

מה לו לשקר במקום עדים לא אמרינן – We do not apply 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 bought עדים that his parents owned it. שמעון bought עדים that he made a חזקה in this property (subsequent to the death of both parents). רבה ruled that שמעון has a מינוח (מה לו לשקר) of מין and is entitled to the land. אביו objected; the מינוח is merely attempting to prove שמעון's claim of אבותי. How can this מינוח 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 מינוח. תוספות will discuss whether שמעון is actually contradicting the עדות of אבותי.

תוספות has a difficulty:

ותימה לרבי שמשון בן אברהם – And the רשב"א is perplexed –

מה לי לשקר (or מיגו) – אמאי הוי במקום עדים – why do we consider this 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:

אחד – let us assume on account of the מֵיגוּ that it belonged to the father of the בעל המֵיגוּ for one day. The מֵיגוּ substantiates his claim of שֶׁל אָבוֹתֵי. In order that it should not contradict the testimony of the עֵדִים who claim that it belonged to the other litigant's father, we will limit the scope of the מֵיגוּ, and believe him that it belonged to his father for only one day¹. However since we must believe the עֵדִים that it was in the possession of the litigant's father, what is to be gained if we assume that the father of the בעל המֵיגוּ was there for one day? תוספות explains:

בעל – and we (בי"ד) will claim that the father of the ²מאבותי bought the property from the parents of his litigant.

דהא טענין ליורש – **for** **בי"ד** **argues on behalf of an heir**³; **תוספות** goes on to explain, how we know that his father lived there for a day so that he is indeed considered an heir –

ומהימנין ליה בהא דקאמר – and we believe him in what he claims –

שאבותיי דרו בו יום אחד – that his parents lived there for one day⁴ –

¹ 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.

² The ש"ר is 'שלחנה' גורם.

³ This follows תוספות opinion (in דף לא, תוד"ה לאו), that we do not require עדים that ביה חד יום in order to implement the מענינן ללוקח וליורש. It is sufficient if the מחזיק claims that יומא חד ביה חד and can substantiate this claim with a מיגן (as in our case). See there that others (רשב"ם[?]) disagree.

⁴ The text did not actually claim that his parents *יומ אחד* (one day), but rather *אבותי*. Nevertheless in order not to contradict the *עדים* we will interpret the *של אבותי* to mean that *יום אחד*.

מיגו; for he could have claimed 'I bought it from you'⁵. The בעל המיגו has עדי חזקה; since he could have claimed מיגו זכינה 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:

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 claim⁷. 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 אבותי שלקחו מאבותיך. This concludes the forthcoming גמרא. תוספות concludes the question: Why is it necessary for him to claim that אבותי לקחו מאבותיך –

– 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 they 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 parents⁸. Why was it necessary for the נהרדעי to say that the בעל המיגו himself has to claim של אבותי שלקחו מאבותיך?⁹

⁵ It is apparent from here that the claim of יומא דרו בה חד cannot be substantiated by a חזקה (alone); but rather a מיגו is required. Perhaps a חזקה can only substantiate an actual claim of purchase such as מיגו זכינה (or maybe even מיגו זכינה דזבנה מיגו קמי ידי, however a claim of יומא דרו בה חד which by itself is not a valid claim (it must rely on the טענין), that cannot be substantiated by a חזקה, וצ"ב, חזקה.

⁶ See הגהות הב"ח.

⁷ The claim of אבותי שלקחו מאבותיך של אבותי is implied in the original claim of אבותי של.

⁸ See previous footnote # 3.

⁹ 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 של אבותי דדרו בה חד יומא cannot mean יומא דדרו בה חד, it is not implicit in the טענה, nevertheless if he were to claim (later) explicitly יומא דדרו בה חד [similar to the case of ומודו של אבותי שלקחו] he should be believed (on account of ליורש טענין), even if he did not state clearly מאבותיך. However, a difficulty remains. If we are to assume that the second question presumes that אבותי דדרו בה חד יומא even if he explicitly claimed it?! The מיגו of מיגו זכינה, has now become a מיגו למפרע (see אות קכב), since he already stated דרו בה (See also footnote # 5.) Perhaps, here it is not considered a מיגו למפרע. The second claim of אבותי דדרו בה is naturally contained within the first claim of אבותי של. According to לא ד"ה לאו (see there footnote # 15), the reason and rule of מיגו למפרע is only when אסיק אדעתיה concerning the subsequent טענה. Here, however, not only is it אסיק אדעתיה that יומא דדרו בה חד, but it is inherently contained in his first טענה. In such a case, מיגו למפרע אמרינן. See also footnote # 3. וצ"ב, לא, א תוס' ד"ה אבל.

answers: תוספות

– **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 – unless he explicitly states** it. Therefore we cannot assume that the **מחזיק** meant to say that **אבות** 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 **מה לי לשקר** (מה לי לשקר) במקום עדים.

Concerning the second question, תוספות continues:

– **and later** when the **גמרא** uses the term **'that they bought it'** which would seem to imply that **דר** בה **חד יומא** is insufficient, but he must claim **טוענין ליורש וללוקח**, which contradicts the idea of **שלקחו מאבותיך**, which contradicts the idea of **טוענין ליורש וללוקח** – **it does not mean that it is necessary for him to claim that he knows that they purchased it – 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 – 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 **חד יומא** דרו בה, therefore **בי"ד** should claim that my parents **שלקחו מאבותיך**.¹¹

Summary

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

Thinking it over

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

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

¹⁰ See הגהות הב"ח.

¹¹ 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.

¹² See סוכ"ד אות כ.