

מגורשת ואינה מגורשת¹ בעלה חייב במזונותיה – She is divorced and not divorced; her husband is liable for her sustenance

OVERVIEW

The גמרא explained that the novelty that a divorced woman has a חזקה (in her husband's assets) is in a case where her divorce is in doubt (מגורשת ואינה מגורשת), and since in this case her husband is liable for her מזונות, we may have thought that she has no בעלה בנכסי חזקה; the ברייתא teaches us that she does. תוספות clarifies the case, where she has a חזקה.

וכגון שייחד לה ארעא אחריתי² -

And for instance where he designated for her needs another land (not the contested land, which she claims as hers), from where she can receive her מזונות -

דאי לאו הכי אין לוי³ חזקה דכיון דאית לה מזוני מזוני הוא דקא אכלה כדאמרין⁴ לקמן:

For if it were not so (that the husband did not designate another property for her (מזונות), **she has no** בעלה בנכסי חזקה, **for since she is entitled to מזונות**, we can say that the reason the husband did not protest her occupying the field is because the husband can claim **she was eating her מזונות**, therefore I did not protest, **as the גמרא states later.**

SUMMARY

The woman who is a מגורשת ספק has a בעליה בנכסי חזקה, only if he designated another property for her מזונות.

THINKING IT OVER

What is the ruling by a regular wife, if he was מייחד לה ארעא אחריתי, does she have a חזקה בנכסי בעלה? Why?⁵

¹ See רשב"ם ד"ה מגורשת that this refers to a woman whose divorce is in doubt; for instance where her husband threw the גט to her and we are unsure whether it was closer to her (where she is מגורשת) or whether it was closer to him (where she is not מגורשת). For further clarification see עה"א וב' גיטין.

² This would seem to be in disagreement with the מהרש"א. See רשב"ם בד"ה מגורשת, עיי"ש.

³ A marginal note amends this to לה (instead of לו).

⁴ נא, א.

⁵ See מהרש"א.