However he acquires it with a note – אבל בשטר קנה

Overview

The משנה in גיטין taught[1] that if a person bought a property from a סיקריקון,[2] and he then bought it back (again) from the (original) owner, the buyer does not acquire the property.[3] רב qualified this ruling that it applies only if the original owner merely told the buyer, לך חזק וקני, however if he wrote a שטר that he is selling him the field, the buyer acquires the field. תוספות reconciles our גמרא with a seemingly contradictory גמרא.

אלקח מן האיש וחזר ולקח מן האשה[4] נמי קאי[5] כדמוכח במתניתין[6] בהניזקין (גיטין דף נח,ב ושם) -

This ruling of רב **applies also to** the case of, '**he bought from the man, and he went back and** also **bought from the woman', as is evident (from the משנה) in** פרק **הניזקין.**

תוספות asks:

וקשה דתניא בסוף מי שהיה נשוי (כתובות דף צה,א ושם דיבור המתחיל וכתבה) -

And there is a difficulty for the ברייתא taught in פרק **מי שהיה נשוי -**

כתב לראשון[7] ולא חתמה לו לשני וחתמה לו איבדה כתובתה[8] -

The husband **wrote a** שטר **to a first** buyer, **but she** (the wife) **did not sign it for him,** the husband then sold it **to a second** buyer **and she signed** the שטר **for him;** the rule is **she forfeited her כתובה.** This concludes the ברייתא. We can infer -

דוקא משום דלא חתמה לראשון אבל אי חתמה לראשון לא איבדה כתובתה[9] כדמוכח התם -

---

[1] גיטין נה,ב.

[2] A סיקריקון is a violent gentile who extorted the property from the ישראל with the threat of killing him.

[3] The reason is because the owner agreed to this sale only under duress. He was concerned that if he does not validate this sale, the סיקריקון will come after him again.

[4] The case there is when someone bought the נכסי מלוג property of a wife, from her husband (who does not own them but has the rights of eating the פירות of the נכסי מלוג), and then he went and bought the same נכסי מלוג from the wife (who actually owns them). The rule is that the buyer does not acquire the נכסי מלוג, since the husband does not own them, and the wife can claim, 'I agreed to the sale only because נחת רוח עשיתי לבעלי'.

[5] The qualification of רב applies to the case of לקח מן האיש וכו' as well. The buyer is not קונה if all the wife told him was לך חזק וקני, however if she gave him a שטר, the buyer is קונה.

[6] Others omit the word במתניתין, for it is not evident from the משנה, but rather from the גמרא. The גמרא there brings this case of לקח מן האיש וכו' as a proof to שמואל and a refutation of רב regarding סיקריקון; indicating that the two cases are intertwined.

[7] The husband sold a property which was designated for his wife's כתובה. He cannot sell it without his wife's consent.

[8] In this case she cannot claim that she signed it because נחת רוח עשיתי לבעלי (see footnote # 4), since we see that she had the courage not to sign for the first buyer, this shows that she really agreed to the sale of the second buyer.

[9] The reason is she can claim נח"ר עשיתי לבעלי.

That it is only because she did not sign for the first buyer, that is why she forfeits her כתובה, **however if she signed for the first** buyer **she did not forfeit her כתובה, as it is evident there;** this is true -

אף על פי שכתבה שטר[10] -

Even though she wrote a שטר, however רב ruled that if she wrote a שטר to the buyer (after he bought it from her husband) it is a valid sale, and from the גמרא there it is apparent that even if she signed on a שטר, it is not a valid sale!

תוספות answers:

ונראה לרבינו יצחק דהא דקאמר רב בשטר קנה יש להעמיד בשטר הראיה שאחר הקנין[11] -

And it appears to the ר"י that this which רב ruled that **when a שטר** is given, **he acquires** the property, **we can establish** this ruling **by a שטר** that is used for **proof** of ownership, **which** is presented **after the קנין -**

דכיון שאחר הקנין עשתה שטר שייפתה כחו כל כך קנה -

For since she made the שטר after the קנין, so she empowered him so much, therefore **he acquires the field -**

והיא דכתובות מיירי בשטר מתנה בלא קנין אחר אלא שטר[12] -

And that גמרא in כתובות is discussing a case of a **שטר מתנה without any other קנין except for the שטר,** therefor he is not קונה**.**

תופות offers an alternate solution:

אי נמי חתמה דהתם לשון גמר כמו חתמו גבי תורף דגיטין -

Or you may **also** say that the word **חתמה there** (in כתובות) **is an expression of completion, like** the word **חתמו regarding the תורף of a divorce -**

וכמו תורה חתומה ניתנה בהניזקין (גיטין דף ס,א) כלומר שגמרה מקח ונתרצתה בעל פה[13] -

And like the phrase **in הניזקין** פרק, **'the תורה was given complete';** the חתמה in כתובות **means she completed the sale and agreed orally** to the sale, but not that she signed a שטר –

A third and final answer:

---

[10] The ברייתא states חתמה, which means signing on a שטר.

[11] A שטר can have two functions; it may be a שטר קנין that with the transfer of the שטר from the seller to the buyer, the buyer acquires the field. Alternately the field may be acquired through another type of קנין, like חליפין or כסף or חזקה, and the שטר is 'merely' proof that a transfer of ownership took place. תוספות is saying that the ruling of רב that בשטר קנה is (only) by a שטר ראיה; meaning that the קנין was accomplished before the giving of the שטר.

[12] The גמרא in כתובות (where there is no קנין for she can claim נח"ר עשיתי לבעלי) is where the שטר was a שטר קנין (and there was no other קנין), however the ruling of רב is where it was a שטר ראיה; given after the קנין.

[13] Therefore in כתובות there was no שטר, so the sale is not valid, but רב is discussing where there was a שטר, therefore the sale is valid (even if was [just] a שטר קנין).

אי נמי חתמה ממש ובשטר של בעל -

Or you may **also** say, **she actually signed** the שטר, however she signed **her husband's שטר,** therefore the sale is not valid -

והא דאמר רב בשטר קנה שעשתה שטר מכירה בשמה -

And this which רב ruled בשטר קנה, is where she made a separate **bill of sale with her name** (not part of her husband's שטר).

תוספות continues to explain the dispute between רב and שמואל:

ומסתבר דטעמא דרב כטעמא דשמואל[14] דאמר בהניזקין (שם דף נח,א ושם דיבר המתחיל אבל) -

And it is logical that the reason of רב, who maintains that if there was a שטר, he is קונה, **is like the reasoning of שמואל, who rules in פרק הניזקין** that -

אף בשטר לא קנה עד שתכתוב לו אחריות[15] -

He is not קונה even with a שטר unless the wife **writes** for the customer **a guarantee -**

ושמואל לטעמיה דאמר בפרק קמא דבבא מציעא (דף יד,א ושם) -

For שמואל follows his view which he stated in the first פרק of ב"מ מסכת -

אחריות לאו טעות סופר בשטרי מקח וממכר ורב סבר אחריות טעות סופר הוא[16] -

The lack of a **guarantee** in a שטר **of buying and selling**, **is not** to be attributed **to a mistake of the scribe, however רב maintains** that the lack of **אחריות is considered a mistake of the scribe.**

תוספות presents a difficulty with this view that טעמא דרב כטעמא דשמואל:

אבל קצת קשה דלקמן[17] פריך לרב הונא דאמר[18] תליוהו וזבין זביניה זביני -

However there is a slight difficulty for later רב המנונא **challenges רב הונא who maintains that a forced sale is a valid sale;** the question was -

---

[14] See 'Thinking it over'.

[15] This is referring to the case of לקח מן האיש ואח"כ לקח מן האשה (see footnote # 4). According to שמואל the buyer acquires the field only if the woman guaranteed the sale, meaning that if the property were to be taken away from the לוקח (for any legal reason), she will reimburse him the money he paid. The reason the sale is valid, for in this instance where the woman is prepared to shell out money, she cannot claim נח"ר עשיתי לבעלי.

[16] רב maintains that in any שטר we assume that there is a guarantee (for the sale, or the loan), and the fact that it does not state so explicitly in the שטר is merely an oversight of the סופר, who forgot to write it. However שמואל maintains that in order there should be a guarantee for the sale, it must be explicitly included, otherwise there is no guarantee. Therefore in the case of לקח מן האיש וכו', according to שמואל there is no sale unless a guarantee was written (for then we know that she is serious [see footnote # 15]), however according to רב that אחריות טעות סופר so if she wrote a שטר even without אחריות, the sale is valid since the אחריות is automatically included in the שטר. It turns out therefore that רב and שמואל basically agree that when there is אחריות the sale is valid (they only argue what is considered that there is אחריות; according to רב any שטר, and according to שמואל a שטר with explicit אחריות).

[17] מח,א.

[18] On the bottom of this עמוד מז,ב.

מהא דאמר שמואל[19] אף בשטר לא קנה -

From this which שמואל ruled that the buyer **is not קונה even** if the sale was made **with a שטר -**

ואי תלוי הדבר באחריות מאי קשה ליה משמואל[20] טפי מרב:

However if the validity of the sale **depends only if there was אחריות, so why is there a difficulty from שמואל more than from רב?!** תוספות does not answer this question.

Summary

In the case of לקח מן האיש ואח"כ לקח מן האשה it is a valid sale if the שטר was only לראיה and another קנין was made previously, or a שטר is always valid, or a שטר is valid if it is a separate שטר from her husband's. The dispute between רב ושמואל is regarding whether אחריות טעות סופר (רב), or not (שמואל).

Thinking it over

How can we understand that when תוספות writes טעמא דרב כטעמא דשמואל,[21] that it is the intent of תוספות to offer an additional answer to his original question[22] from פרק מי שהיה נשוי?[23]

---

[19] The challenge was actually from the case of סיקריקון (see 'Overview'), which is a forced sale. שמואל ruled that even if the owner wrote a שטר to the buyer (from the סיקריקון), the buyer is not קונה. The question is, according to רב הונא he should be קונה since תליוהו וזבין זביניה זביני. [The גמרא there said that according to רב there is no question since he agrees that if there was a שטר he is קונה; the question is only according to שמואל.]

[20] The גמרא there said that there is no difficulty from רב since he agrees that the sale is valid because there is a שטר (meaning there is אחריות), the same answer can be applied to שמואל that if there is a שטר with אחריות the sale is valid. There is no real dispute between רב ושמואל regarding a forced sale both agree that when there is אחריות it is valid and when there is no אחריות it is not valid.

[21] See footnote # 14.

[22] See footnotes #7-10.

[23] See מהר"ם ומהרש"א.