

## **We do not remove it from his possession      אין מוציאים אותה מידו –**

### **OVERVIEW**

The נהרדעי ruled in the case of זה אומר של אבותי וכו' (regarding which ר"נ ruled כדא"ג), that if a third party took possession of the property, בי"ד does not remove him from this property (even if he makes no claim<sup>1</sup>). תוספות expands this ruling.

ואפילו כתבו הרשאה<sup>2</sup> זה לזה הואיל<sup>3</sup> ורשעים הם<sup>4</sup> אין נזקקים להם:

And this ruling of אין מוציאים אותה מידו is effective **even if they wrote a הרשאה to each other**. The reason the הרשאה is ineffective; **since they are רשעים, we do not assist them**.

### **SUMMARY**

The rule of אין מוציאים אותה מידו is in effect even if they wrote a הרשאה to each other.

### **THINKING IT OVER**

תוספות writes that אין נזקקים להם since *they* are רשעים.<sup>5</sup> Seemingly only of them is [certainly] a רשע; there is no reason to assume that they are both רשעים; why therefore does תוספות rule that אין נזקקים להם even if זה לזה כתבו הרשאה?<sup>6</sup>

<sup>1</sup> See ד"ה אין and רשב"ם ד"ה אם.

<sup>2</sup> A הרשאה is a power of attorney. In this case, each of the initial litigants (after they realized that a third party took possession) gave the other litigant the power to claim on his behalf the disputed property. Seemingly once these two הרשאות were executed, each one of them is seemingly the rightful owner; for he is claiming this property on his own behalf and on behalf of the other litigant who granted him the power of attorney to litigate on his behalf. The third usurping party seemingly has no rights at all since he is not making any claim (see 'Overview' and footnote # 1). Nevertheless, בי"ד will not remove the third party from the property, as תוס' continues to explain.

<sup>3</sup> It is apparent from תוספות that he disagrees with the ד"ה אין רשב"ם who states בה חלק להם חלק בה ד"ה אין רשב"ם. Then it is obvious that a הרשאה is ineffective (since it may not belong to either of them).

<sup>4</sup> One of the two initial litigants is certainly a רשע; for the property belongs to only one of them. See 'Thinking it over'.

<sup>5</sup> See footnote # 4.

<sup>6</sup> See בל"י אות רמו.