

## החזיק בזרעים קנה עציץ –

### He took possession of the plants, he acquired the flowerpot

#### Overview

The גמרא rules that if one sells a flowerpot with plants in it, as soon as he makes a חזקה in the זרעים he acquire the עציץ. Our תוספות discusses whether the מוכר is required to say אגב וקני in order for the buyer to acquire the עציץ.

צריך עיון אם צריך לומר אגב וקני כמו בעלמא<sup>1</sup> כדאמרין בפרק קמא דקידושין (דף כז, א) -  
**Contemplation is required to decide whether it is necessary for the seller to say, 'אגב וקני', just as this requirement is elsewhere, as the גמרא rules in the first פרק of מסכת קידושין**

או שמא הכא לא צריך דכיון דצריך עציץ לזרעים<sup>2</sup> בטל אגב זרעים -  
**Or perhaps here it is not necessary that he be told אגב וקני, for since the עציץ is necessary for the זרעים, the עציץ is בטל to the זרעים –**

וכן גבי שטר<sup>3</sup> כיון שהחזיק בקרקע נקנה השטר בכל מקום שהוא -

**And similarly by שטר where the rule is, as soon as he takes possession of the land he acquires the שטר wherever it is;** the same query applies, whether the seller is required to tell him אגב וקני regarding the שטר, or he is קונה the שטר even without אגב וקני -  
**ושמא<sup>4</sup> התם לא בעינן אגב משום דשטר אפסרא דארעא<sup>5</sup> הוא:**

**And perhaps there (by the שטר) we do not require that the מוכר say אגב, because**

<sup>1</sup> One can acquire מטלטלין (movable objects) אגב קרקע; meaning that if the grantor/seller wants to transfer to the recipient both קרקע (real estate) and מטלטלין, the recipient can acquire the מטלטלין, by just making a קנין for the קרקע, and the מטלטלין are transferred to him automatically; provided that the grantor/seller says to him acquire this קרקע with a קנין and acquire the מטלטלין אגב קרקע. Seemingly here too he is קונה the עציץ (מטלטלין) by making a חזקה in the זרעים, provided that the seller tells him אגב וקני.

<sup>2</sup> In this case the זרעים require the עציץ to grow, and additionally when he gives him the זרעים (to make a חזקה) he must give him the עציץ as well; therefore this case is different from other קניני אגב where the קרקע has no need for the מטלטלין; however here since they go together it is understood that he is giving him the זרעים with the עציץ.

<sup>3</sup> קידושין כז, א. The גמרא there teaches that a scribe may write a bill of sale for the seller (of קרקע) even though the buyer is not there (since it is to the detriment of the seller that he is no longer the owner of this property). The גמרא concludes that as soon as the buyer makes a חזקה on the קרקע, he also owns the שטר (which is his deed to the property).

<sup>4</sup> This 'ושמא' can be interpreted in two ways; either תוספות is explaining why by שטר (also) אגב may not be required (as 'ושמא' explained regarding עציץ), or תוס' is suggesting that even if אגב is not required by שטר, it still may be required by עציץ, since a שטר is more closely related to the קרקע than the עציץ to the זרעים, for a שטר is דארעא. [One can always transfer the זרעים into a different עציץ.] See מים חיים. See 'Thinking it over'.

<sup>5</sup> When one sells a horse with its reins it is obvious that the reins are included in the sale, for otherwise one cannot lead the horse; similarly a field without a שטר (deed) is worthless, for anyone can dispute its ownership.

the שטר is the 'reins of the land'.

### **Summary**

שטר and עציץ is required by אגב וקני is uncertain whether תוספות

### **Thinking it over**

Is it possible to say<sup>6</sup> that by עציץ there is more reason to assume that אגב is not required, even more so than by שטר?<sup>7</sup>

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<sup>6</sup> See footnote # 4.

<sup>7</sup> זיו הים and עיין תפארת יעקב