

We remove him from it

מעבירין אותו הימנה –

OVERVIEW

The משנה teaches that if a poor man spread his טלית over the פאה (to acquire it for himself), he may be removed from this פאה (and another עני may take it for himself). תוספות explains that one may do this לכתחילה even though he is taking away something from someone who intended to acquire it.

אפילו רשע לא מיקרי¹ –

He is not even considered a רשע for removing the עני from the פאה –

תוספות anticipates a difficulty:

ואף על גב דעני המהפך בחררה ובא אחר ונטלו נקרא רשע (קדושין דף נט, א ושם דיבור המתחיל עני) –

And even though the ruling is that a poor man who was ‘circling a cake’² and another came and took it from the עני, the one who took it is called a רשע; seemingly here too the עני who placed his טלית over the פאה is an המהפך בחררה and (even though he was not קונה the פאה, nevertheless) whoever removes him from the פאה and takes it away from the עני should be considered a רשע. Why do we say here that it is permitted?

תוספות responds that the ruling of רשע וכו' נקרא רשע is discussing a different case (than here by פאה):

היינו³ משום דאפשר ליה למיטרח ולמיזבן ארעא אחרית⁴ –

This rule of רשע וכו' is called a רשע, applies only to buying a field, because it was possible for the one who bought it (in place of the עני) to trouble himself and to buy another field; therefore he is called a רשע -

אבל במציאה או בהפקר⁵ דליכא למימר הכי⁶ אפילו רשע לא מיקרי –

¹ He is permitted to do so. The expression מעבירין אותו הימנה means you may do it לכתחילה.

² This means he was ‘eyeing the cake; hoping to acquire it. See following footnote # 3.

³ This phrase of עני המהפך בחררה וכו' was used regarding a case where רב גידל was interested in purchasing a field, and רבי אבא (not knowing that רב גידל was interested) bought the field. רב זירא (not knowing that רב אבא was unaware of רב גידל's interest in the field) admonished רב אבא that רב גידל is like an המהפך בחררה and you are the רשע who took it away from him.

⁴ There are always properties available for purchase. Why buy this one when someone else already intends to purchase it.

⁵ This is referring (also) to the פאה here; which is not a מציאה, but it is הפקר for all the עניים.

⁶ Regarding a מציאה one cannot say, go find another מציאה elsewhere (firstly) because מציאות do not abound; (and) similarly by פאה we cannot say go collect other פאה (or another מציאה), for (even if there is other פאה [or another מציאה]) he is losing this פאה for he can collect both this פאה and others as well. However when it comes to purchase, the purchaser is willing to spend only a specific sum, therefore we tell him you can spend that sum and purchase your property elsewhere.

However regarding a מציאה or הפקר where we cannot say this (that he should go elsewhere and find another מציאה or an object of הפקר), he is not even considered a רשע.

[וע"ע תוספות בבא בתרא דף כא: ד"ה מרחיקין]:

SUMMARY

The prohibition of taking away from an עני המהפך בחררה is only by מכירה (where he has the option of buying elsewhere), but not by מציאה והפקר.

THINKING IT OVER

states that by מציאה there is no rule of עני המהפך בחררה (and one is permitted to take it away from him). Why then does our משנה state that in a case of ונפל עליה the rule is that if בא אחר והחזיק בה זה שהחזיק בה ראה את המציאה ונפל עליה זכה, which indicates that it is his בדיעבד if he took it; why does it not state (לכתחילה) as it states מעבירין אותה הימנה concerning פאה?⁷

⁷ See אמ"ה # 49.