ראייתן ראיה ומעמידין שדה בידן –

Their proof is a proof and we place the field in their possession

Overview

רב הונא taught that all those who do not have a חזקה, nevertheless if they bought proof that the field is theirs, their proof is valid and we place the field in their possession, except for a robber that his proof is no proof, and we do not place the field in his possession. תוספות discusses the need for the duplication; ראייתן ראיה and מעמידין שדה בידן. They seemingly mean the same thing; the field is theirs.

נראה לרבינו שמשון בן אברהם דנקט תרוייהו -

It appears to the רשב"א that the reason ר"ה **mentions both of them,** ראייתו ראיה, and מעמידין שדה בידן, is -

איידי דבעי למיתני גבי גזלן אין ראייתו ראיה ואין מעמידין שדה בידו[1] -

Since he wanted to teach (in the סיפא) **regarding a robber** that **אין ראייתו ראיה and אין מעמידין שדה בידו,** therefore in the רישא he also mentioned both of them even though it was not necessary –

תוספות explains why by גזלן it was necessary to mention both:

דהתם איצטריך תרוייהו דאי לא תנא אלא אין ראייתו ראייה -

For there by גזלן **it was necessary** to mention **both;** אין ראייתו ראיה and אין מעמידין שדה בידו, **for if** ר"ה **would have taught only אין ראייתו ראיה,** and not mention אין מעמידין שדה בידו -

הוה אמינא דאין ראייתו ראיה לגבי הא שאין מעמידין שדה[2] בידו אבל מעות יש לו[3] -

I would have said that the ruling of **אין ראייתו ראיה** is only **regarding that we do not place the field in his possession however, he has the money –**

The reason we would assume that we are [also] discussing a case where we know there was a transfer of money is because -

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[1] See רשב"ם ד"ה ראייתן that the entire רישא is superfluous; it was taught only as an introduction to the סיפא, and since in the סיפא it was necessary to mention both; regarding אין ראייתו ראיה and ואין מעמידין שדה בידו (as תוספות will explain immediately), therefore he mentions them both in the רישא even though it was not necessary.

[2] We may have certainly assumed that, if ר"ה would only say אין מעמידין השדה בידו; but we could have assumed that even if he would say just אין ראייתו ראיה.

[3] This means (as תוספות continues to explain) that the case of גזלן is [even] where the עדים saw the actual transfer of money (from the גזלן to the נגזל) and nevertheless אין ראייתו ראיה; we will not allow the גזלן to keep the field (for we will assume that it was a forced sale), however the גזלן is entitled to get his money back (even if לא מנה לו מעות בפני עדים), for either there is proof that he gave it to the נגזל, or the נגזל admitted that he was paid. This is what we would assume if all ר"ה stated was אין ראייתו ראיה.

דלא היינו אומרים טעמא אי לאו דאודי ליה הוה ממטי ליה ולחמריה לשחוור -

That we would not have assumed the reason אין ראייתו ראיה (that the sale is invalid) is because that **if he would not admit to** the גזלן that he sold him the field, the גזלן **would have brought him and his donkey to the official** (as רב כהנא explained) -

אלא הוה מפרשינן טעמא משום דתליוהו וזבין לא הוו זביניה זביני[4] אפילו מנה לו מעות -

Rather we would have explained the reason why the sale is invalid is **because** the rule is **תליוהו וזבין לא הוו זביניה זביני,[5] even when** the robber **counted the money to** the נגזל in the presence of עדים. This is how we may have understood the ruling of ר"ה, had he only said אין ראייתו ראיה -

הלכך קאמרי תרוייהו דאין ראייתו ראיה כלל דאפילו מעות אין לו[6] -

Therefore ר"ה said both; אין מעמידין שדה בידו and אין ראייתו ראיה, so now we understand **that אין ראייתו ראיה at all, that he even does not receive the money -**

דטעמא הוא משום דאי לאו דאודי ליה כולי -

For the reason of this ruling by a גזלן **is because** we assume **that if** the seller **would not have admitted to** the גזלן, **etc.** הוה ממטי ליה ולחמריה לשחוור. The admission is coerced and therefore meaningless.

In summation; had ר"ה just said one (either אין ראייתו ראיה or אין מעמידין), we could have mistakenly assumed that we are [also] discussing a case where money was transferred in the presence of עדים, however since (we are mistakenly assuming that) the rule is תליוהו וזבין <u>לאו</u> זביניה זביני, therefore the rule will be that the גזלן does not receive the field but he receives his money back (even if לא מנה לו המעות בפני עדים). Therefore ר"ה mentioned both rules, so now we know (from אין מעמידין השדה בידו) that the גזלן does not receive the field, and therefore אין ראייתו ראיה teaches us that the does not receive the money back (in a case where לא מנה המעות בפני עדים), the reason is that we assume that he did not pay money, and the reason why the נגזל admits that he received money is like רב כהנא (that דאי לאו דאודי לי' וכו'). However if מנה המעות בפני עדים the גזלן will retain the field, since תליוהו וזבין זביניה זביני.

תוספות continues:

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[4] This means, **'he (**the buyer**) hung him (**the seller**) up** on a tree**, and (**because of this coercion**) he sold** the property, the rule is **the sale is <u>not</u> valid.** We will assume that this was a coerced sale, since the buyer is a גזלן and therefore it is never a valid sale (regardless if money was seen transferred, or not). However the גזלן receives his money back (regardless if money was seen transferred or not, since the נגזל admitted that he received money).

[5] However this is incorrect, for as the גמרא states shortly that ר"ה maintains that תליוהו וזבין זביניה זביני.

[6] When ר"ה stated אין מעמידין השדה בידו, we know that the גזלן does not get the field, the addition of אין ראייתו ראיה is that even though there are witnesses (or a שטר) that the נגזל admitted to receiving payment (however no one saw the actual transfer of funds), the גזלן cannot even receive this money back, for we say this admission was coerced as רב כהנא said; אי לאו דאודי ליה וכו'. However a coerced sale with payment is a valid sale. We can therefore not be discussing a case where עדים saw the transfer of money. See 'Thinking it over'.

והאי כולן נראה לרבינו שמשון בן אברהם דקאי נמי אבן שלא חלק ואשה שלא נתגרשה -

And it appears to the רשב"א that this word **כולן** which ר"ה stated (וכולן שהביאו ראיה) **it also refers to the son who did not separate** from being supported by his father, **and a woman who was not divorced**[7] that by them too 'ראייתן ראיה וכו.

ואף על גב דאמר לקמן[8] [גבי אשה בנכסי בעלה[9]] דלגלויי זוזי הוא דבעי[10] -

And even though the גמרא **later states regarding [a woman in her husband's assets]** that she has no ראיה for we say, **he wanted to reveal her money** –

תוספות responds:

כיון דאוקימנא בהודאה[11] לא שייך בה גלויי זוזי -

Since we have just **established** the ruling of ר"ה that ראייתו ראיה is (only) in a case of **admission** (however it does not apply in a case where מנה לו המעות), therefore the concept of **גלויי זוזי is not applicable** –

Another approach why ראייתו ראייה even by אשה שלא נתגרשה:

ועוד דמשמע לקמן דסבירא להו לרב הונא ולרב נחמן דלא אמר לגלויי זוזי הוא דבעי:

And additionally, it seems later that ר"ה and ר"נ maintain that we do not say that he sold it because of **לגלויי זוזי הוא דבעי,** but rather it is a good proof, therefore we can maintain here that ראייתן ראייה applies also to an אשה שלא נתגרשה.

Summary

The double ruling that אין ראייתו ראיה and אין מעמידין שדה בידו teaches us that not only does the גזלן not receive the field, but he also does not get back any money (where it was merely אודי ליה).

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[7] The ברייתא on מז,א states, **בן שחלק ואשה שנתגרשה הרי הן כשאר כל אדם ;** indicating that a בן שלא חלק and an אשה שלא נתגרשה do not have a חזקה, like an אומן ואריס. Therefore when ר"ה stated that 'כולן שהביאו ראיה וכו, he meant not only the אומן ואריס but also the בן ואשה.

[8] נא,א.

[9] A married woman cannot have a חזקה in her husband's assets, for he can say, 'I let you use it for your support' (מזונות, etc.). Furthermore even if she has a שטר which states that her husband sold her this field for this amount of money, that does not prove anything, for we can say that the husband was suspicious that she had money hidden away from him (to which he is entitled to), therefore he made as if he is selling her this field so she will reveal this money.

[10] The question is how can the רשב"א state that the ruling of ר"ה applies to an אשה שלא נתגרשה, that יש לה ראיה, when the גמרא later states that she has no ראיה since we say לגלויי זוזי הוא דבעי?!

[11] תוספות just explained that the rulings of ר"ה is only in a case where the ראיה was that the נגזל admitted that he sold the field (and that he received payment) and the same is by the אומן ואריס that we are only discussing a case of where they admitted that the אומן ואריס bought the item (but not that there is proof that there was a transfer of funds [no one saw any transfer]), therefore we can include a woman שלא נתגרשה, meaning that if the husband admitted that he sold her the field, she gets to keep it, for since we do not know of any money which exchanged hands, the reason of גלויי זוזי does not apply (there was no reason for the husband to admit to the sale) and the ראיה is valid.

THINKING IT OVER

It seems from תוספות that the way we know that not only does the גזלן not receive the field, but also that he does not receive his money back, is from the fact the רב הונא said two things; אין מעמידין שדה בידו (he does not get the field), and אין ראייתו ראיה (he does not get the money back).[12] According to this, ר"ה should have stated it in the reverse אין מעמידין שדה בידו ואין ראייתו ראייה, why does he actually state אין ראייתו ראייה (first, and then) אין מעמידין שדה בידו?![13]

[12] See footnote # 6.

[13] See נחלת משה.