

בעינן דומיא דערים מצורות –

We require that it be similar to fortified cities

Overview

The גמרא explained that even if we maintain דמי כמקרקעי, it is still understood why if קנה מטלטלין לא קנה בעבדים, because the קרקע that can create קנין must be similar to the מצורות, from which we derive קנין. However, עדים מצורות, since they move, are not similar to the קרקע, therefore they cannot be considered as קרקע for קנין. The question arises if עבדים are not considered as קרקע to create a קנין, then they should be allowed to be acquired through קנין. However we learnt in this ברייתא that Our תוספות resolves this difficulty. **החזיק בקרקע לא קנה עבדים -**

anticipates and resolves an apparent difficulty:

And when he made a חזקה in the קרקע he is nevertheless not קונה the קרקע; when seemingly he should be קונה the קרקע since עבדים are not considered עבדים; in regards to creating a קנין. They should (at least) be נקנה באגב.

responds; the reason why **החזיק בעבדים לא קנה קרקע** is -

משום דאין קרקע נקנית באגב:

because קרקע cannot be acquired through אגב². It is true that עבדים cannot create a קנין because they are not similar to מצורות; but nevertheless they are considered like קרקע and therefore cannot be acquired through קנין, since only מטלטלין can be נקנה through אגב but not קרקע³.

Summary

עבדי כמקרקעי (according to the מ"ד that קנין אגב through נקנה עבדים cannot be acquired through אגב), for קנין אגב cannot be acquired through קרקע (דמי).

Thinking it over

How do we know that קרקע is not נקנה through אגב קנין?

¹ See previous תוספות ד"ה אגב.

² It is evident from this תוספות that the ruling of שמואל concerning מכר לו עשר שדות וכו' is not on account of (הלכות חזקה) but rather it is a ruling in אגב.

³ See 'Thinking it over'.