# Sharecropping - Muwatta Malik - Sunnah.com - Sayings and Teachings of Prophet Muhammad (صلى الله عليه و سلم)

Yahya related to me from Malik from Ibn Shihab from Said ibn al-  
Musayyab that the Messenger of Allah, may Allah bless him and grant  
him peace, said to the jews of Khaybar on the day of the conquest of  
Khaybar, "I confirm you in it as long as Allah, the Mighty, the  
Majestic, establishes you in it, provided that the fruits are divided  
between us and you." Said continued, "The Messenger of Allah, may  
Allah bless him and grant him peace, used to send Abdullah ibn Rawaha,  
to assess the division of the fruit crop between him and them, and he  
would say, 'If you wish, you can buy it back, and if you wish, it is  
mine.' They would take it."

حَدَّثَنَا يَحْيَى، عَنْ مَالِكٍ، عَنِ ابْنِ شِهَابٍ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، أَنَّ رَسُولَ اللَّهِ صلى الله عليه وسلم قَالَ لِيَهُودِ خَيْبَرَ يَوْمَ افْتَتَحَ خَيْبَرَ ‏  
"‏ أُقِرُّكُمْ فِيهَا مَا أَقَرَّكُمُ اللَّهُ عَزَّ وَجَلَّ عَلَى أَنَّ الثَّمَرَ بَيْنَنَا وَبَيْنَكُمْ ‏"‏ ‏.‏ قَالَ فَكَانَ رَسُولُ اللَّهِ صلى الله عليه وسلم يَبْعَثُ عَبْدَ اللَّهِ بْنَ رَوَاحَةَ فَيَخْرُصُ بَيْنَهُ وَبَيْنَهُمْ ثُمَّ يَقُولُ إِنْ شِئْتُمْ فَلَكُمْ وَإِنْ شِئْتُمْ فَلِيَ ‏.‏ فَكَانُوا يَأْخُذُونَهُ ‏.‏

Sunnah.com reference : Book 33, Hadith 1USC-MSA web (English) reference : Book 33, Hadith 1Arabic reference : Book 33, Hadith 1391Report Error | Share | Copy ▼

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Malik related to me from Ibn Shihab from Sulayman ibn Yasar that  
the Messenger of Allah, may Allah bless him and grant him peace, used  
to send Abdullah ibn Rawaha to Khaybar, to assess the division of the  
fruit crop between him and the jews of Khaybar.  
  
  
The jews  
collected for Abdullah pieces of their women's jewellery and said to  
him, "This is yours. Go light on us and don't be exact in the  
division!"  
  
  
Abdullah ibn Rawaha said, "O tribe of jews! By  
Allah! You are among the most hateful to me of Allah's creation, but  
it does not prompt me to deal unjustly with you. What you have offered  
as a bribe is forbidden. We will not touch it." They said, "This is  
what supports the heavens and the earth."  
  
  
Malik said, "If a  
share-cropper waters the palms and between them there is some  
uncultivated land, whatever he cultivates in the uncultivated land is  
his."  
  
  
Malik said, "If the owner of the land makes a condition  
that he will cultivate the uncultivated land for himself, that is not  
good because the sharecropper does the watering for the owner of the  
land and so he increases the owner of the land in property (without  
any return for himself)."  
  
  
Malik said, "If the owner  
stipulates that the fruit crop is to be shared between them, there is  
no harm in that if all the maintenance of the property - seeding,  
watering and case, etc. - are the concern of the sharecropper.  
  
  
If the share-cropper stipulates that the seeds are the  
responsibility of the owner of the property - that is not permitted  
because he has stipulated an outlay against the owner of the property.  
Share-cropping is conducted on the basis that all the care and expense  
is outlayed by the share-cropper, and the owner of the property is not  
obliged anything. This is the accepted method of share-cropping."  
  
  
Malik spoke about a spring which was shared between two men, and  
then the water dried up and one of them wanted to work on the spring  
and the other said, "I don't have the means to work on it." He said,  
"Tell the one who wants to work on the spring, 'Work and expend. All  
the water will be yours. You will have its water until your companion  
brings you half of what you have spent. If he brings you half of what  
you have spent, he can take his share of the water.' The first one is  
given all the water, because he has spent on it, and if he does not  
reach anything by his work, the other has not incurred any expense."  
  
  
Malik said, "It is not good for a share-cropper not to expend  
anything but his labour and to be hired for a share of the fruit while  
all the expense and work is incurred by the owner of the garden,  
because the share-cropper does not know what the exact wage is going  
to be for his labour, whether it will be little or great."  
  
  
Malik said, "No-one who lends a qirad or grants a share-cropping  
contract, should exempt some of the wealth, or some of the trees from  
his agent, because, by that, the agent becomes his hired man. He says,  
'I will grant you a share-crop provided that you work for me on such-  
and-such a palm - water it and tend it. I will give you a qirad for  
such-and-such money provided that you work for me with ten dinars.  
They are not part of the qirad I have given you.' That must not be  
done and it is not good. This is what is done in our community."  
  
  
Malik said, "The sunna about what is permitted to an owner of a  
garden in share-cropping is that he can stipulate to the share-cropper  
the maintenance of walls, cleaning the spring, sweeping the irrigation  
canals, pollinating the palms, pruning branches, harvesting the fruit  
and such things, provided that the share-cropper has a share of the  
fruit fixed by mutual agreement. However, the owner cannot stipulate  
the beginning of new work which the agent will start digging a well,  
raising the source of a well, instigating new planting, or building a  
cistern whose cost is great. That is as if the owner of the garden  
said to a certain man, 'Build me a house here or dig me a well or make  
a spring flow for me or do some work for me for half the fruit of this  
garden of mine,' before the fruit of the garden is sound and it is  
halal to sell it. This is the sale of fruit before its good condition  
is clear. The Messenger of Allah, may Allah bless him and grant him  
peace, forbade fruit to be sold before its good condition became  
clear."  
  
  
Malik said, "If the fruits are good and their good  
condition is clear and selling them is halal and then the owner asks a  
man to do one of those jobs for him, specifying the job, for half the  
fruit of his garden, for example, there is no harm in that. He has  
hired the man for something recognised and known. The man has seen it  
and is satisfied with it.  
  
  
"As for share-cropping, if the  
garden has no fruit or little or bad fruit, he has only that. The  
labourer is only hired for a set amount, and hire is only permitted on  
these terms. Hire is a type of sale. One man buys another man's work  
from him. It is not good if uncertainty enters into it because the  
Messenger of Allah, may Allah bless him and grant him peace, forbade  
uncertain transactions."  
  
  
Malik said, "The sunna in share-  
cropping with us is that it can be practised with any kind of fruit  
tree, palm, vine, olive tree, pomegranate, peach, and soon. It is  
permitted, and there is no harm in it provided that the owner of the  
property has a share of the fruit:a half or a third or a quarter or  
whatever."  
  
  
Malik said, "Share-cropping is also permitted in  
any crop which emerges from the earth if it is a crop which is picked,  
and its owner cannot water, work on it and tend it.  
  
  
"Share-  
cropping becomes reprehensible in anything in which share-cropping is  
normally permitted if the fruit is sound and the good condition is  
clear and it is halal to sell it. He must share-crop in it the next  
year. If a man waters fruit whose good condition is clear and it is  
halal to sell it, and he picks it for the owner, for a share of the  
crop, it is not sharecropping. It is similar to him being paid in  
dirhams and dinars. Share-cropping is what is between pruning the  
palms and when the fruit becomes sound and its sale is halal."  
  
  
Malik said, "If some one makes a share-cropping contract for fruit  
trees before the condition becomes clear and its sale is halal, it is  
share-cropping and is permitted . "  
  
  
Malik said, "Uncultivated  
land must not be involved in a share-cropping contract. That is  
because it is halal for the owner to rent it for dinars and dirhams or  
the equivalent for an accepted price."  
  
  
Malik said, "As for a  
man who gives his uncultivated earth for a third or a fourth of what  
comes out of it, that is an uncertain transaction because crops may be  
scant one time and plentiful another time. It may perish completely  
and the owner of the land will have abandoned a set rent which would  
have been good for him to rent the land for. He takes an uncertain  
situation, and does not know whether or not it will be satisfactory.  
This is disapproved. It is like a man having someone travel for him  
for a set amount, and then saying, 'Shall I give you a tenth of the  
profit of the journey as your wage?' This is not halal and must not be  
done."  
  
  
Malik summed up,"A man must not hire out himself or  
his land or his ship unless for a set amount."  
  
  
Malik said, "A  
distinction is made between sharecropping in palms and in cultivated  
land because the owner of the palms cannot sell the fruit until its  
good condition is clear. The owner of the land can rent it when it is  
uncultivated with nothing on it."  
  
  
Malik said, "What is done  
in our community about palms is that they can also be share-cropped  
for three and four years, and less or more than that."  
  
  
Malik  
said, "That is what I have heard. Any fruit trees like that are in the  
position of palms. Contracts for several years are permissible for the  
sharecropper as they are permissible in the palms."  
  
  
Malik  
said about the owner, "He does not take anything additional from the  
share-cropper in the way of gold or silver or crops which increases  
him. That is not good. The share-cropper also must not take from the  
owner of the garden anything additional which will increase him of  
gold, silver, crops or anything. Increase beyond what is stipulated in  
the contract is not good. It is also not good for the lender of a  
qirad to be in this position. If such an increase does enter share-  
cropping or quirad, it becomes by it hire. It is not good when hire  
enters it. Hire must never occur in a situation which has uncertainty  
in it."  
  
  
Malik spoke about a man who gave land to another man  
in a share-cropping contract in which there were palms, vines, or the  
like of that of fruit trees and there was also uncultivated land in  
it. He said, "If the uncultivated land is secondary to the fruit  
trees, either in importance or in size of land, there is no harm in  
share-cropping. That is if the palms take up two-thirds of the land or  
more, and the uncultivated land is a third or less. This is because  
when the land that the fruit trees take up is secondary to the  
uncultivated land and the cultivated land in which the palms, vines or  
the like is a third or less, and the uncultivated land is two-thirds  
or more, it is permitted to rent the land and share-cropping in it is  
haram."  
  
  
"One of the practices of people is to give out  
sharecropping contracts on property with fruit trees when there is  
uncultivated land in it, and to rent land while there are fruit trees  
on it, just as a Qur'an or sword which has some embellishment on it of  
silver is sold for silver, or a necklace or ring which have stones and  
gold in them are sold for dinars. These sales continue to be  
permitted. People buy and sell by them. Nothing described or  
instituted has come on that which if exceeded, makes it haram, and if  
fallen below makes it halal. What is done in our community about that  
is what people practise and permit among themselves. That is, if the  
gold or silver is secondary to what it is incorporated in, it is  
permitted to sell it. That is, if the value of the blade, the Qur'an,  
or the stones is two-thirds or more, and the value of the decoration  
is one-third or less."

وَحَدَّثَنِي مَالِكٌ، عَنِ ابْنِ شِهَابٍ، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، أَنَّ رَسُولَ اللَّهِ صلى الله عليه وسلم كَانَ يَبْعَثُ عَبْدَ اللَّهِ بْنَ رَوَاحَةَ إِلَى خَيْبَرَ فَيَخْرُصُ بَيْنَهُ وَبَيْنَ يَهُودِ خَيْبَرَ - قَالَ - فَجَمَعُوا لَهُ حَلْيًا مِنْ حَلْىِ نِسَائِهِمْ فَقَالُوا لَهُ هَذَا لَكَ وَخَفِّفْ عَنَّا وَتَجَاوَزْ فِي الْقَسْمِ ‏.‏ فَقَالَ عَبْدُ اللَّهِ بْنُ رَوَاحَةَ يَا مَعْشَرَ الْيَهُودِ وَاللَّهِ إِنَّكُمْ لَمِنْ أَبْغَضِ خَلْقِ اللَّهِ إِلَىَّ وَمَا ذَاكَ بِحَامِلِي عَلَى أَنْ أَحِيفَ عَلَيْكُمْ فَأَمَّا مَا عَرَضْتُمْ مِنَ الرُّشْوَةِ فَإِنَّهَا سُحْتٌ وَإِنَّا لاَ نَأْكُلُهَا ‏.‏ فَقَالُوا بِهَذَا قَامَتِ السَّمَوَاتُ وَالأَرْضُ ‏.‏ قَالَ مَالِكٌ إِذَا سَاقَى الرَّجُلُ النَّخْلَ وَفِيهَا الْبَيَاضُ فَمَا ازْدَرَعَ الرَّجُلُ الدَّاخِلُ فِي الْبَيَاضِ فَهُوَ لَهُ ‏.‏ قَالَ وَإِنِ اشْتَرَطَ صَاحِبُ الأَرْضِ أَنَّهُ يَزْرَعُ فِي الْبَيَاضِ لِنَفْسِهِ فَذَلِكَ لاَ يَصْلُحُ لأَنَّ الرَّجُلَ الدَّاخِلَ فِي الْمَالِ يَسْقِي لِرَبِّ الأَرْضِ فَذَلِكَ زِيَادَةٌ ازْدَادَهَا عَلَيْهِ ‏.‏ قَالَ وَإِنِ اشْتَرَطَ الزَّرْعَ بَيْنَهُمَا فَلاَ بَأْسَ بِذَلِكَ إِذَا كَانَتِ الْمَئُونَةُ كُلُّهَا عَلَى الدَّاخِلِ فِي الْمَالِ الْبَذْرُ وَالسَّقْىُ وَالْعِلاَجُ كُلُّهُ فَإِنِ اشْتَرَطَ الدَّاخِلُ فِي الْمَالِ عَلَى رَبِّ الْمَالِ أَنَّ الْبَذْرَ عَلَيْكَ كَانَ ذَلِكَ غَيْرَ جَائِزٍ لأَنَّهُ قَدِ اشْتَرَطَ عَلَى رَبِّ الْمَالِ زِيَادَةً ازْدَادَهَا عَلَيْهِ وَإِنَّمَا تَكُونُ الْمُسَاقَاةُ عَلَى أَنَّ عَلَى الدَّاخِلِ فِي الْمَالِ الْمَئُونَةَ كُلَّهَا وَالنَّفَقَةَ وَلاَ يَكُونُ عَلَى رَبِّ الْمَالِ مِنْهَا شَىْءٌ فَهَذَا وَجْهُ الْمُسَاقَاةِ الْمَعْرُوفُ ‏.‏ قَالَ مَالِكٌ فِي الْعَيْنِ تَكُونُ بَيْنَ الرَّجُلَيْنِ فَيَنْقَطِعُ مَاؤُهَا فَيُرِيدُ أَحَدُهُمَا أَنْ يَعْمَلَ فِي الْعَيْنِ وَيَقُولُ الآخَرُ لاَ أَجِدُ مَا أَعْمَلُ بِهِ إِنَّهُ يُقَالُ لِلَّذِي يُرِيدُ أَنْ يَعْمَلَ فِي الْعَيْنِ اعْمَلْ وَأَنْفِقْ وَيَكُونُ لَكَ الْمَاءُ كُلُّهُ تَسْقِي بِهِ حَتَّى يَأْتِيَ صَاحِبُكَ بِنِصْفِ مَا أَنْفَقْتَ فَإِذَا جَاءَ بِنِصْفِ مَا أَنْفَقْتَ أَخَذَ حِصَّتَهُ مِنَ الْمَاءِ ‏.‏ وَإِنَّمَا أُعْطِيَ الأَوَّلُ الْمَاءَ كُلَّهُ لأَنَّهُ أَنْفَقَ وَلَوْ لَمْ يُدْرِكْ شَيْئًا بِعَمَلِهِ لَمْ يَعْلَقِ الآخَرَ مِنَ النَّفَقَةِ شَىْءٌ ‏.‏ قَالَ مَالِكٌ وَإِذَا كَانَتِ النَّفَقَةُ كُلُّهَا وَالْمَئُونَةُ عَلَى رَبِّ الْحَائِطِ وَلَمْ يَكُنْ عَلَى الدَّاخِلِ فِي الْمَالِ شَىْءٌ إِلاَّ أَنَّهُ يَعْمَلُ بِيَدِهِ إِنَّمَا هُوَ أَجِيرٌ بِبَعْضِ الثَّمَرِ فَإِنَّ ذَلِكَ لاَ يَصْلُحُ لأَنَّهُ لاَ يَدْرِي كَمْ إِجَارَتُهُ إِذَا لَمْ يُسَمِّ لَهُ شَيْئًا يَعْرِفُهُ وَيَعْمَلُ عَلَيْهِ لاَ يَدْرِي أَيَقِلُّ ذَلِكَ أَمْ يَكْثُرُ ‏.‏ قَالَ مَالِكٌ وَكُلُّ مُقَارِضٍ أَوْ مُسَاقٍ فَلاَ يَنْبَغِي لَهُ أَنْ يَسْتَثْنِيَ مِنَ الْمَالِ وَلاَ مِنَ النَّخْلِ شَيْئًا دُونَ صَاحِبِهِ وَذَلِكَ أَنَّهُ يَصِيرُ لَهُ أَجِيرًا بِذَلِكَ يَقُولُ أُسَاقِيكَ عَلَى أَنْ تَعْمَلَ لِي فِي كَذَا وَكَذَا نَخْلَةً تَسْقِيهَا وَتَأْبُرُهَا وَأُقَارِضُكَ فِي كَذَا وَكَذَا مِنَ الْمَالِ عَلَى أَنْ تَعْمَلَ لِي بِعَشَرَةِ دَنَانِيرَ لَيْسَتْ مِمَّا أُقَارِضُكَ عَلَيْهِ فَإِنَّ ذَلِكَ لاَ يَنْبَغِي وَلاَ يَصْلُحُ وَذَلِكَ الأَمْرُ عِنْدَنَا ‏.‏ قَالَ مَالِكٌ وَالسُّنَّةُ فِي الْمُسَاقَاةِ الَّتِي يَجُوزُ لِرَبِّ الْحَائِطِ أَنْ يَشْتَرِطَهَا عَلَى الْمُسَاقَى شَدُّ الْحِظَارِ وَخَمُّ الْعَيْنِ وَسَرْوُ الشَّرَبِ وَإِبَّارُ النَّخْلِ وَقَطْعُ الْجَرِيدِ وَجَذُّ الثَّمَرِ هَذَا وَأَشْبَاهُهُ عَلَى أَنَّ لِلْمُسَاقَى شَطْرَ الثَّمَرِ أَوْ أَقَلَّ مِنْ ذَلِكَ أَوْ أَكْثَرَ إِذَا تَرَاضَيَا عَلَيْهِ غَيْرَ أَنَّ صَاحِبَ الأَصْلِ لاَ يَشْتَرِطُ ابْتِدَاءَ عَمَلٍ جَدِيدٍ يُحْدِثُهُ الْعَامِلُ فِيهَا مِنْ بِئْرٍ يَحْتَفِرُهَا أَوْ عَيْنٍ يَرْفَعُ رَأْسَهَا أَوْ غِرَاسٍ يَغْرِسُهُ فِيهَا يَأْتِي بِأَصْلِ ذَلِكَ مِنْ عِنْدِهِ أَوْ ضَفِيرَةٍ يَبْنِيهَا تَعْظُمُ فِيهَا نَفَقَتُهُ وَإِنَّمَا ذَلِكَ بِمَنْزِلَةِ أَنْ يَقُولَ رَبُّ الْحَائِطِ لِرَجُلٍ مِنَ النَّاسِ ابْنِ لِي هَا هُنَا بَيْتًا أَوِ احْفُرْ لِي بِئْرًا أَوْ أَجْرِ لِي عَيْنًا أَوِ اعْمَلْ لِي عَمَلاً بِنِصْفِ ثَمَرِ حَائِطِي هَذَا قَبْلَ أَنْ يَطِيبَ ثَمَرُ الْحَائِطِ وَيَحِلَّ بَيْعُهُ فَهَذَا بَيْعُ الثَّمَرِ قَبْلَ أَنْ يَبْدُوَ صَلاَحُهُ وَقَدْ نَهَى رَسُولُ اللَّهِ صلى الله عليه وسلم عَنْ بَيْعِ الثِّمَارِ حَتَّى يَبْدُوَ صَلاَحُهَا ‏.‏ قَالَ مَالِكٌ فَأَمَّا إِذَا طَابَ الثَّمَرُ وَبَدَا صَلاَحُهُ وَحَلَّ بَيْعُهُ ثُمَّ قَالَ رَجُلٌ لِرَجُلٍ اعْمَلْ لِي بَعْضَ هَذِهِ الأَعْمَالِ - لِعَمَلٍ يُسَمِّيهِ لَهُ - بِنِصْفِ ثَمَرِ حَائِطِي هَذَا فَلاَ بَأْسَ بِذَلِكَ إِنَّمَا اسْتَأْجَرَهُ بِشَىْءٍ مَعْرُوفٍ مَعْلُومٍ قَدْ رَآهُ وَرَضِيَهُ فَأَمَّا الْمُسَاقَاةُ فَإِنَّهُ إِنْ لَمْ يَكُنْ لِلْحَائِطِ ثَمَرٌ أَوْ قَلَّ ثَمَرُهُ أَوْ فَسَدَ فَلَيْسَ لَهُ إِلاَّ ذَلِكَ وَأَنَّ الأَجِيرَ لاَ يُسْتَأْجَرُ إِلاَّ بِشَىْءٍ مُسَمًّى لاَ تَجُوزُ الإِجَارَةُ إِلاَّ بِذَلِكَ وَإِنَّمَا الإِجَارَةُ بَيْعٌ مِنَ الْبُيُوعِ إِنَّمَا يَشْتَرِي مِنْهُ عَمَلَهُ وَلاَ يَصْلُحُ ذَلِكَ إِذَا دَخَلَهُ الْغَرَرُ لأَنَّ رَسُولَ اللَّهِ صلى الله عليه وسلم نَهَى عَنْ بَيْعِ الْغَرَرِ ‏.‏ قَالَ مَالِكٌ السُّنَّةُ فِي الْمُسَاقَاةِ عِنْدَنَا أَنَّهَا تَكُونُ فِي أَصْلِ كُلِّ نَخْلٍ أَوْ كَرْمٍ أَوْ زَيْتُونٍ أَوْ رُمَّانٍ أَوْ فِرْسِكٍ أَوْ مَا أَشْبَهَ ذَلِكَ مِنَ الأُصُولِ جَائِزٌ لاَ بَأْسَ بِهِ عَلَى أَنَّ لِرَبِّ الْمَالِ نِصْفَ الثَّمَرِ مِنْ ذَلِكَ أَوْ ثُلُثَهُ أَوْ رُبُعَهُ أَوْ أَكْثَرَ مِنْ ذَلِكَ أَوْ أَقَلَّ ‏.‏ قَالَ مَالِكٌ وَالْمُسَاقَاةُ أَيْضًا تَجُوزُ فِي الزَّرْعِ إِذَا خَرَجَ وَاسْتَقَلَّ فَعَجَزَ صَاحِبُهُ عَنْ سَقْيِهِ وَعَمَلِهِ وَعِلاَجِهِ فَالْمُسَاقَاةُ فِي ذَلِكَ أَيْضًا جَائِزَةٌ ‏.‏ قَالَ مَالِكٌ لاَ تَصْلُحُ الْمُسَاقَاةُ فِي شَىْءٍ مِنَ الأُصُولِ مِمَّا تَحِلُّ فِيهِ الْمُسَاقَاةُ إِذَا كَانَ فِيهِ ثَمَرٌ قَدْ طَابَ وَبَدَا صَلاَحُهُ وَحَلَّ بَيْعُهُ وَإِنَّمَا يَنْبَغِي أَنْ يُسَاقَى مِنَ الْعَامِ الْمُقْبِلِ وَإِنَّمَا مُسَاقَاةُ مَا حَلَّ بَيْعُهُ مِنَ الثِّمَارِ إِجَارَةٌ لأَنَّهُ إِنَّمَا سَاقَى صَاحِبَ الأَصْلِ ثَمَرًا قَدْ بَدَا صَلاَحُهُ عَلَى أَنْ يَكْفِيَهُ إِيَّاهُ وَيَجُذَّهُ لَهُ بِمَنْزِلَةِ الدَّنَانِيرِ وَالدَّرَاهِمِ يُعْطِيهِ إِيَّاهَا وَلَيْسَ ذَلِكَ بِالْمُسَاقَاةِ إِنَّمَا الْمُسَاقَاةُ مَا بَيْنَ أَنْ يَجُذَّ النَّخْلَ إِلَى أَنْ يَطِيبَ الثَّمَرُ وَيَحِلَّ بَيْعُهُ ‏.‏ قَالَ مَالِكٌ وَمَنْ سَاقَى ثَمَرًا فِي أَصْلٍ قَبْلَ أَنْ يَبْدُوَ صَلاَحُهُ وَيَحِلَّ بَيْعُهُ فَتِلْكَ الْمُسَاقَاةُ بِعَيْنِهَا جَائِزَةٌ ‏.‏ قَالَ مَالِكٌ وَلاَ يَنْبَغِي أَنْ تُسَاقَى الأَرْضُ الْبَيْضَاءُ وَذَلِكَ أَنَّهُ يَحِلُّ لِصَاحِبِهَا كِرَاؤُهَا بِالدَّنَانِيرِ وَالدَّرَاهِمِ وَمَا أَشْبَهَ ذَلِكَ مِنَ الأَثْمَانِ الْمَعْلُومَةِ ‏.‏ قَالَ فَأَمَّا الرَّجُلُ الَّذِي يُعْطِي أَرْضَهُ الْبَيْضَاءَ بِالثُّلُثِ أَوِ الرُّبُعِ مِمَّا يَخْرُجُ مِنْهَا فَذَلِكَ مِمَّا يَدْخُلُهُ الْغَرَرُ لأَنَّ الزَّرْعَ يَقِلُّ مَرَّةً وَيَكْثُرُ مَرَّةً وَرُبَّمَا هَلَكَ رَأْسًا فَيَكُونُ صَاحِبُ الأَرْضِ قَدْ تَرَكَ كِرَاءً مَعْلُومًا يَصْلُحُ لَهُ أَنْ يُكْرِيَ أَرْضَهُ بِهِ وَأَخَذَ أَمْرًا غَرَرًا لاَ يَدْرِي أَيَتِمُّ أَمْ لاَ فَهَذَا مَكْرُوهٌ وَإِنَّمَا ذَلِكَ مَثَلُ رَجُلٍ اسْتَأْجَرَ أَجِيرًا لِسَفَرٍ بِشَىْءٍ مَعْلُومٍ ثُمَّ قَالَ الَّذِي اسْتَأْجَرَ الأَجِيرَ هَلْ لَكَ أَنْ أَعْطِيَكَ عُشْرَ مَا أَرْبَحُ فِي سَفَرِي هَذَا إِجَارَةً لَكَ فَهَذَا لاَ يَحِلُّ وَلاَ يَنْبَغِي ‏.‏ قَالَ مَالِكٌ وَلاَ يَنْبَغِي لِرَجُلٍ أَنْ يُؤَاجِرَ نَفْسَهُ وَلاَ أَرْضَهُ وَلاَ سَفِينَتَهُ إِلاَّ بِشَىْءٍ مَعْلُومٍ لاَ يَزُولُ إِلَى غَيْرِهِ ‏.‏ قَالَ مَالِكٌ وَإِنَّمَا فَرَّقَ بَيْنَ الْمُسَاقَاةِ فِي النَّخْلِ وَالأَرْضِ الْبَيْضَاءِ أَنَّ صَاحِبَ النَّخْلِ لاَ يَقْدِرُ عَلَى أَنْ يَبِيعَ ثَمَرَهَا حَتَّى يَبْدُوَ صَلاَحُهُ وَصَاحِبُ الأَرْضِ يُكْرِيهَا وَهِيَ أَرْضٌ بَيْضَاءُ لاَ شَىْءَ فِيهَا ‏.‏ قَالَ مَالِكٌ وَالأَمْرُ عِنْدَنَا فِي النَّخْلِ أَيْضًا إِنَّهَا تُسَاقِي السِّنِينَ الثَّلاَثَ وَالأَرْبَعَ وَأَقَلَّ مِنْ ذَلِكَ وَأَكْثَرَ ‏.‏ قَالَ وَذَلِكَ الَّذِي سَمِعْتُ وَكُلُّ شَىْءٍ مِثْلُ ذَلِكَ مِنَ الأُصُولِ بِمَنْزِلَةِ النَّخْلِ يَجُوزُ فِيهِ لِمَنْ سَاقَى مِنَ السِّنِينَ مِثْلُ مَا يَجُوزُ فِي النَّخْلِ ‏.‏ قَالَ مَالِكٌ فِي الْمُسَاقِي إِنَّهُ لاَ يَأْخُذُ مِنْ صَاحِبِهِ الَّذِي سَاقَاهُ شَيْئًا مِنْ ذَهَبٍ وَلاَ وَرِقٍ يَزْدَادُهُ وَلاَ طَعَامٍ وَلاَ شَيْئًا مِنَ الأَشْيَاءِ لاَ يَصْلُحُ ذَلِكَ وَلاَ يَنْبَغِي أَنْ يَأْخُذَ الْمُسَاقَى مِنْ رَبِّ الْحَائِطِ شَيْئًا يَزِيدُهُ إِيَّاهُ مِنْ ذَهَبٍ وَلاَ وَرِقٍ وَلاَ طَعَامٍ وَلاَ شَىْءٍ مِنَ الأَشْيَاءِ وَالزِّيَادَةُ فِيمَا بَيْنَهُمَا لاَ تَصْلُحُ ‏.‏ قَالَ مَالِكٌ وَالْمُقَارِضُ أَيْضًا بِهَذِهِ الْمَنْزِلَةِ لاَ يَصْلُحُ إِذَا دَخَلَتِ الزِّيَادَةُ فِي الْمُسَاقَاةِ أَوِ الْمُقَارَضَةِ صَارَتْ إِجَارَةً وَمَا دَخَلَتْهُ الإِجَارَةُ فَإِنَّهُ لاَ يَصْلُحُ وَلاَ يَنْبَغِي أَنْ تَقَعَ الإِجَارَةُ بِأَمْرٍ غَرَرٍ لاَ يَدْرِي أَيَكُونُ أَمْ لاَ يَكُونُ أَوْ يَقِلُّ أَوْ يَكْثُرُ ‏.‏ قَالَ مَالِكٌ فِي الرَّجُلِ يُسَاقِي الرَّجُلَ الأَرْضَ فِيهَا النَّخْلُ وَالْكَرْمُ أَوْ مَا أَشْبَهَ ذَلِكَ مِنَ الأُصُولِ فَيَكُونُ فِيهَا الأَرْضُ الْبَيْضَاءُ ‏.‏ قَالَ مَالِكٌ إِذَا كَانَ الْبَيَاضُ تَبَعًا لِلأَصْلِ وَكَانَ الأَصْلُ أَعْظَمَ ذَلِكَ أَوْ أَكْثَرَهُ فَلاَ بَأْسَ بِمُسَاقَاتِهِ وَذَلِكَ أَنْ يَكُونَ النَّخْلُ الثُّلُثَيْنِ أَوْ أَكْثَرَ وَيَكُونَ الْبَيَاضُ الثُّلُثَ أَوْ أَقَلَّ مِنْ ذَلِكَ وَذَلِكَ أَنَّ الْبَيَاضَ حِينَئِذٍ تَبَعٌ لِلأَصْلِ وَإِذَا كَانَتِ الأَرْضُ الْبَيْضَاءُ فِيهَا نَخْلٌ أَوْ كَرْمٌ أَوْ مَا يُشْبِهُ ذَلِكَ مِنَ الأُصُولِ فَكَانَ الأَصْلُ الثُّلُثَ أَوْ أَقَلَّ وَالْبَيَاضُ الثُّلُثَيْنِ أَوْ أَكْثَرَ جَازَ فِي ذَلِكَ الْكِرَاءُ وَحَرُمَتْ فِيهِ الْمُسَاقَاةُ وَذَلِكَ أَنَّ مِنْ أَمْرِ النَّاسِ أَنْ يُسَاقُوا الأَصْلَ وَفِيهِ الْبَيَاضُ وَتُكْرَى الأَرْضُ وَفِيهَا الشَّىْءُ الْيَسِيرُ مِنَ الأَصْلِ أَوْ يُبَاعَ الْمُصْحَفُ أَوِ السَّيْفُ وَفِيهِمَا الْحِلْيَةُ مِنَ الْوَرِقِ بِالْوَرِقِ أَوِ الْقِلاَدَةُ أَوِ الْخَاتَمُ وَفِيهِمَا الْفُصُوصُ وَالذَّهَبُ بِالدَّنَانِيرِ وَلَمْ تَزَلْ هَذِهِ الْبُيُوعُ جَائِزَةً يَتَبَايَعُهَا النَّاسُ وَيَبْتَاعُونَهَا وَلَمْ يَأْتِ فِي ذَلِكَ شَىْءٌ مَوْصُوفٌ مَوْقُوفٌ عَلَيْهِ إِذَا هُوَ بَلَغَهُ كَانَ حَرَامًا أَوْ قَصُرَ عَنْهُ كَانَ حَلاَلاً ‏.‏ وَالأَمْرُ فِي ذَلِكَ عِنْدَنَا الَّذِي عَمِلَ بِهِ النَّاسُ وَأَجَازُوهُ بَيْنَهُمْ أَنَّهُ إِذَا كَانَ الشَّىْءُ مِنْ ذَلِكَ الْوَرِقِ أَوِ الذَّهَبِ تَبَعًا لِمَا هُوَ فِيهِ جَازَ بَيْعُهُ وَذَلِكَ أَنْ يَكُونَ النَّصْلُ أَوِ الْمُصْحَفُ أَوِ الْفُصُوصُ قِيمَتُهُ الثُّلُثَانِ أَوْ أَكْثَرُ وَالْحِلْيَةُ قِيمَتُهَا الثُّلُثُ أَوْ أَقَلُّ ‏.‏

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Yahya said that Malik said, "The best of what has been heard  
about a sharecropper stipulating on the owner of the property the  
inclusion of some slave workers, is that there is no harm in that if  
they are workers that come with the property. They are like the  
property. There is no profit in them for the share-cropper except to  
lighten some of his burden. If they did not come with the property,  
his toil would be harder. It is like share-cropping land with a spring  
or land with a watering trough. You will not find anyone who receives  
the same share for share-cropping two lands which are equal in  
property and yield, when one property has a constant plentiful spring  
and the other has a watering trough, because of the lightness of  
working land with a spring, and the hardship of working land with a  
watering trough."  
  
  
Malik added, "That is what is done in our  
community."  
  
  
Malik said, "A share-cropper cannot employ  
workers from the property in other work, and he cannot make that a  
stipulation with the one who gives him the share-cropping contract.  
Nor is it permitted to one who share-crops to stipulate on the owner  
of the property inclusion of slaves for use in the garden who are not  
in it when he makes the share-cropping contract."  
  
  
"Nor must  
the owner of the property stipulate on the one who uses his property  
for share-cropping that he take any of the slaves of the property and  
remove him from the property. The share-cropping of property is based  
on the state which it is currently in."  
  
  
"If the owner of the  
property wants to remove one of the slaves of the property, he removes  
him before the share-cropping, or if he wants to put someone into the  
property, he does it before the share-cropping. Then he grants the  
share-cropping contract after that if he wishes. If any of the slaves  
die or go off or become ill, the owner of the property must replace  
them."

قَالَ يَحْيَى قَالَ مَالِكٌ إِنَّ أَحْسَنَ مَا سُمِعَ فِي عُمَّالِ الرَّقِيقِ فِي الْمُسَاقَاةِ يَشْتَرِطُهُمُ الْمُسَاقَى عَلَى صَاحِبِ الأَصْلِ إِنَّهُ لاَ بَأْسَ بِذَلِكَ لأَنَّهُمْ عُمَّالُ الْمَالِ فَهُمْ بِمَنْزِلَةِ الْمَالِ لاَ مَنْفَعَةَ فِيهِمْ لِلدَّاخِلِ إِلاَّ أَنَّهُ تَخِفُّ عَنْهُ بِهِمُ الْمَئُونَةُ وَإِنْ لَمَ يَكُونُوا فِي الْمَالِ اشْتَدَّتْ مَئُونَتُهُ وَإِنَّمَا ذَلِكَ بِمَنْزِلَةِ الْمُسَاقَاةِ فِي الْعَيْنِ وَالنَّضْحِ وَلَنْ تَجِدَ أَحَدًا يُسَاقَى فِي أَرْضَيْنِ سَوَاءٍ فِي الأَصْلِ وَالْمَنْفَعَةِ إِحْدَاهُمَا بِعَيْنٍ وَاثِنَةٍ غَزِيرَةٍ وَالأُخْرَى بِنَضْحٍ عَلَى شَىْءٍ وَاحِدٍ لِخِفَّةِ مُؤْنَةِ الْعَيْنِ وَشِدَّةِ مُؤْنَةِ النَّضْحِ ‏.‏ قَالَ وَعَلَى ذَلِكَ الأَمْرُ عِنْدَنَا ‏.‏ قَالَ وَالْوَاثِنَةُ الثَّابِتُ مَاؤُهَا الَّتِي لاَ تَغُورُ وَلاَ تَنْقَطِعُ ‏.‏ قَالَ مَالِكٌ وَلَيْسَ لِلْمُسَاقَى أَنْ يَعْمَلَ بِعُمَّالِ الْمَالِ فِي غَيْرِهِ وَلاَ أَنْ يَشْتَرِطَ ذَلِكَ عَلَى الَّذِي سَاقَاهُ ‏.‏ قَالَ مَالِكٌ وَلاَ يَجُوزُ لِلَّذِي سَاقَى أَنْ يَشْتَرِطَ عَلَى رَبِّ الْمَالِ رَقِيقًا يَعْمَلُ بِهِمْ فِي الْحَائِطِ لَيْسُوا فِيهِ حِينَ سَاقَاهُ إِيَّاهُ ‏.‏ قَالَ مَالِكٌ وَلاَ يَنْبَغِي لِرَبِّ الْمَالِ أَنْ يَشْتَرِطَ عَلَى الَّذِي دَخَلَ فِي مَالِهِ بِمُسَاقَاةٍ أَنْ يَأْخُذَ مِنْ رَقِيقِ الْمَالِ أَحَدًا يُخْرِجُهُ مِنَ الْمَالِ وَإِنَّمَا مُسَاقَاةُ الْمَالِ عَلَى حَالِهِ الَّذِي هُوَ عَلَيْهِ ‏.‏ قَالَ فَإِنْ كَانَ صَاحِبُ الْمَالِ يُرِيدُ أَنْ يُخْرِجَ مِنْ رَقِيقِ الْمَالِ أَحَدًا فَلْيُخْرِجْهُ قَبْلَ الْمُسَاقَاةِ أَوْ يُرِيدُ أَنْ يُدْخِلَ فِيهِ أَحَدًا فَلْيَفْعَلْ ذَلِكَ قَبْلَ الْمُسَاقَاةِ ثُمَّ لْيُسَاقِ بَعْدَ ذَلِكَ إِنْ شَاءَ ‏.‏ قَالَ وَمَنْ مَاتَ مِنَ الرَّقِيقِ أَوْ غَابَ أَوْ مَرِضَ فَعَلَى رَبِّ الْمَالِ أَنْ يُخْلِفَهُ ‏.

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