

## הא דטעו הא דלא טעו –

### Here, where they erred; here where they did not err

#### Overview

The גמרא reconciles the two rulings of רב נחמן. In a case where the בי"ד erred (in a sixth) in their assessment, their sale is nullified (since they erred); however if בי"ד did not err, but the יתומים (who had their estate divided by an אפוטרופוס of בי"ד) are not happy with the site of their portion, they cannot protest. תוספות offers an alternate solution to the contradiction.

-----  
הוא הדין דמצי למימר הא דטעו בשתות והא דטעו בפחות משתות -

The גמרא **could have just as well answered; here** (where we say the sale is void) is **where their error** in the assessment **was one sixth** of the true value, **and here** where the יתומים cannot protest is **where the error was less than a sixth** of its true value.

תוספות explains the advantage of this reconciliation:

**ולא איצטריך לומר יכולין למחות<sup>1</sup> ברוחות:**

**For now it will not be necessary to say, they can protest regarding the site location.**

#### Summary

We can reconcile the two rulings of ר"נ that by טעו בשתות the sale is בטל, but by פחות פחות the division remains.

#### Thinking it over

According to תוספות that רב נחמן rules (regarding יתומים) that they cannot be מוחה, this indicates that שמואל (who argues with ר"נ) maintains that even בפחות פחות the יתומים can be מוחה. The question is that שמואל does not agree even with the חכמים (who argue with רשב"ג) for they say בטל מכרן only by שתות, but not by פחות פחות<sup>2</sup>!

---

<sup>1</sup> According to the answer of the גמרא (that לא טעו, and we are discussing ברוחות) it turns out that the dispute between שמואל (ר' נחמן אמר) and ר' נחמן (דידיה) is in a case of רוחות, and שמואל will maintain that even if it was a טעות טעות in the value, the יתומים can dissolve the חלוקה. This seems a little far-fetched. However according to תוספות answer that the מחלוקת between שמואל and ר"נ is where there was a טעות בשומא (less than a sixth), therefore we can better understand the view of שמואל.

<sup>2</sup> See נחלת משה and מהרש"א.