

Is there a doubt, if he sold it to one — מכרן לאחד בבת אחת מיבעיא —

OVERVIEW

The **ברייתא** taught that if the debtor sold all his fields to one person (or if he sold it to three people simultaneously), then כולן נכנסו תחת הבעלים. The **גמרא** is attempting to understand under what circumstances was it sold לאחד. The **גמרא** argues that it cannot be discussing a case where he sold the three fields לאחד simultaneously, for then is obvious that כולן נכנסו תחת הבעלים; for if when he sold it to three people (where it is possible that one preceded the other) the rule is כולן נכנסו תחת הבעלים, then certainly if מכרן לאחד, that כולן נכנסו תחת הבעלים. Our תוספות will argue that this 'certainty' is not necessarily so.

השתא לא אסיק אדעתיה טעמא דאי שתקת¹ -

It did not enter the mind of this questioner, **the logic of 'if you remain silent'**. If this מכרן לג' would have known of the אי שתקת argument, he would not have assumed that if מכרן לאחד it is כולם נכנסו תחת הבעלים (and the ניזק cannot be refused the עידית), then certainly by מכרן לאחד it should be נכנס תחת הבעלים, this is not true. By מכרן לאחד it is possible that the ניזק can be refused the עידית since the אחד can use the אי שתקת argument; saying to the ניזק, either take the זיבורית or I will return the זיבורית to the original owner, and you will be required to collect from the זיבורית.²

anticipates and resolves the concern that perhaps by מכרן לאחד we cannot use the argument of אי שתקת.

דאפילו כתוב הכל בשטר אחד -

For even if the entire sale of all three fields is written on only one שטר, we can still utilize the אי שתקת argument. Even though we can seemingly say, how can the buyer claim, זיבורית fine, and otherwise I will return the זיבורית to the owner; he cannot return the זיבורית without returning the עידית as well, since they are both written on the same שטר. He seemingly has no 'threat' against the ניזק. Nevertheless תוספות claims that it is not so; the claim of אי שתקת is valid even if there is only one שטר; for the buyer -

יכול לכבוש השטר ולהחזיר הזיבורית לבעלים כאלו לא קנה מעולם:

Can conceal the שטר and return the זיבורית field to the original owner, as if he

¹ The אי שתקת claim is used in a case where the buyer purchased the last. If the creditors wish to claim the עידית (since it was purchased last), the buyer can 'threaten' them saying, if you collect כדן (i.e. the מבינונית), then fine; however if you insist on the עידית, I will return to the seller the שטר מכירה of the זיבורית purchase, giving the seller (who is the initial debtor) back his זיבורית field and you will be required to collect from the זיבורית.

² By מכרן לשלשה, however, the purchaser of the עידית does not have the אי שתקת argument to deny the ניזק his עידית; since the purchaser only owns the עידית (not the מבינונית, and not the זיבורית).

never bought the זיבורית field. It is not necessary to threaten to actually return the שטר to enact the אי שתקת argument, it is equally effective if you 'threaten' to conceal the שטר and allow the original owners to take possession of the זיבורית property.

is saying that the פשיטא of the גמרא is valid only if we do not employ the אי שתקת claim. However once we employ the אי שתקת claim, then on the contrary, it is not פשיטא at all that if מכרן לאחד כולן נכנסו תחת הבעלים (if he has sufficient זיבורית) he can threaten the ניזק and force him to collect בינונית, otherwise he will return the זיבורית to the original owner, and the ניזק will be forced to collect from those זיבורית. Therefore we are forced to say that the גמרא did not as yet entertain the idea of אי שתקת.

SUMMARY

The argument of אי שתקת does not require the ability to return the שכירה of the desired field; it is sufficient to merely 'hide' the bill of sale.

THINKING IT OVER

maintains that אי שתקת can be initiated by threatening to (merely) conceal the שכירה and returning the designated field. It is difficult to understand what the גמרא answers (on the ע"ב) that we can avoid the אי שתקת if we are discussing (עיי"ש) יתומים. According to תוספות that he is simply concealing (or even returning) the שטר, it will not be considered as if they bought it מיתת אביהם!³

³ See מהר"ם שי"ף וכו'.