

תא שמע דאמר ריש לקיש הגודרות אין להם חזקה –

Come, hear; for ר"ל said; the herds have no חזקה

OVERVIEW

חמא queried; if there was a slave which belonged to the husband and now he is in the possession of the woman with a גט written on his hand, do we assume that the husband gave her the עבד (as גירושין), or that the עבד came on his own accord and she is not מגורשת. The גמרא resolved this query from a ruling of ר"ל that possession of גודרות does not presume ownership, for they can go of their own accord.¹ The same is regarding this עבד, that we have no reason to assume that the husband gave her the עבד; he could have gone to her on his own. תוספות discusses the necessity of (citing) this ruling by ר"ל.

פירוש² לאלתר אלא עד ג' שנים יש להם חזקה כדאמרינן בחזקת הבתים (בבא בתרא דף לו,א) –
The meaning of חזקה גודרות אין להן חזקה is that there is no **immediate חזקה**; however, **there is a חזקה** for גודרות, but **only after three years** as רבא states in **פרק חזקת הבתים** –

תוספות asks:

ואם תאמר מתניתין הוה ליה לאתויי –

And if you will say; the גמרא should have brought the משנה to resolve the query of רב"ה -

דתנן התם (דף כח,א) העבדים חזקתן ג' שנים מיום ליום אבל לאלתר לא³ –

For the משנה teaches us there (in ב"ב) 'the חזקה of עבדים is three complete years', however there is no immediate חזקה by עבדים. This could have resolved the query of רב"ה (just as the statement of ר"ל)⁴ –

תוספות has an additional question:

ועוד מאי קא משמע לן ריש לקיש מתניתין היא –

And furthermore what is ר"ל teaching us with his ruling that חזקה הגודרות אין להם חזקה

¹ גודרות (since they can move on their own) are different than other מטלטלין (inanimate moveable objects) where possession is a presumption of ownership (immediately).

² See (bracketed end of) footnote # 4.

³ It is preferable to cite a משנה, rather than to cite a statement of an אמורא.

⁴ The fact that the עבד is in her possession is no indication that he gave it to her (that it is hers). [תוספות prefaced this question by stating that גודרות have a חזקה after three years, for otherwise there would be no question, for it was necessary to cite ר"ל that she is never מגורשת even if she has the slave for three years (see גרש ירחים).]

[לאלתר]; **it is a משנה** that there is no immediate חזקה by עבדים, and therefore by extension there is no חזקה by גודרות for they move on their own just like עבדים.

תוספות rejects a possible resolution:

ודוחק לומר כמו שפירש הרב רבי יהודה מקורבי"ל דריש לקיש אתא לאשמועינן –

And it is unwieldy to say as the ר"י מקורבי"ל explained that ר"ל comes to inform us -

אפילו בכהאי גוונא דאיירי הכא שהגט כתוב על ידו או על קרן של פרה –

That even in such a manner as we are discussing here where the גט is written on the slave's hand or on the horn of the cow -

דאיכא הוכחה קצת דיהביה לאשה אפילו הכי אין לה חזקה⁵ ולהכי מיייתי מריש לקיש⁶ –

Where there is some evidence that he gave it to the woman, nevertheless she has no חזקה, and therefore the גמרא cites from ר"ל to resolve the query –

תוספות rejects this explanation of the ר"י מקורבי"ל:

דאם כן הוה ליה לפרושי בהדיא כיון דלא איצטריך לאשמועינן אלא בכי האי גוונא –

For if this is indeed so (that ר"ל is discussing a case where the name is written on the עבד or פרה), he should have clearly stated it, since his ruling is only necessary in this manner; however, since ר"ל said סתם that להם חזקה, that means he is discussing all cases even when nothing is written on them. The original question remains –

תוספות answers:

אלא יש לומר דממתניתין לא שמעינן גודרות –

Rather one can say; that from our משנה regarding עבדים we would not know that חזקה לאלתר, even though עבדים do not have a חזקה לאלתר, even though גודרות have no חזקה לאלתר,

דהוה אמינא דוקא עבדים דבני דעת ועיילי מנפשיהו –

For we would have said only עבדים have no חזקה לאלתר for they have intelligence and they can enter on their accord into someone else's property -

אבל גודרות אין דרכם לילך לבית איש נכרי⁷ –

However, regarding גודרות it is not usual for them to go to a stranger's house -

⁵ The novelty of חזקה over the הגודרות אין להן חזקה משנה of ליום מיום שנים ג' שנים חזקתן is specifically in a case where there is an indication that it belongs to the woman (since he wrote the name on the עבד or the פרה), therefore one may have thought that in such a case the rule of the משנה does not apply. ר"ל teaches us that even in such a case there is no חזקה.

⁶ The גמרא could not have resolved it from the משנה, because in our case there is some indication that it belongs to the woman (her name is written on the עבד), therefore the ruling of ר"ל was brought because he is discussing this very case (according to the ר"י מקורבי"ל).

⁷ This explains why ר"ל needed to make his ruling because we cannot derive it from עבדים.

ולחכי⁸ הוה אמינא הכא שהגט כתוב על ידו ומוכח קצת שהוא שלה יש לה חזקה –

And therefore we may have thought here where the גט is written on the slave's hand and there is a slight indication that it is hers, so it should be a חזקה –

להכי מייתי מגודרות דאין להם חזקה⁹ –

Therefore the גמרא cites ר"ל of גודרות that they have no חזקה –

אף על פי שיש הוכחה דלא עיילי מנפשיהו כמו עבדים:

Even though there is evidence that it belongs to the possessor, since גודרות do not enter on their own like עבדים do, similarly by the גט the slight evidence (that her name is written on the עבד) is not sufficient to be considered a חזקה.

SUMMARY

A slight indication that it belongs to the מוחזק (such as גודרות [which usually do not enter a stranger's field] or a גט written on the slave's hand), is not sufficient to render it a חזקה.

THINKING IT OVER

עבד explains that by the עבד even though her name is written on the עבד, nevertheless it is insufficient to be considered a חזקה. What would be in a case where it was his פרה and now it is in her possession with the גט written on the horn, is she מגורשת (since there are two things in her favor; her name is on it and it is גודרות [as opposed to עבדים] who do not usually go to strangers), or not?¹⁰

⁸ explains now why it was necessary for the גמרא to cite ר"ל and not the משנה regarding עבדים (even though here we are discussing עבדים and not גודרות).

⁹ There is a greater similarity between the גט written on the עבד and גודרות than between this גט and the עבד of the משנה. Both by גודרות and גט עבד there is an indication that it belongs to the מוחזק (by גודרות because they will usually not go to a stranger, and by גט עבד because her name is written on it). However by עבד in the משנה there is no indication at all that he belongs to the מוחזק since the עבד goes wherever he wants, even to a stranger. Therefore the גמרא cites ר"ל that a קצת הוכחה is not sufficient for a חזקה and it must be a הוכחה גמורה.

¹⁰ See נח"מ.