

## עייל ונפיק אזוזי לא קני –

### Entering and leaving for the money; he did not acquire it

#### Overview

רבא ruled that regarding a sale, if the seller is impatient to receive (full) payment, the sale is not valid (unless the seller receives full payment). תוספות clarifies the case.

נראה דאייירי אפילו משך<sup>1</sup> המקח -

It is the view of תוספות that even if the buyer ‘pulled’ the sold item, nevertheless the buyer does not acquire it, if the seller is עייל ונפיק אזוזי -

אם לא פירש בשעת מכירה -

Unless the seller explicitly said at the time of the sale -

משיכה זו תהא קונה חפץ זה וזוזי ליהו הלואה גבאי-

‘This משיכה should acquire this object (for the buyer), and the money owed for this object shall be a loan by me’ (the buyer owes me the money, but the sale is final) -

כמו בשטר דאמר לעיל אני פלוני מכרתי כולי -

Just like by buying a field with a שטר where רשב"ג stated previously that the seller writes in the שטר, ‘I so-and-so sold, etc. this field to him, for this amount of money and he paid me partially and the rest is a loan, which he owes me.

דאין סברא<sup>2</sup> לומר דלענין מי<sup>3</sup> שפרע<sup>4</sup> מיירי:

It is illogical to say that no משיכה was made and this ruling is regarding whether he receives a מי שפרע<sup>5</sup> or not.

#### Summary

An item is not acquired if the מוכר is עייל ונפיק אזוזי even if there was a משיכה.

#### Thinking it over

<sup>1</sup> מטלטלין (pulling the item bought) is one method by which one acquires (movable objects)

<sup>2</sup> See ‘Thinking it over’.

<sup>3</sup> מי שפרע, literally, ‘whoever took retribution’, refers to a curse which is given in a case where מטלטלין was bought and paid for, but no משיכה was done and either party reneges on the sale. Legally the sale is not binding since no משיכה was made and the חכמים instituted that מטלטלין are acquired only with משיכה (or הגבהה). Nevertheless since it was paid for (and התורה it is a proper קנין), so whoever reneges on the deal is subject to this curse. It basically states whoever punished the דור המבול, etc. (meaning ה), should punish whoever does not keep his word.

<sup>4</sup> If we assume that there was no משיכה, so there is no issue whether or not the item is acquired (it is certainly not acquired); it will be necessary to say that the issue here (when the עייל ונפיק אזוזי מוכר is) is only whether there is a מי שפרע or not. However if there was a משיכה then the issue here is whether the לוקח is קונה or not.

<sup>5</sup> See footnote # 2.

On one hand תוספות merely writes, 'אין סברא', but does not explain explicitly why the גמרא is not discussing a case (regarding a שפרע מי) where there was no משיכה, but on the other hand it seems obvious that we are not discussing regarding a מי שפרע, since the גמרא states that he is either קני לא (if עייל ונפיק אזוזי) or קני (if he is not עייל ונפיק אזוזי); it seems quite evident from the גמרא that we discussing קנין, but not שפרע מי. Why did not תוספות use this proof?!