

משהחזיק בה אין יכול לחזור –

Once he took possession of it, he cannot retract

OVERVIEW

אביי taught that if ראוּבן sold a field to שמעון without אחריות, and there appeared challengers to the title of this property, שמעון can nullify the sale¹ if he was not החזיק on this field. However after he was החזיק in the field, the sale is valid.² If the field was sold באחריות then even if שמעון was החזיק, he can still nullify the sale.³ The גמרא clarified that החזיק means (that the purchaser walked around the perimeter of the field) – דייש אמצרי.

בפרק קמא דבבבא מצינא (דף יד,ב) פירש רש"י אף על גב שלא נתן מעות -

explained in the first of פרק מ"מ that even if he did not pay any money for this field, nevertheless once he was מחזיק, the buyer cannot retract.⁴ The sale is valid. The reason he cannot retract is -

דקרקע נקנית בחזקה -

because land is acquired through the קנין of חזקה. The דייש אמצרי is considered a קנין⁵.

פירוש רש"י has a difficulty with תוספות:

וקשה אמאי נקט חזקה יותר מכסף ושטר -

And it is difficult to understand why the גמרא mentions חזקה, rather than money or a note. קרקע can be acquired either through שטר, כסף, or חזקה. Why does the גמרא say if he made a חזקה he cannot be חוזר; the same will apply if he gave money or received a שטר. In any of these three דרכי הקנין, he cannot be חוזר (just as by חזקה).

פירוש רש"י has an additional question on תוספות:

ועוד מאי קבעי מאימת הוה חזקה -

¹ This means that (if he paid any money, he receives it back and) if he did not pay any money he does not owe ראוּבן any money, for the sale is nullified.

² (Even) if שמעון did not pay for the field yet, but if שמעון was החזיק, he owes ראוּבן the money for the field.

³ שמעון is not obligated to wait until the field is confiscated by the עוררים and then sue ראוּבן (if he paid him money [see, however later in this תוספות]), but rather the sale is nullified as of now. See footnote # 1. The reason is that since eventually ראוּבן will be required to return the sale money to שמעון (for it was sold באחריות), there is no point in having the monies exchange hands twice. According to the דאמרי, however, if he was החזיק he cannot nullify the sale even if he purchased it באחריות.

⁴ The buyer must pay the agreed upon sales price to the seller

⁵ רש"י there explains that דייש אמצרי means מתקן גבולות השדה ומגביהם; he repaired and raised the boundaries of the field. תוספות will shortly challenge this interpretation.

And furthermore, why does the גמרא ask 'from when is it considered a חזקה'; what kind of question is this?! When it is an explicit -

מתניתין היא בפרק חזקת הבתים (בבא בתרא דף מב,א) נעל פרץ וגדר -

משנה in פרק חזקת הבתים that a חזקה is by either **locking, breaking an opening in the wall, or fencing** the property. Why is there even a question?!

An additional question:

ועוד מאי קבעי הכא טפי מבשאר דוכתין -

And in addition why ask here 'what is a חזקה'; more that in the rest of the places where the גמרא mentions חזקה. There is never a question what is a חזקה. Why are we asking the question here in this case?

A final question:

ועוד דדייש אמצריה משמע דריסה בעלמא שהולך סביב המצרים -

And finally, the words 'that he tread on its boundaries', indicate merely treading, meaning that he went around the boundaries of the field.⁶ Walking around the boundaries is not a חזקה, because he did nothing to show ownership. A חזקה, as mentioned previously, is if the purchaser was נעל גדר ופרץ, but not merely walking around the perimeter of the field.

ונראה לפרש דמיירי שקנאו בקנין גמור בחליפין או בשטר או בחזקה או רפק בה פורתא -

And the explanation seems to be that the גמרא is discussing a case where he purchased the field with a valid קנין, either חליפין or שטר or חזקה (the חזקה of נעל or he dug (even) minimally in the field (which is also considered a חזקה). Nevertheless, even though he made a גמור קנין, the גמרא maintains that the purchaser is able to retract before the חזיק בה, because -

ודעתו של אדם אף על פי שקנאו בקנין גמור אם יצאו עוררין יכול לחזור בו -

It is in the mind of a person that even though he acquired the property with a קנין גמור, he should nevertheless be entitled to retract the sale if עוררין challenge the ownership. This right of retraction lasts -

כל זמן שלא הלך אמצרי השדה לארכה ולרחבה לראות ענייני השדה -

As long as the purchaser did not go on the boundaries of the field in the length and width to ascertain the condition of the field⁷ -

והיינו דדייש אמצרי -

⁶ See footnote # 5.

⁷ It would seem that this is an implicit understanding; that even though a formal קנין was made, but there is no complete agreement (סמיכת דעת) on the sale until אמצרי.

And that is what the גמרא says that משהחזיק בה refers to **'treading on the boundaries'**. It is not the 'regular' קנין חזקה, but rather the משהחזיק בה relinquishes the buyer's right to retract the sale.

תוספות mentioned that he acquired the field with either שטר or חליפין, חזקה. However תוספות did not mention the option of קנין כסף:

ובלא נתן מעות איירי דאי בנתן מעות איירי -

And we are discussing a case where the purchaser **did not give** the money for the field. It is only in this case that he can retract (even after דייש אמצרי) if he purchased it באחריות. **For if** the גמרא **is discussing** a case where the purchaser gave the money, then -

אפילו באחריות נמי אמאי יכול לחזור בו משהחזיק בה וכי לעולם יכול לחזור בו -

Even if he purchased the field באחריות, **why can he retract** the sale and demand his money back (according to the לישנא קמא) **after he was מחזיק** in the field⁸?! **Is it** right to say **that he can retract the sale forever!?** Once money was paid for the sale, the purchaser relinquishes his rights for חזרה. If he gave the money it is assumable that he is completely satisfied with the sale. It is only where there was (merely) a קנין (and no money exchanged hands) that the purchaser retains the right to retract even after החזיק בה if the sale was באחריות.

תוספות has a question:

ואם תאמר ולימא ליה שקול ארעא בזוזך -

And if you will say; let the buyer say to the seller who wishes to collect his money (in a case where בה⁹ החזיק) **'take the land in lieu of your money'**¹⁰. The seller desires to actualize the sale and receive his money from the buyer. The buyer should tell him you can have the land which is the equivalent value of the money I owe. I am paying the money with the value of the field¹¹. Why can the seller force the buyer to pay money?!

תוספות answers:

ויש לומר כגון שהוזלו -

⁸ It seems from the wording of תוספות [דאי בנתן מעות כו' אפי' באחריות כו' משהחזיק] תוספות that he cannot be חוזר if he paid the money and (דייש אמצרי) החזיק; however if he only paid the money and was not דייש אמצרי ([even] in a case of שלא נח"מ) or if he was דייש אמצרי and did not pay the money [in a case of באחריות] he can be חוזר. See however תוספות who maintains that if נתן מעות he can never be חוזר even if he was not דייש אמצרי. He interprets the word 'משהחזיק' to mean the קנין חזקה עיי"ש וצ"ב.

⁹ This question is (both according to the first לשון by תוספות and) according to the דאמרי (even) by אחריות. See 'Thinking it over' # 1.

¹⁰ According to תוספות the גמרא is discussing case where the buyer did not pay. It is therefore the seller who wants the money; therefore תוספות asks 'ולימא ליה שקול ארעא בזוזך'.

¹¹ See following תוספות ד"ה רב הונא footnote # 7. See אות רמה בל"י.

And one can say; that we are discussing a situation where **for instance** the value of the land **depreciated** from the time of the sale until now. The seller will not be satisfied by taking the field, for now the field is not worth the money that was initially agreed upon. Therefore he wants to receive the full sales price.

תוספות offers an alternate answer:

אי נמי כיון שיצאו עליה עוררין אין שוה כמו שהיתה שוה בשעה שקנאה:

Or you may **also** say; that **since there arose challengers to this field it is not worth now what it was worth when he bought it.**¹² Therefore the seller requests his entire money.

SUMMARY

If a property is purchased with any קנין (besides כסף), the buyer has the right to nullify the sale if יצאו עליה עוררין as long as he was not דייש אמצרי. And if he purchased it באחריות then even if דייש אמצרי it can be nullified.

When the buyer must pay, he can claim שקול ארעך בזוּז (by עוררין), if the value of the property remains the same as at the time of the sale.

THINKING IT OVER

1. לוקח שלא asks that the buyer should claim 'שקול ארעא בזוּז'. Can the לוקח באחריות (after he was דייש אמצרי) claim 'שקול ארעא', or can only the לוקח באחריות (according to the איכא דאמרי) claim 'שקול ארעא'?¹³

2. מוכר שקול ארעא בזוּז asks that the לוקח should say to the מוכר: 'Seemingly the מוכר can respond; you owe me money for the sale; this land that you want to give me is not your land, for it belongs to the עוררין. It is not an acceptable payment.'¹⁴

3. גמרא states that if he was not החזיק, the buyer can be חוזר if עוררין. What would be if the buyer became aware of other deficiencies in the field before he was החזיק (but there were no עוררין), Can he also nullify the sale on account of these deficiencies?

¹² The dispute over the ownership of the field diminishes its sales price.

¹³ See footnote # 9. See נח"מ.

¹⁴ See חי' ר"נ אות דש.