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Agreement Between a Woman About to Give Birth, Her Husband
and Her Mother

Cairo, September-October 1137

Vienna, Erzherzog Rainer Collection, Heb. 89

ed. S.D. G (1964) 8 NJ190
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(The background of this rather complicated document may be reconstructed as follows: The woman's husband had children from a previous marriage, and she was, therefore, particularly eager to safeguard the future of the child she was expecting. This had already been done to a large extent in her marriage contract, where it was stipulated that the dowry which she brought⁽ⁱⁿ⁾, as well as all payments due to her, would go to her children, to the exclusion of other heirs of her husband. In addition, she now wants half of a house, given by her to her mother prior to her marriage, to revert to her future child. The other half belonged to her, and both she and her husband were eager that the whole should become the property of the expected newborn. The old lady, however, had earmarked sixty per cent of her share for her brother and nieces and forty per cent for charitable purposes. In view of this, our document stipulates that the gifts intended by the old woman will be made by her son-in-law in cash after her death, while the half of the house referred to will be registered as property of the newborn.

The document should be understood in its historical context. The expecting mother belonged to one of the leading families of her community, as her grandfather was the "Head of the congregations" Mevōrākh, a man

prominent in the politics of the community about the middle of the eleventh century (cf. MJ I, pp. 146-7). On the other hand, her uncle, the judge Nathan ^{ha-Kohen} b. Solomon, signatory of many documents in Fustat during the years 1122-1148, was a refugee from Palestine, which was occupied at that time by the Crusaders.^{a)} It stands to reason that her mother, too, had come from Palestine and ha^d, therefore, no possessions of her own in Cairo. This explains why she was given, in her old age, one-half of a house by her daughter, who had inherited or received it as a gift from her father's family, or perhaps ^{left to her by} ~~from~~ a former husband. For one gets the impression from our document that the expecting mother was a fully mature, resolute woman, and not too young any more ~~herself~~. This tallies well with the fact that her grandfather already appears as an influential man in a letter dated 1039, almost a full hundred years before our document was written.^{b)}

We, the undersigned, know the following for certain and bear witness to it. We called on Sheikh Abu 'l-Faraj, M. and R. Yeshū^oā, the elder, son of M. and R. Judah, the honorable elder - m(ay he rest in) E(den), known as "the son of the sparrow,"^{c)} in the presence of his wife Sitt al-Ahl,^{d)} the daughter of our Teacher Zadok, m.E., son of M. and R. Mevōrākh, the Head of the Communities, m.E., who said to us:

"I am a woman about to give birth, and I do not know what will happen

to me. I have made an agreement with my husband, which I would like to be written down in a document, so that none of us can annul or renounce it. We agreed that I should buy for him, from my mother, half of the house which I gave her as a gift before I married him, and ask her to sell it to him for a hundred dinars, forty of which will be given to the hidden poor^{e)} of Cairo and Fustat, fifteen to the three daughters of my maternal aunt, five dinars to each of them, and the rest of the hundred dinars, which is forty dinars, ^s shall belong to my maternal uncle, the Hāver, our Teacher Nathan ha-Kohen, member^{f)} of the Great Court - ma(y his) Ro(ok preserve him) - to do whatever he likes with it, no one having any right to interfere or to have ^a voice in the matter.

All this will be done in the event that I have a child from this husband of mine, and that the child will be alive at the time of the purchase of the half of that house, which I promised to acquire from my mother after her death;¹ and on condition that my husband registers it for the child - whether male or female - in addition to everything else due to the child on the basis of my marriage contract, to the exclusion of his children, who are not from me, and of anyone else."

The elder Abu 'l-Faraj agreed to this and undertook to fulfil her stipulations.

Then her mother, called Hasana,^{g)} daughter of our teacher Solomon ha-Kohen - o(f blessed) m(emory) - came in and she informed her of the

agreement made between her and her husband and asked her to sell him the half of the house, of which she had made her a gift before her marriage, for one hundred dinars, the purchase to become into effect after her death, on condition, etc.^{h)}

Finally, when the elder Abu 'l-Faraj had accepted all these conditions and undertaken to carry them out, the above mentioned Ḥasana sold him the complete half of the house which had been given to her on condition, etc.¹⁾ and on condition that he pay the price of the house in cash, not in installments and without asking for respite, that is to say, sixty to the three daughters of her maternal aunt and to her maternal uncle, the Ḥāwēr, while the remaining forty will be paid ⁱⁿ (stallments to the poor, two dinars per month.

(The document reiterates that the purchase will be valid only if the child survives, and concludes with the usual reference that the symbolic purchase necessary for validating any transaction had been made in the correct form. The date given is: Tishri 1449 of the era of the documents in al-Mu^oizziyya al-Qāhira, the official name of Cairo at that time. The lower part of the sheet which contained the signatures is cut away. The document is in the handwriting of the famous scribe Ḥalfōn b. Manasse ha-Levi (of p.).

Notes

- a) Details about him in the present writer's Introduction to the Study of the Cairo Geniza Documents (in preparation).
- b) Cf. MJ II, p. 169, Note 1, where 1037 is a misprint for 1039. The father of the lady, Zadok^R, appears in various undated Geniza fragments which were written by scribes who flourished shortly before or after 1100.
- c) This sobriquet was borne by the father, Judah, as is proved by ms. T.-S. 12-94, line 4, which deals with another son of his, Moses. The word "sparrow" (in the feminine) has no article which suggests that the sobriquet had become a family name: ben ʿuṣfūra ("sparrow-son").
- d) "The mistress of the family."
- e) Needy people of good family, who do not accept alms in public.
- f) Hebrew ḥāṣēr, serving almost as a proper name of the person bearing it (see below and p.).
- g) "The fair," the female equivalent of Ḥasan, but not at all as common as the latter.
- h) The conditions and stipulations are repeated here in full.
- i) See Note g^h.

Comments

1. Text: ba^od °ainihā, later on twice: ba^od hayāt °ainihā, "after her substance," or "after the life of her substance (has ceased)."