

והילכתא כוותיה דאביי בי"ל קג"ם –

And the ruling is like *Abayay in Ya'AhL KaGaM*

OVERVIEW

The גמרא concluded that the הלכה is like אביי (against רבא) in the six cases of י"ל, which in this case of לביאה (the 'קו"ף' of קג"ם) where one is מקדש one of many sisters and did not say explicitly which one he intends to marry the rule is that they are all מספק.¹ Our תוספות discusses the ramification of this ruling in an actual case.

מעשה בא לפני רבינו תם בבנו של הרב רבינו אושעיא הלוי שקידש בת עשיר אחד -
An incident came before הר"ר אושעיא הלוי regarding the son of ר"ת who was
the daughter of a certain wealthy person -

ואמר בתך² מקודשת לי סתמא ולא פירש פלונית בתך³ -
Where the son of הר"א said to the wealthy father, 'your daughter is מקודשת to me'; it was said anonymously without specifying the specific daughter.

ואמר רבינו תם דמקודשת⁴ ולא מיבעיא אם שידך⁵ באחת מהם בשם ואחר כך קידשה סתם -
And the ר"ת ruled that the intended one is מקודשת to him (to the exclusion of her sisters), and this ruling applies undoubtedly if he previously was engaged to one of the daughters specifically, and later he was מקדש her anonymously through the father, in such a case we can surely say -

דאדעתא דהכי קידשה⁶ -
That it was with this intent that he was מקדש the one he was engaged to, exclusively -
אלא אפילו לא שידך בשם אלא שנתרצו בפה ואמר פלוניתא אתן לך -

But even if there was no שידוך by name, but they agreed orally and the father said to the חתן, 'I will give you that particular daughter' -
יש לנו לומר דאדעתא דהכי קדיש דשארית⁷ ישראל לא יעשו עולה ולא ידברו כזב -

¹ The מקדש needs to give each of the sisters a גט (because perhaps he was מקדש her), and the מקדש is not permitted to marry any of the sisters, since perhaps the one whom he wants to marry now is the sister of the one whom he was מקדש (she is אחות אשתו). Additionally the sisters may not marry a כהן since they are גרושות (ספק).

² The עשיר had a few daughters who were not בוגרות, where the father accepts קידושין on their behalf.

³ The question here is whether the intended daughter (the oldest) is מקודשת to him, and the other daughters do not require a גט, or do we implement the ruling of אביי that all the daughters are מספק (see footnote # 1).

⁴ According to רבא there is no issue; even if there is no קידושין he can go now and be מקדש her specifically.

⁵ See מהרש"א that שידך here means that תנאים were written up and her name was included in the תנאים.

⁶ It appears from the entire discussion in the גמרא if there is a valid reason to believe that the father accepted the קידושין on behalf of a specific daughter then all agree that she is מקודשת (see גב,א regarding the father who had two daughters). The ר"ת applies this reasoning to our case.

We need to assume that it was with this intent to marry the agreed upon daughter, that he was מקדש, for 'the remnant of Israel will not do injustice, and will not speak falsely'.

ועוד אפילו לא פירש נמי אפילו בפה יש לנו לומר דקידוש הגדולה -

And additionally even if previously he did not specify even orally which daughter he wants to marry we need to assume that he was מקדש the oldest daughter -

משום דלא⁸ יעשה כן במקומנו לתת הצעירה לפני הבכירה -

Because 'it is not customary in our community to give the younger one (away in marriage) before the eldest'.

In short; it is the view of the ר"ת that the oldest daughter is מקודשת even if nothing was said before. תוספות offers a dissenting opinion:

והרב רבינו מנחם מיוני נחלק עליו ואמר דהא הוי נמי כמי שקידש אחת משתי אחיות⁹ -

And הר"ר disagreed with the ר"ת, and he said that this case is just like the case of one who was מקדש one of two sisters -

ואי כדברי רבינו תם דהגדולה מקודשת משום דלא יעשה כן במקומנו -

And if we were to follow the ruling of the ר"ת that the older one is מקודשת because of the reasoning that לא יעשה כן במקומנו לתת הצעירה לפני הבכירה -

זה אינו לא לרבא¹⁰ ולא לאביי -

This ruling is neither according to רבא nor according to אביי -

דהא אפילו לאביי דאמר הו קידושין לא אמרינן אלא להצריכה גט -

For even according to אביי who maintains that if one is מקדש one of two sisters that it is קידושין, that was meant only regarding that both sisters require a גט, but not that [only] the older sister exclusively is מקודשת ודאי -

אם כן זה נמי צריך ליתן גט ואף רבינו תם חזר בו¹¹ ולא עבד עובדא:

Therefore in this case as well he is required to give a גט to all the daughters (but not that the older daughter is מקודשת ודאי to him). And even the ר"ת retracted and

⁷ This is a פסוק in (ג,יג) צפניה. Therefore (in order to be truthful and honest) the father will accept the קידושין on behalf of the agreed upon daughter to the exclusion of all others.

⁸ A פסוק in (כט,ו) ויצא. [בראשית (ויצא) כט,ו] 'במקומנו' (seemingly) should be understood generically (in all places) not only in a specific place (of להבדיל or לבן of the ר"ת).

⁹ הר"ר disagrees even in a case where it was שידך, for in any event by אחיות מב' אחיות we maintain that all sisters are מקודשת (מספק) (according to אביי), and no difference is made whether שידך or not; as long as at the time of the קידושין he was not explicit, they are all מספק.

¹⁰ According to רבא, one who is מקדש אחת מב' אחיות, there is no קידושין at all.

¹¹ There is a dispute among the commentaries if the ר"ת retracted only in a case where nothing was stated explicitly, where initially the ר"ת maintained that the גדולה is מקודשת because of במקומנו לא יעשה כן במקומנו, but he did not retract if there was an (oral) agreement (the view of the ר"ת), or the ר"ת retracted even in a case where שידך (the view of the ר"ת).

did not follow through on his ruling, but rather required that a גט be given to all.

SUMMARY

The ר"ת (initially) maintains that if there were שידוכין or a verbal agreement (or even if there was no agreement) she is מקודשת to the intended (or to the oldest). While הר"ר מנחם מיוני disagrees and in all cases they all require a גט even by שידוך.

THINKING IT OVER

How can the ר"ת (who maintains that even if there was no agreement at all, she is מקודשת to the oldest) explain the גמרא where we maintain that at most they are all מקודשת ודאי¹², but not that the oldest is ודאי?

¹² See גהלת משה.