

## **דאגר אגורי לדוולא ואתא מטרא פסידא דפועלים –**

**He hired workers to irrigate, and rain came; it is the workers' loss**

### **Overview**

The גמרא cites a ruling of רבא; if one hired workers to irrigate his field (the following day), and it rained, so the field needed no further irrigation; it is the loss of the workers (the owner is not required to pay them). תוספות reconciles this ruling of רבא with a seemingly contradictory ruling.

משמע הכא דהלכה כרבא דליכא מאן דפליג -

**It seems from the גמרא here that the הלכה is like רבא** (that it is the loss of the workers), **since no one argues** with רבא.

תוספות asks:

**ותימה דאמר במי שאחזו** (גיטין דף עז, ב ושם דיבור המתחיל רבה) **ההוא דאמר ליה לאריסיה -**

**And it is astounding! For the גמרא relates in שאחזו**; פרק מי שאחזו; there was **that person who said to his sharecropper -**

**כולי עלמא דלו תלתא ושקלי ריבעא ואת דלי ארבעה ושקול תלתא לסוף אתי מטרא -**

**“The entire world (all other sharecroppers) irrigates three times and takes a fourth of the crops; but you should irrigate four times and receive a third of the crops”; eventually it rained,** and there was no need for the fourth irrigation<sup>1</sup> -

**אמר רב יוסף הא לא דלה רבה אמר הא לא אצטריך -**

**רבה ruled; but he did not irrigate** (so he cannot take a third of the crops); **רבה ruled, but the field did not require** irrigation (so he should receive a third) -

**ומפרש<sup>2</sup> טעמא דרבה משום דמשמיא רחימי עליה<sup>3</sup> ומוכח התם דהלכה כרבה -**

**And the explanation of s'רבה reasoning is because, they had mercy on the אריס from heaven, and it is evident in the גמרא there that the הלכה is like רבה;** this contradicts the ruling of רבא here, who says it is the loss of the workers.<sup>4</sup>

תוספות answers:

**ויש לומר דדוקא באריס שיורד לקרקע באריסות נותן לו השליש אפילו אתי מיטרא -**

**And one can say; it is only by an אריס who cultivates the land as a sharecropper, that the owner gives him a third even if it rained, because the**

<sup>1</sup> See ד"ה אתא there רש"י.

<sup>2</sup> This reason is not found in the גמרא (or רש"י ותוס' there). See 'Thinking it over'.

<sup>3</sup> It is as if ה' irrigated the field on behalf the אריס for the fourth time, so he receives the third as negotiated.

<sup>4</sup> We do not say that ה' did the irrigation on behalf of the workers, so they should receive their pay.

stipulation, that he should irrigate a fourth time, was made on account -

**מספק דשמה לא אתי<sup>5</sup> -**

**Of a doubt** by the owner **that perhaps it would not** rain; in that case he must give him a third -

**כמו שאר אריסי דשקלי ריבעא אפילו אתי מיטרא לא<sup>6</sup> יצטרך לדלות תלתא -**

**Just like the other אריסי who take a fourth even if it rained and the אריס will not need to irrigate even three times;** this is regarding אריסות –

**אבל הכא פועלים שאינם אריסין אלא נותן להם שכירות על המלאכה<sup>7</sup> -**

**However here, the workers are not sharecroppers, but rather he pays them for their work, so therefore -**

**אפילו התחילו במלאכה אין להם ליטול אלא לפי מה שעשו -**

**Even if they began to work (and it started to rain) they can only take according to what they did -**

**כיון דלא נחתי לארעא להיות בחזקת אריסין:**

**since they did not enter the field with the assumption of becoming אריסים.**

## **Summary**

Regarding irrigation and rain; the workers receive only according to their work; while אריסים receive whatever was negotiated.

## **Thinking it over**

1. Why was it necessary for תוספות to write<sup>8</sup> עליה דמשמא רחימי וכו'?
2. What would be the ruling if one contracted to do the irrigation (קבלן); where on one hand he has no share in the produce (more like a פועל than an אריס), but on the other hand they are not paid for their work, but rather for the job (more like an אריס than a פועל)?

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<sup>5</sup> The owner wanted to make sure that his field would be properly irrigated (for which he was offering a third), so he told the אריס to irrigate it four times; however when it rained there was no need to irrigate it a fourth time, but the owner nevertheless has to pay him because of their agreement that the field should be properly irrigated, just as it is by a regular אריס (for his fourth) as תוספות continues.

<sup>6</sup> Others amend this to ולא (instead of לא).

<sup>7</sup> A sharecropper (as opposed to a worker) does not get paid according to his work, but rather according to what the field produces (he is somewhat like a partner with the owner); his percentage depends on what was negotiated. The agreement to irrigate four times was not that the owner wanted him to do it an extra time, rather he wanted to be sure that his field would be properly irrigated and for that he is willing to pay a third. The field was properly irrigated and therefore the אריס receives a third. A worker, however, has no interest in the field; the owner is paying him only for his work; no work no pay!

<sup>8</sup> See footnote # 2.