לוקח ראשון מעיד ללוקח שני והוא דאית ליה ארעא אחריתי אבל[1] לית ליה ארעא אחריתי לא יעיד –

The first buyer may testify for the second buyer, provided that he has other land, however if he has no other land he may not testify

Overview

The ברייתא states that if ראובן (seller) sold one field to לוי (the לוקח ראשון) and then ראובן sold another field to יהודה (the לוקח שני), the rule is that if שמעון (the מערער) comes and contests the ownership of s'יהודה field (which he bought from ראובן), the לוקח ראשון (לוי) may testify on behalf of the לוקח שני (which is יהודה), provided that either ראובן or יהודה have another field; otherwise, לוי may not testify for יהודה. There is a dispute between the רשב"ם and תוספות how to explain this ברייתא.

פירש הקונטרס[2] משום דחייש שמא יבא בעל חובו ויטרוף ממנו -

The רשב"ם explained the reason the לוקח ראשון cannot testify for the לוקח שני, if לית ליה ארעא אחריתי is because לוי is biased and wants the property to remain by יהודה (the לוקח שני), **since** לוי (the לוקח ראשון) **is concerned perhaps** s'ראובן **creditor (**שמעון**) will come and collect from** לוי -

ולא יהא לו ממה לגבות מן המוכר[3] -

And לוי **will not have from what to be compensated from the seller** (ראובן).

תוספות asks on the פרשב"ם:

וקשה לרבינו יצחק דאם כן אפילו אית ליה ארעא אחריתי[4] נמי -

And the ר"י has a difficulty with the פי' רשב"ם, **for if** it is indeed **so** that the לוקח ראשון is concerned that the seller (ראובן owes money), so **even if אית ליה ארעא אחריתי,** the לוקח ראשון should **also** not be allowed to testify -

דכי היכי דחייש לבעל חוב קטן -

For just as לוי **is concerned for a limited creditor** (of $100, the value of one field) -

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[1] These words, יעיד...אבל, do not appear in the text of our גמרות.

[2] רשב"ם בד"ה לוקח.

[3] Let us assume that the two fields of לוי and יהודה are each worth $100. לוי is concerned perhaps ראובן owes יוסף $100. Therefore if יהודה has another field (which he bought from ראובן, after לוי bought his field), or if ראובן still has a field worth $100, לוי can testify for יהודה, since he is not נוגע, for even if the מערער wins the case and takes away this one field from יהודה, nevertheless the מלוה will still be able to collect, either from s'יהודה other field or from s'ראובן field, and לוי will not be affected. However if both יהודה and ראובן have no other field, לוי has an interest that יהודה should retain his field, otherwise the בע"ח will take away s'לוי field, and לוי will lose since ראובן cannot reimburse לוי, for ראובן has no other assets.. He is therefore a נוגע בעדות and cannot testify.

[4] This means that either יהודה or ראובן have another field (worth $100 [or more]).

הכי נמי ניחוש לבעל חוב גדול שיהא חובו כנגד שני קרקעות[5] -

He should be just as concerned for a major creditor that the loan to ראובן **is equal** to the value of **both fields** –

תוספות responds to an anticipated difficulty:[6]

אלא נראה לרבינו יצחק דאף על גב דלעיל (דף מד,א) **גבי מוכר שדה שלא באחריות -**

Rather it appears to the ר"י that generally the לוקח is not concerned for a בע"ח, **for even though previously regarding** a case where **one sold a field** (even) **without a guarantee -**

אמרינן שאין מעיד לו עליה מפני שמעמידה בפני בעל חובו -

We say that the seller **cannot testify on behalf** of the buyer against a contester, **because the** seller want this field to remain by the buyer (instead of by the מערער), **so his creditor can collect from it;** we see that we are concerned for a בע"ח!

תוספות responds:

התם ודאי חיישינן לבעל חוב לפי שאדם יודע אם יש לו בעלי חובים אם לאו -

There we are certainly suspect that there is a בע"ח, since a person (the seller, whom we are discussing) **knows if he has creditors or not -**

וכשאנו רואים שבא להעיד אנו חוששים שלכך מעיד לפי שרוצה להעמידה בפני בעל חובו -

And so when we see the seller **coming to testify** on behalf of the buyer, **we suspect that the reason he is testifying, is because he want to be מעמידה בפני בע"ח -**

והתם אפילו אית ליה ארעא אחריתי לא יעיד דחיישינן שמא יש לו בעל חוב גדול[7] –

And indeed **there, even if** the seller **has other lands, he may not testify, because we are concerned that perhaps he has a major creditor** for which he will need all the lands (his own and that which he sold) to satisfy the loan –

תוספות supports his view that if there is a concern for a בע"ח, it applies even if אית ליה ארעא אחריתי:

וכן אומר רבינו שמשון בן אברהם דמשמע לעיל[8] כי פריך -

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[5] Perhaps ראובן owes $200, therefore even if יהודה or ראובן own another land worth an additional $100, nevertheless לוי should not be able to testify for יהודה, for the loan may be for $200 and לוי wants to be sure that the מלוה has where to collect from without coming after לוי, therefore he is testifying for יהודה; he is a נוגע בעדות!

[6] תוספות in his previous question on the רשב"ם is implying that we cannot say that the לוקח ראשון is concerned about a בע"ח (for if so, he should never be allowed to testify, since he may be concerned for a בע"ח גדול), however תוספות will cite גמרות where there is a concern for a בע"ח; there is a need to distinguish between the various cases.

[7] תוספות is stating in conjunction with his question that whenever we are concerned for a בע"ח there is no difference whether אית ליה ארעא אחריתי or not, for we do not know the size of the loan; we are concerned for a loan of any amount.

[8] מג,א. The גמרא stated there that one שותף may testify on behalf of his שותף provided that he was מקנה his share of the field to the other שותף, so he no longer has any interest in it,

And the רשב"א says similarly that this is **indicated previously when** the גמרא **asks -**

וכי קנו מידו מאי הוי הרי מעמידה בפני בעל חובו[9] -

'and even he made a קנין that he is transferring the field to his partner, **what of it, but** there is still the issue of **מעמידה בפני בע"ח' -**

ולא משני כגון דאית ליה ארעא אחריתי -

And the גמרא **does not answer, 'for instance that** the granting שותף, **has other land** from where his בע"ח can collect from. The reason is that whenever we are concerned for a בע"ח, there is no limit, for we cannot know how much is owed –

תוספות anticipates an additional difficulty:

והא דקאמר לעיל[10] אי דאית ליה ארעא אחריתי עליה הדר -

And regarding this which the גמרא **stated previously, 'if** the seller **has other land,** the מלוה **will go after it'** so he can testify on behalf of the buyer -

לא תקשי היאך הדר עליה שמא יש לו בעל חוב גדול[11] -

You should not ask, how can he go after the other land, **perhaps he owes much money** and he needs both lands to satisfy the loan, so how can he testify?! –

תוספות responds:

דהכי פירושו אי אית ליה ארעא אחריתי כדי כל החוב עליה הדר -

For this is the explanation of that גמרא; '**if** the seller **has other lands sufficient for the entire loan** (no matter how large) **he will go after it -**

ואי לית ליה ארעא אחריתי כדי כל החוב מאי נפקא מינה[12] -

And if he does not have other lands sufficient for the entire loan, what difference is there to the seller.

This applies when we are discussing the seller who is the לוה, and he knows whether he owes money (and how much), or not –

אבל אין לחוש שהלוקח מעיד לפי שיהיה לבעל חוב של מוכר ממה לגבות -

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[9] The first שותף who transferred his rights to the second שותף wants that field to remain by the second שותף so that the בע"ח from the first שותף will have from where to collect his loan.

[10] מה,א. This is the case mentioned previously regarding המוכר שדה לחבירו שלא באחריות אינו מעיד לו עליה מפני שמעמידה בפני בע"ח. The גמרא asks that it should make no difference to the seller whether the buyer retains the field, or not.

[11] תוספות is saying that whenever we are concerned for a בע"ח it makes no difference whether אית ליה ארעא אחריתי, or not, for the loan may be very large and requires both lands to satisfy it.

[12] The גמרא there in the הוה אמינא did not understand what difference it makes to the seller whether this sold land remains by the buyer or not. If he has other land to cover the loan, the מלוה will not go after the buyer, and if his lands cannot cover the loan, so why should he care if the מלוה cannot collect his loan; it is the s'מלוה loss not his. [The גמרא answered that he does not want to be a לוה רשע ולא ישלם.]

However there is no concern that the buyer should testify falsely **in order that the creditor of the seller should have from where to collect -**

דאין הלוקח יודע אם יש למוכר שום בעל חוב -

Since the buyer does not know if the seller has any creditor!

תוספות rejects the פי' רשב"ם that we are concerned that the לוקח will testify falsely in order that the בע"ח of the מוכר should have from where to collect (to make sure that he does not collect from this לוקח), this is not so, for the לוקח has no idea whether the seller owes money or not.

תוספות offers his explanation why the לוקח ראשון cannot testify for the לוקח שני:

אלא היינו טעמא דאין הלוקח ראשון מעיד ללוקח שני אף על גב דלא חייש לבעל חוב[13] -

Rather this is the reason why the לוקח ראשון cannot testify for the לוקח שני, for even though the לוקח ראשון **is not concerned for the בע"ח** of the מוכר -

מיהו חייש שמא קרקע גזולה היא והיום או למחר יבא הנגזל ויקחנה -

Nevertheless the לוקח ראשון **is concerned perhaps this** (the field which the לוקח ראשון bought from the מוכר) **is stolen property, and** either **today or tomorrow** (anytime soon) **the victim of the theft will come and reclaim** his property -

ולא יהיה לו ממה לחזור על המוכר היכא דלית ליה ארעא אחריתי למוכר[14] -

And if the לוקח שני will lose his field, the לוקח ראשון **will not have from what to collect from the seller,** in a case **where there is no other field** left by **the מוכר.**

תוספות asks:

ואם תאמר ומלוה וערב (והלוקח) אמאי מעידים ללוה אף על גב דאית ליה ארעא אחריתי -

And if you will say, why can the מלוה and the ערב (and the buyer) testify for the לוה, even if there is ארעא אחריתי -

ניחוש שמא היא גזולה וכשיבא נגזל ויקחנה לא יהיה לו ממה לגבות -

Let us be concerned that perhaps the ארעא אחריתי **is stolen** property, **and when the נגזל will come and take it away** from the לוה, the מלוה and the ערב **will not have from where to collect** what is owed to them; we should be concerned שמא גזולה היא -

כדחיישינן לחד נגזל גבי לוקח הכי נמי ניחוש גבי ערב ומלוה[15] -

Just as we are concerned for one נגזל regarding the לוקח ראשון (for that is why he cannot testify for the לוקח שני), **we should be concerned just as well regarding**

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[13] See previously in this תוספות that the לוקח (ראשון) has no idea whether his מוכר owes money to anyone.

[14] The לוקח ראשון is a נוגע בעדות if there is no other property (besides this contested field of the לוקח שני), either by the מוכר or the לוקח שני. The לוקח ראשון wants this contested field to remain in the possession of the לוקח שני, so in case his property (לוקח ראשון) is taken from him (because it never belonged to the מוכר), the לוקח ראשון will have recourse to collect this contested field from the לוקח שני. The לוקח ראשון cannot testify for the לוקח שני, since he is a נוגע בעדות.

[15] See 'Thinking it over'.

the ערב ומלוה!

תוספות answers:

ויש לומר דבשום מקום אין המלוה וערב והלוקח חוששין כל זמן שאחריות שלהן[16] קיים:

And one can say; that under no circumstances are the מלוה וערב ולוקח concerned that that the field they depend on may be stolen, **as long as their security exists.**

Summary

According to the רשב"ם, the לוקח ראשון is concerned that the מוכר owes money, while according to תוספות, the לוקח ראשון is concerned perhaps his property was stolen.

Thinking it over

תוספות asks that by a מלוה וערב we should also be concerned that perhaps the ארעא אחריתי was stolen (just as the לוקח ראשון is concerned that his field was stolen).[17] Can we ask the same question on the רשב"ם פי' that by the מלוה וערב, even if the לוה has אית ליה ארעא אחריתי, we should be concerned perhaps he owes another בע"ח, who will take away his ארעא אחריתי (just as we are concerned by the לוקח ראשון)?[18]

[16] In the case of לוקח ראשון, he cannot testify for לוקח שני where אית ליה ארעא אחריתי, because the לוקח ראשון is concerned that his own field may have been stolen, and the field of the לוקח שני, which he is depending on for security is being contested; therefore he is a נוגע בעדות. However by the מלוה וערב where their security (for the loan) is guaranteed by the ארעא אחריתי, in that case a person is not worried that perhaps his security will be lost (because it was stolen), he is only concerned that perhaps the property he owns is stolen. By the לוקח there is only one concern, perhaps his property is stolen and he will have no recourse; however by the מלוה וערב there are two concerns, firstly maybe the לוה will not pay (if he pays there is no concern), and secondly maybe the ארעא אחריתי was stolen (but maybe not), therefore since there needs to be two maybe's, to such an extent one is not concerned.

[17] See footnote # 15.

[18] See מהרש"א.