

He acquires it by merely seeing it

בראיה בעלמא קנה –

OVERVIEW

The גמרא presently assumes that the משנה added כולה שלי (which is seemingly) unnecessary, in order to teach us that one cannot acquire a מציאה by merely seeing and looking at it. תוספות explains that this cannot be derived from other משניות.

anticipates a difficulty: תוספות

אף על גב דקתני במתניתין¹ (לקמן דף ט,ב) ראה את המציאה ואמר לחבירו תנה לי –

Even though we already learnt in a משנה; ‘if he saw a מציאה and said to his friend give it to me’, the ruling is -

דלא קנה בראיה –

that the speaker **did not acquire** the מציאה through merely seeing it.

וכן ראה את המציאה ונפל עליה (לקמן דף י,א) קתני נמי דלא קני² –

And similarly we learnt in another משנה, ‘if he saw a מציאה and fell upon it’, the משנה rules there also that he did not acquire it. We have two משניות that teach us that ראה is not קונה, why is it necessary for our משנה to teach this rule again (by adding שלי כולה)

responds: תוספות

מצי למדחי כיון דאמר תנה לי³ או שנפל עליה –

We can refute these proofs. Really ראה is קונה; however in those two cases, since he said ‘give it me’ (in the first משנה), or he fell upon it (in the second משנה), by doing either of these two things -

גלי דעתיה דלא ניחא ליה למקני עד שיגיע לידו:

He revealed his intent that he does not want to acquire them (by merely seeing them), until they come into his hand; that is why the ראה is not קונה. However in a case where there is no such intention; where he merely⁴ saw the מציאה and intended to acquire it with ראה alone, perhaps he is קונה. Therefore our משנה teaches that ראה is never קונה.

SUMMARY

¹ See תנא that the תוספות is challenging that which רש"י states in ד"ה בעלמא that the תנא never taught us that only קונה (and not ראה) is הגבהה.

² The fact that in both those משניות the seer does not acquire the מציאה proves that לא קני ראה. Otherwise, if מציאה is קונה, why does not the seer retain the מציאה.

³ See ‘Thinking it over’.

⁴ See תוס' that this gives a better meaning to the phrase 'בעלמא' ראה.

Our משנה teaches us that ראייה לא קני even when he did not take any action that would indicate that he wants to acquire the מציאה by means other than ראייה.

THINKING IT OVER

How does saying לי תנה indicate that he did not intend to be קונה the מציאה through ראייה?⁵ What else should he have said?! He merely wanted his friend to give him the מציאה, which he was קונה through ראייה!⁶

⁵ See footnote # 3.

⁶ See תוספות הרא"ש.