

**We do not apply** **מה לי לשקר במקום עדים לא אמרינן** – **the rule of 'why should he lie' when it contradicts witnesses.**

### **OVERVIEW**

The case at hand: ראובן and שמעון each claim that a particular property belonged to their respective parents. ראובן brought עדים that his parents owned it. שמעון brought עדים that he made a חזקה in this property (subsequent to the death of both parents). רבה ruled that שמעון has a (מה לו לשקר) of מיגו and is entitled to the land. מיגו objected; the מיגו is merely attempting to prove שמעון's claim of אבותי. How can this מיגו substantiate שמעון's claim of אבותי, when the עדים testify that it belonged to ראובן's parents?! עדים are certainly a stronger validation than a מיגו. מיגו will discuss whether שמעון is actually contradicting the עדות of אבותי.

asks: תוספות

**תימה לרבינו שמשון בן אברהם אמאי הוי במקום עדים** –

**And the מיגו is astounded; why** do we consider this לשקר (or מיגו) as **contradicting the עדים?! It is possible that it belonged to the parents of the one who has the** מיגו, as well as the parents of the other litigant. תוספות explains:

**נימא של אבותי היתה יום אחד<sup>1</sup> ונאמר שלקחה<sup>2</sup> מאבותי דהא טוענין ליורש<sup>3</sup> –**

**Let us assume** on account of the מיגו **that it belonged to the father of the המיגו for one day.** The מיגו substantiates his claim of אבותי. It will not contradict the testimony of the עדים who claim that it belonged to the other litigant's father, for we will limit the scope of the מיגו, and believe him that it belonged to his father for only one day. **And we (בי"ד) will claim that** the father of the המיגו **bought the property from the parents of his litigant. For בי"ד argues on behalf of an heir;** תוספות goes on to explain, how we know that his father lived there for a day so that he is indeed considered an heir -

**ומהימנינן ליה בהא דקאמר שאבותי דרו בו יום אחד<sup>4</sup> במיגו דאי בעי אמר מינך זבנתיה –**

**And we believe him in what he claims that his parents lived there for one day,**

<sup>1</sup> It seems that תוספות assumes that the עדים did not testify that they knew that it belonged to the litigant's parents up until their death; rather they testified that in general it belonged to his parents without being specific that it belonged to them until their death.

<sup>2</sup> גורם 'שלקחה' is רש"ש.

<sup>3</sup> This follows תוספות opinion (in לא תוד"ה לאו), that we do not require עדים that יום ביה חד in order to implement the מיגו. It is sufficient if the מחזיק claims that יומא חד and can substantiate this claim with a מיגו (as in our case). See there (footnotes # 8&9) that others (רשב"ם[?]) disagree.

<sup>4</sup> The המיגו did not actually claim that his parents יום אחד, דרו בו יום אחד, but rather אבותי של. Nevertheless in order not to contradict the עדים we will interpret the אבותי של to meant that יום אחד בה אבותי שדרו.

**with a מיגו; for he could have claimed 'I bought it from you'.<sup>5</sup>** The בעל המיגו has since he could have claimed מיגו זבינתה and would have been believed, we must also believe him when he actually claims של אבותי, at least to the extent that his אבותי lived there for one day. This will not contradict the עדים who testify (in general terms) that the litigant's parents lived there. It will also permit בי"ד to claim on behalf of the בעל המיגו that his parents bought it from his litigant's parents.

expands his question:

**ולקמן נמי דקאמרי<sup>6</sup> נהרדעי דהיכא דאמר של אבותי שלקחיה מאבותיך דחוזר וטוען<sup>7</sup> –**

**And also later when the גמרא states that the scholars of נהרדעי agree that in a case where the בעל המיגו subsequently claimed; 'it belonged to my parents who bought it from your parents' that he is permitted to restate his claim.** Even though originally he stated that it belonged to my parents, implying that it did not belong to your parents; nevertheless he may qualify and restate his original claim to mean that של אבותי שלקחו מאבותיך. This concludes the forthcoming גמרא. תוספות concludes the question: Why is it necessary for him to claim that אבותי לקחו מאבותיך –

**הא אפילו לא יטעון שלקחיה אלא אמר שדרו בה יום אחד אנן טענינן<sup>8</sup> ליה –**

**for even if he will not claim that my parents bought it from your parents,** meaning that he did not observe the transaction **but rather he merely claimed that his parents lived there for (only) one day;** that should be sufficient that he should acquire the property, for **we (בי"ד) will argue on his behalf** that his parents indeed bought it from his litigant's parents. Why was it necessary for the נהרדעי to say that the בעל המיגו himself has to claim של אבותי שלקחו מאבותיך?<sup>9</sup>

answers:

<sup>5</sup> It is apparent from here that the claim of יומא דרו בה חד יומא (alone); but rather a מיגו is required. Perhaps a חזקה can only substantiate an actual claim of purchase such as מיגו זבינתה (or maybe even מפלניא), however a claim of יומא דרו בה חד יומא which by itself is not a valid claim (it must rely on the רצ"ב, חזקה), that cannot be substantiated by a חזקה (טענינן).

<sup>6</sup> The דקאמר דמורו נהרדעי amends this to read דקאמר דמורו נהרדעי.

<sup>7</sup> The claim of אבותי שלקחו מאבותיך של אבותי is implied in the original claim of אבותי.

<sup>8</sup> See previous footnote # 3.

<sup>9</sup> It would seem that the second question of the רשב"א follows the pattern of a 'ואם תמצא לומר'. Even if we were to assume that the טענה of אבותי של cannot mean יומא דרו בה חד יומא for it is not implicit in the טענה, nevertheless if he were to claim (later) explicitly יומא דרו בה חד יומא [similar to the case of נהרדעי] he should be believed (on account of ליוורש), even if he did not state clearly שלקחו מאבותיך. However, a difficulty remains. If we are to assume that the second question presumes that אבותי של does not imply יומא דרו בה חד יומא, then why should he be believed that יומא דרו בה חד יומא even if he explicitly claimed it?! The מיגו of זבינתה, has now become a למפרע מיגו (see also footnote # 5.) Perhaps, here it is not considered a מיגו (בל"י אות קכב), since he already stated של אבותי! (See also footnote # 5.) The second claim of יומא דרו בה חד יומא is naturally contained within the first claim of אבותי של. According to Tosfos (see there footnote # 15), the reason and rule of למפרע מיגו is only when אסיק אדעתיה לא concerning the subsequent טענה. Here, however, not only is it אסיק אדעתיה that יומא דרו בה חד יומא, but it is inherently contained in his first טענה. In such a case, מיגו למפרע אמרינן. See also footnote # 3. לא,א תוס' ד"ה מה.

ואומר רבינו יצחק דשל אבותי משמע שהיתה מעולם של אבותי ולא שלקחיה –

And the ר"י says the answer to the first question is **that** the phrase ‘it belonged to my parents’, implies that it always belonged to my parents and it cannot be interpreted to mean **that they purchased it** -

עד שיפרש בדבריו –

**unless he explicitly states it.** Therefore we cannot assume that the מחזיק meant to say that אבותי דרו בה יום אחד, but rather that they always lived there. This contradicts the testimony of the עדים. That is why it is considered a במקום עדים.

Concerning the second question, תוספות continues:

ולקמן דנקט שלקחיה לא שצריך שיטעון שידע שלקחיה –

And later when the גמרא uses the term ‘**that they** (the parents of the מחזיק) **bought it**’ which implies that יומא חד is insufficient, but he must claim שלקחו מאבותיך, which contradicts the idea of וללוקח; **it does not mean that it is necessary for the** המיגו **to claim that he knows that they purchased it** –

אלא של אבותי שראיתי שדרו בה יום אחד על כן אני רוצה לזכות –

But rather he is claiming ‘it is my parents’ since I have seen that they lived there for one day therefore I want to have a right in this property -

דשמא לקחיה<sup>10</sup> אבותי במשפט וטוענין ליורש<sup>11</sup>:

For perhaps they have rightfully purchased it [from your parents], and בי"ד is obligated to argue on my behalf since I am an heir’. The שלקחו מאבותיך is to be understood that since I saw that יומא חד דרו בה יום אחד, therefore בי"ד should claim that my parents לקחו מאבותיך.

## SUMMARY

The statement של אבותי (unless it is explicitly qualified) implies that it always belonged to my parents.

## THINKING IT OVER

1. שדרו בה יום אחד asks that we should interpret the claim of של אבותי to mean של אבותי אחד. Why did not תוספות ask simpler; let us interpret של אבותי to mean של אבותי אחד, (especially) since eventually that is the טענין!<sup>12</sup>

2. What are the opposing assumptions of the רשב"א and the ר"י?

<sup>10</sup> The הגהות הב"ה amends this to read במשפט וטוענין ליורש.

<sup>11</sup> It seems that the ר"י agrees to the premise of the רשב"א's second question. His answer is that indeed this is what the גמרא means.

<sup>12</sup> See סוכ"ד אות כ.