertheless people will refrain from buying him, so that he will not be by them frequently; therefore he is not worth even a פרוטה. This is true only if he has to buy

¹ Everyone would be willing to pay a פרוטה for the opportunity to receive שלשים שקלים if this slave is killed by an animal.

² The גמרא assumed that everyone is willing to pay a פרוטה for the קנס, so how can there be a slave that is not worth a פרוטה. However this question can be asked even if one cannot sell an עבד, only for the קנס; the question still remains how can there be an עבד who is not worth a פרוטה (even if he cannot be sold exclusively for the קנס), but he can be sold completely for a פרוטה. Seemingly everyone will pay a פרוטה to own an עבד completely and have the chance of receiving שלשים שקלים?!

³ See previously יב,א.

⁴ People will certainly not buy him if they are required to feed him, for they are just spending money and not receiving anything in return since this עבד is worthless. However, even if they do not need to feed him they still will not buy him.

him completely⁵ -

אבל אם מכרו לקנס מכור זמנין דזבני ליה⁶ -

However if the rule is that a sale for קנס only, is a valid sale, occasionally people will buy him, therefore he is worth a פרוטה –

תוספות offers an alternate solution

ועוד יש לומר דאפילו מוכרו כולו לגמרי אינו מכור⁷ -

And additionally one can say that even if he sells this עבד completely, it is not a sale -

דהא אינו שוה כלום ואינו מוכרו אלא לקנס ולקנס אינו מכור:

Since intrinsically this עבד is worthless, so he is being sold only for קנס and there is no sale for קנס only (if this is what we assume), therefore he is not worth even a פרוטה.

SUMMARY

People will not be willing to purchase an עבד (who is not worth a פרוטה), even if they don't feed him, for they do not want him being around, however if it's only for קנס they may consider paying a פרוטה for the שקלים. Alternately, if we maintain מכור לקנס אינו מכור, one cannot sell an עבד who is not worth a פרוטה.

THINKING IT OVER

1. How can we explain the תוספות וועי"ל that even if he sold him לגמרי the sale is not valid;⁸ why should it not be valid since they both agreed to the sale?⁹

2. What are the relative advantages of both answers?

⁵ No one wants a worthless עבד being in their household, and this עבד since he was bought completely by the master will assume that it is his home and be there against the will of the owner.

⁶ In this case since he is being sold only for the קנס, the עבד will assume that his real owner is the seller and will therefore make that his home, so people will not be reluctant to buy him for the קנס only.

⁷ See 'Thinking it over'. We are now assuming that מכור לקנס אינו מכור.

⁸ See footnote # 7.

⁹ See נחלת משה.