הכי גרסינן לסוף אודי ליה –

This is how we read the text; eventually he admitted to him

Overview

The narrative in the גמרא according to our גירסא is that there was a dispute between רב אידי בר אבין and a relative (קריביה) as to who should inherit the tree which קריביה דראב"א left over. Each one claimed that he was the closer relative. קריביה took possession of the tree initially, but subsequently admitted that ראב"א was the closer relative. After רב חסדא placed the tree in the possession of ראב"א, he (ראב"א) wanted that קריביה should pay him (ראב"א) for the fruit which קריביה consumed while it was in his possession. ר"ח ruled that קריביה need not pay for the fruit since until now קריביה insisted that he was קרוב טפי (and his admission now [according to the רשב"ם][1] is his way of giving ראב"א a gift).[2] However אביי ורבא maintain that since he admitted that ראב"א is קרוב טפי, he is liable to pay for the fruits. תוספות offers alternate גירסאות and interpretations of this episode.

ולא גריס דאיהו קרוב טפי[3] אלא לא היה רוצה לחלוק עם רב אידי ונתן לו הדקל בחנם –

And the text does not read that, קריביה admitted that '**he** (ראב"א) **is a closer relative', but rather** 'he [merely] admitted'; meaning that קריביה) **did not want to argue with ראב"א, so he gave him the tree gratis -**

ולא בשביל שהיה קרוב יותר –

But not because קריביה admitted that ראב"א **was a closer relative -**

ומשום הכי קאמר רב חסדא הא איהו דאמר אנא קריבנא טפי –

And therefore ר"ח said to ראב"א, **'but** קריביה **is the one who maintained 'I am the closer relative'' -**

שמרצונו נתן לך ולא בשביל שאתה קרוב יותר –

For he gave it to you willingly, but not because you are a closer relative -

ואביי ורבא סברי כיון דאודי אודי –

However אביי ורבא maintain that since he admitted that the tree belongs to ראב"א; **he admitted** and must pay for the fruits -

ומסתמא[4] לא היה מוחל לו אלא מפני שהוא יותר קרוב –

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[1] ד"ה אהאי.

[2] The difficulty in this logic is apparent. If קריביה stated explicitly that ראב"א is קרוב טפי, why should we read anything else (that he is giving it as a gift) into it.

[3] See footnote # 2. תוספות rejects the explanation of the רשב"ם.

[4] The הגהות הב"ח amends this to read דמסתמא (instead of ומסתמא).

For presumably קריביה **did not forfeit** his rights **to** ראב"א **unless** he realized **that** ראב"א **was the closer relative.**

תוספות has reservations about this interpretation:

ולשון אודי דחוק הוא[5] וכן סברת אביי ורבא[6] –

And the expression, 'he admitted' is somewhat **stilted, and similarly the logic of אביי ורבא** is wanting.

In summation: קריביה 'admitted' and gave the tree to ראב"א. ראב"א did not collect the פירות according to ר"ח because it was merely a gift. אביי ורבא maintain that since he admitted and gave it to ראב"א it is presumed that ראב"א is קריב טפי and is to be paid for the פירות.[7]

תוספות anticipates and rejects an alternate explanation with the גירסא of קרוב טפי:

ואין לפרש דגרסינן דאיהו קרוב טפי והיה טוען דלא[8] אכל פירות –

And we cannot explain that the גירסא is (that קריביה admitted) **דאיהו קרוב טפי** and the reason ר"ח exempted קריביה from paying is because קריביה **claimed that he did not eat any fruit** (while the tree was in his possession) -

ולרב אידי היו לו עדים שאכל –

But ר"א had witnesses that he did eat the fruits -

והא[9] דקאמר איהו קאמר אנא קריבנא טפי פירוש מעיקרא –

And [רב חסדא] said, 'but קריביה **said 'I am a closer relative''; meaning** that **initially** קריביה said אנא קריבנא טפי -

והואיל וכן השתא נמי מהימן במאי דאמר שלא אכלה במיגו שלא היה מודה[10] –

And therefore since it is **so** that קריביה claimed initially אנא קריבנא טפי, **he should also be believed now in what he says that he did not eat** the fruit, **for** he has a **מיגו** that he did not **have to admit** that ראב"א is קריב טפי -

וסבירא ליה דאמרינן מיגו במקום עדים[11] כדבסמוך[12] –

And רב חסדא **maintains that we utilize a מיגו** even when it **contradicts עדים, as**

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[5] According to the גירסא (and explanation) that קריביה gifted him the tree (but did not explicitly admit the ראב"א was קרוב טפי); how do we understand the word 'אודי' - he admitted; what exactly did he admit.

[6] Since he did not admit that ראב"א is קרוב טפי, why should we assume that he granted him the tree because ראב"א is קרוב טפי; perhaps he gave it to him because he did not want to argue with (such a prominent person as) ראב"א.

[7] The difficulties for this interpretation are to be found in footnotes # 5 & 6.

[8] The הגהות הב"ח amends this to read **<u>ש</u>**לא (instead of דלא).

[9] The הגהות הב"ח amends this to read איהו **<u>רב חסדא הא</u>** וקאמר שאכל

[10] Had קריביה maintained his original claim (אנא קריבנא טפי); he would still be in possession of the tree, and ראב"א would have no valid claim against him.

[11] The claim of לא אכלתי (which is supported by the מיגו) is contradicted by עדים who testify that אכל.

[12] ב,לג.

the גמרא will **shortly** state.[13]

תוספות rejects this interpretation:

דאם כן הוה ליה למימר הא איהו אמר[14] לא אכלתי ואי בעי אמר אנא קריבנא טפי[15] –

For if indeed this is **so** (the issue is whether מיגו במקום עדים אמרינן or not) ר"ח **should have said, 'but he is the one who said 'I did not eat' and *he could have* said 'I am the קרוב טפי'' –**

תוספות offers an additional refutation of the proposed explanation:

ועוד[16] אם כן הוה ליה לאסוקי נמי הכא בהאי לישנא כדמסיק בסמוך[17] –

And furthermore (if it is indeed so [that they argue whether מיגו במקום עדים אמרינן or not]) the גמרא **should have [asked] and concluded also here in the same manner as** the גמרא **concludes later** (in the following מחלוקת between ר"ח and אביי ורבא), namely that -

אביי ורבא לא סבירא להו הא דרב חסדא [מה לי לשקר במקום עדים לא אמרינן] –

אביי ורבא do not agree with ר"ח [for **we do not utilize a מה לי לשקר when it contradicts witnesses].**

In summation: קריביה admitted that ראב"א is קריב טפי but denied that he ate the פירות. ר"ח exempted קריביה from paying for the פירות (even though there were witnesses that he ate), because he has a מיגו that he need have not admitted that ראב"א is קריב טפי. תוספות negates this גירסא, because there is no mention of his claim [לא אכלתי] and the מיגו is not clearly stated. In addition אביי ורבא should have responded מיגו במקום עדים לא אמרינן.

תוספות offers an alternate interpretation and גירסא:

וגירסת רבינו חננאל נראה לרבינו יצחק עיקר דלא גריס לסוף אודי ליה –

And the ר"י prefers the גירסא of the ר"ח, who is not 'גורס,'לסוף אודי ליה at all -

אלא גרס לסוף אייתי סהדי דאיהו קריביה –

Rather the ר"ח is **גורס** that '**eventually** (ראב"א) **bought witnesses that he** (ראב"א)

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[13] According to this explanation the מחלוקת between רב חסדא and אביי ורבא would be whether מיגו במקום עדים אמרינן or not (similar to the מחלוקת mentioned shortly in the גמרא). This would seemingly remove the objections which תוספות had to this גירסא (according to פי' הרשב"ם) and to his own גירסא. The word אודי means that he indeed admitted that ראב"א is קרוב טפי; the reasoning of ר"ח is because he has a מיגו and maintain אביי ורבא לא אמרינן מיגו במקום עדים.

[14] The הגהות הב"ח amends this to read דַּאמר (instead of אמר).

[15] The claim of קריביה is לא אכלתי, and אנא קריבנא טפי is the מיגו that supports his claim; ר"ח should have mentioned his claim of לא אכלתי (which he ignores completely; indicating that it is not his claim) and ר"ח should have also indicated (by adding ואי בעי אמר) that אנא קריבנא טפי is (merely) a מיגו, but not that he is claiming it now (as it seems from the text).

[16] The הגהות הב"ח amends this to read ועוד דַּהוה ליה **<u>למיפרך</u>** ולאסוקי נמי (deleting the אם כן).

[17] Instead the גמרא concludes כיון דאודי אודי, which is not the true reason why אביי ורבא disagree with ר"ח.

is a relative of the deceased -

ולא גרס קרוב טפי שלא היו מעידים שרב אידי קרובו היה טפי מההוא גברא –

But the גירסא is not that ראב"א **'was a <u>closer</u> relative', for the** עדים **were not testifying that ר"א was a closer relative than the other person** (קריביה) -

אלא היו מעידים שרב אידי קרובו היה –

But rather they were merely **testifying that ר"א was a relative** of the deceased -

וההוא גברא לא היו מכירים אם הוא היה קרובו או לאו ולא היה לו שום עדי קורבה –

And the witnesses **did not know** regarding קריביה **whether he was** also **a relative** of the deceased **or not, and** קריביה **has no witnesses that he was a relative –**

תוספות reconsiders:

ואפילו[18] גרס טפי מצינו לפרש טפי מכל אותם שהיו העדים מכירים[19] –

And even [if we] are 'גורס 'טפי; we can explain that to mean that the עדים knew that ר"א was the closest relative **from all the relatives whom the עדים knew -**

לכך אוקמה רב חסדא בידיה דרב אידי דהוי רב אידי ודאי וההוא גברא ספק[20] –

Therefore, ר"ח placed the tree **in the possession of ר"א since ר"א was certainly a relative and it was doubtful** whether **the other person** was a relative at all.

והיה רב אידי תובע גם הפירות כיון שהודה שאכל –

And ר"א was claiming payment **for the fruits, since** קריביה **admitted that he ate** the fruits of the tree -

ורב חסדא פטר ליה במיגו דאי בעי אמר לא אכלי כי אמר נמי אכלי ודידי אכלי[21] מהימן[22] –

However ר"ח exempted קריביה from paying for the fruits since קריביה had a **מיגו, for he could have said, 'I did not eat** the פירות' therefore even **when he says 'I ate** the פירות **and they are mine', he is believed -**

ורבא[23] ואביי סברי כיון שאכל פירות ואודי חייב לשלם –

However אביי ורבא maintain since he ate פירות and admitted eating them; **he is liable to pay** for them -

ולא מהימן במיגו הואיל והקרקע יוצא מתחת ידו מן הדין דבקרקע ליכא מיגו –

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[18] The הגהות הב"ח amends this to read ואפילו **<u>אי</u>** גרס<u>ינן</u> טפי.

[19] They knew nothing, however, regarding קריביה therefore they could not judge who of the two was the closer relative.

[20] The claim of ר"א was (partially) substantiated, while the claim of קריביה had no substantiation at all. A ודאי יורש takes precedence over a ספק יורש (even if the ספק יורש is the מוחזק, the ודאי is מוציא from the ספק). See 'Thinking it over'.

[21] This is not a מיגו במקום עדים since the עדים do not explicitly contradict his claim that he is קרוב טפי and therefore they also do not contradict his claim of דידי אכלי.

[22] Previously (see footnote # 15) the claim was not mentioned (at all) and the מיגו was mentioned as a claim. However, here אנא מקרבנא טפי is the claim (and the מיגו is self-understood).

[23] The הגהות הב"ח amends this to read ואביי ורבא (instead of ורבא ואביי).

For he is not believed that דידי אכלי **with the מיגו** (of לא אכלתי), **since he relinquishes the tree legally; for concerning the tree there is no מיגו,**[24] so once the קרקע is legally transferred to ראב"א and קריביה admitted to eating the פירות, how can we exempt him from paying for the פירות which grew on a tree which legally belongs to ראב"א.

In Summation: ראב"א brought witnesses that he was a קרוב, however קריביה had no witnesses that he was a קרוב, but admitted that he ate פירות. ר"ח exempted him from paying since he had a מיגו of לא אכלתי; however אביי ורבא maintain that he has to pay since the field legally belongs to ראב"א, this renders the מיגו ineffective.

תוספות asks:

ואם תאמר והא לקמן (דף לד,א) אמרינן אי דמיא[25] לרבי אבא[26] –

And if you will say; but later אביי **said if** you wish **to compare the** case of **ר"א,** you may compare it -

לחד סהדא ולתרתין שנין ולפירי[27] –

To a case of **one witness and two years regarding the fruit;** meaning that in a case -

דכשמודה שאכל פירות ואיכא חד סהדא שחייב לשלם מתוך שאינו יכול לישבע –

Where the מחזיק **admits that he ate the פירות** for two years **and there is one עד** that he was in this field and ate the פירות for two years, **that** the מחזיק **is liable to pay, since he cannot swear** to contradict the ע"א -

אבל אי ליכא חד סהדא לא היה חייב לשלם[28] –

However if there was no ע"א that saw him eat the פירות, **he would not be obligated to pay** (even if he admitted that he ate the פירות) -

ואמאי נימא כיון שהקרקע יוצא מתחת ידו גם הפירות ישלם[29] –

But why is this so?! **Let us say that since he relinquishes the קרקע** (it reverts legally to the מערער, since he has no חזקה), **he should also pay for the פירות** as אביי

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[24] Concerning the פירות we say that קריביה had a מיגו of לא אכלתי, which obviously cannot apply to the tree.

[25] The הגהות הב"ח amends this to read דמיא אבא **הא** דרבי

[26] The case of דר' אבא [נסכא] is where an עד testified that ראובן grabbed a נסכא (silver) from שמעון. ראובן admitted to taking the נסכא but claims that it is his. The ע"א is (seemingly) testifying that ראובן stole, but ראובן is not contradicting the ע"א therefore he cannot swear against the ע"א (since they agree), but he cannot retain the נסכא for מתוך שאינו יכול לישבע משלם (for an ע"א is testifying that [seemingly] ראובן stole). עיי"ש.

[27] The case is where there is one עד that the מחזיק was in this field and ate the פירות for two years. There is obviously no חזקה and the field reverts to the מערער. Had the מחזיק denied eating any פירות, he would have to swear and contradict the ע"א and be פטור from paying for the פירות of two years. However, the מחזיק admits that he ate the פירות, but he claims it is his field and the פירות are his. He has a מיגו that he could have said I did not eat the פירות and be believed with a שבועה; however since now he cannot swear to contradict the עד who is testifying that he ate (without a חזקה) the rule is מתוך שאינו יכול לישבע משלם.

[28] He is פטור to pay for the פירות for he is believed that דידי אכלי with a מיגו of לא אכלתי.

[29] It is a contradictory ruling; if the קרקע belongs to the מערער, so do the פירות!

ורבא rule here.

תוספות answers:

ויש לומר דהתם מיירי שאומר שאכלה שלש שנים והעד אינו מעיד אלא משתים –

And one can say; that there it is a case where the מחזיק **claims that he ate** the פירות **for three years** (and is the מוחזק), **but the עד confirms only two years** (so there is no חזקה) -

דהתם ודאי אי לא הוה חד סהדא פשיטא דפטור אף על פי שהקרקע יוצא מתחת ידו –

For in that case certainly if there would be no ע"א that he ate פירות (two years), the מחזיק is **obviously פטור** from paying for the פירות of three years **even though he relinquishes the קרקע** (and admits that he ate פירות for three years) -

דאי מהימן במאי דאמר דאכלה שלש שנים לא היה לנו להוציא הקרקע מידו –

For if you believe the מחזיק **in that which he claims that he ate** פירות **for three years** (and your want him to be liable for those פירות), **we could not remove the קרקע from his possession -**

כיון דאכלה שני חזקה[30] –

Since he ate פירות the three **חזקה years!**

תוספות anticipates (and rejects) a rebuttal to the previous conclusion:

וליכא למימר דנאמין לו שאכלה שלש שנים אבל לא נאמין שלקחה אלא בגזל אכלה[31] –

And we cannot say that we should believe the מחזיק **that he ate** פירות for **three years, however** (he will be liable to pay, because) **we will not believe him that he bought** the field (despite the alleged חזקה), **but rather he ate** the פירות **illegally** (he stole the פירות).

תוספות offers a support for this conjecture:

כדאמרינן בהנזקין[32] (גיטין דף נד,ב ושם) דנאמן אתה להפסיד שכרך[33] –

As אמי ר' **stated in פרק הנזקין that 'you are believed to lose your wage -**

ואין אתה נאמן להפסיד ספר תורה –

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[30] In this case, the only reason we can make the מחזיק pay for the פירות is because of his admission that he ate פירות for three years, and if we assume that the מחזיק ate the פירות for three years it is a valid חזקה, and the property should remain by the מחזיק. [Therefore (when giving the קרקע to the מערער) we assume that the מחזיק ate no פירות at all, despite the 'admission' (or claim) of the מחזיק.

[31] This way we can reconcile the fact that the מחזיק has to pay for the פירות of three years, but nevertheless he does not have a חזקה, because we can assume that he ate it בגזילה.

[32] The case there is where a סופר told אמי ר' that I did not write the names of ה' in this לשמה ס"ת, thus rendering the ס"ת פסול. The ס"ת was already bought and in the possession of the customer. אמי ר' ruled as follows.

[33] The סופר admitted that it was not written לשמה, thereby rendering the ס"ת worthless; the לוקח therefore does not have to pay him, since he hired him to write a כשר ס"ת.

But you are not believed to ruin the ס"ת;[34] the ס"ת is כשר –

תוספות rejects the comparison:

דלא דמי דהתם[35] **(אף על פי שספר תורה) –**

For (the two case are not comparable, for) **there (even though that the ס"ת) [by** the case of a **ס"ת] -**

כיון שהוא ביד לוקח כאילו יש עדים שנכתבו לשמן[36]**–**

Since it is in the possession of the buyer it is considered **as if there are witnesses that** the שמות **were written לשמה** (that explains why the ס"ת is כשר) -

מכל[37] **מקום מפסיד שכרו כיון שמודה שאין חייבין לו כלום:**[38]

But nevertheless the סופר **loses his wage since he admitted that he is owed nothing.**

Summary

[Either קריביה admitted and granted the field to ראב"א or] ראב"א brought witnesses that he was a קרוב and therefore since the field legally belonged to him, קריביה had to pay for the פירות despite his מיגו (as ר"ח maintains). It is not comparable to the case of תרתי שנין, which is not comparable to the ס"ת case where the סופר forfeited his wage.

Thinking it over

תוספות maintains that ראב"א was a ודאי while the other was a ספק.[39] Seemingly ראב"א stated אנא קריבנא טפי; indicating that ראב"א admitted that קריביה is a relative. Why therefore is ראב"א considered a ודאי and the קריביה is considered a ספק?![40]

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[34] It is evident from there that we accept his admission where it is for his detriment (that he does not receive his wages); however, we do not accept his admission if it adversely affects others; the ס"ת is כשר (even though the two parts of the ruling are contradictory). Similarly here we should accept his admission (that he ate פירות ג' שנים) only for his detriment (that he is obligated to pay for the פירות), but we do not accept his claim regarding a חזקה where it adversely affects the מרא קמא, the מערער. [In the case of the חזקה the two rulings would not be as contradictory (as they are by the ס"ת) for we can say he ate פירות three years בגזל (however by the ס"ת if he loses his wages because he wrote it שלא לשמה, why is the ס"ת כשר).]

[35] The הגהות הב"ח amends this to read דהתם בספר תורה כיון (deleting the words אע"פ). The מהרש"ל deletes that which is in the parenthesis.

[36] Every ס"ת has a presumed חזקת כשרות, unless we know that it is פסול.

[37] The הגהות הב"ח amends this to read וְמכל מקום (instead of מ"מ).

[38] By the ס"ת case the סופר is admitting that he is not owed any money, therefore (even though the ס"ת is deemed to be כשר) he receives nothing (like הודאת בע"ד). However here the מוחזק claims that the field is his and the פירות are his since he made a חזקה. If he will have to pay for the פירות indicating that indeed he made a חזקה, the קרקע should be placed in his possession.

[39] See footnote # 20.

[40] See נח"מ.