

For instance one has witnesses, etc. - כגון דאית ליה סהדי למר כולי -

Overview¹

The גמרא answered that the reason שמעון cannot remove יהודה from the field, in the same manner as he is removing לוי, is because in the dispute between שמעון ויהודה, both have witnesses that it belongs to them, and if יהודה will win his case against לוי, he will be the מוהזק, and שמעון will not be able to dislodge him. However in his confrontation with לוי it is only יהודה who has the witnesses (that ראובן stole the field from שמעון and sold it to לוי illegally). It seems from the גמרא that this answer 'כגון', is something new which the תרצן informs us, however תוספות argues that seemingly we knew all along that שמעון and יהודה have witnesses supporting their claim; why does the גמרא say 'כגון'?!

תוספות asks:

תימה דלא הוה ליה למימר כגון² -

It is astounding! for the גמרא should not have said 'כגון' (for instance) -

דהא מעיקרא נמי ידעינן דאית ליה לשמעון סהדי דזידיה היא -

For initially we also knew that שמעון has עדים that it belongs to him -

כדקתני³ ראובן שגזל שדה משמעון⁴ ואי לית ליה לשמעון סהדי שגזלה ראובן ממנו -

As the ברייתא states, 'שמעון who stole a field from ראובן', and if שמעון has no עדים that ראובן stole it from him -

אנן היכי ידעינן שגזלה ומכח מה הוא מערער⁵ -

How do we know that ראובן stole it, and on what basis is שמעון protesting the occupation of the field. This proves that we always realized that שמעון has עדים -

ויהודה נמי על כרחך אית ליה סהדי דאי לאו הכי מאיזה כח מערער -

And perforce you must say that יהודה also has עדים that he owns this field, for otherwise, what is יהודה's basis to protest לוי's occupation of the field. We have thus proven that even initially we were aware that both שמעון and יהודה have עדים supporting their

¹ See 'Overview' to the previous תוס' ד"ה וכיון.

² The term 'כגון' indicates that the גמרא is giving us a new scenario in this case, when in fact we always knew this, as תוספות goes on to explain.

³ This does not say in the actual ברייתא, however רב ששת interpreted the ברייתא in this manner.

⁴ The ברייתא is teaching us the ruling in a case where ראובן stole a field from שמעון; the only way we can know that ראובן stole a field from שמעון is if שמעון has עדים that it belonged to him before ראובן took possession (and ראובן has no proof of ownership at all).

⁵ The ruling is that שמעון cannot testify against יהודה since he has a vested interest that the field should remain by לוי so that he (שמעון) will later be able to dislodge לוי. However, if שמעון has no עדים that he owns it, how can he protest against לוי occupying this field?!

claim that they are the owners, so why does the תרצן say 'כגון'?!⁶

והכי הוי ליה למימר כיון דאית ליה סהדי למר כולי ומאי סלקא דעתיה דמקשה⁶ -

Rather this is what the תרצן should have said, 'since this one has עדים etc. (and the other one has עדים)', so what did the questioner even think?!

תוספות dismisses a proposed solution:

ואין לומר דמעיקרא סלקא דעתיה דאיירי כגון דאית ליה ליהודה עדים דשל אבותיו היא -

And one cannot say that originally we assumed that this is a case where יהודה has witnesses that it belonged to his parents -

ולשמעון הנגזל אית ליה סהדי דאכלה שני חזקה וטעין מיהודה זבנה⁷ -

And שמעון, whose field was stolen by ראובן, has witnesses that he (שמעון) consumed the produce of this field for the three years required for a חזקה, and claims that he bought it from יהודה, this would seemingly answer our question. However תוספות maintains that we cannot understand the גמרא in this manner -

דאם כן מאי קאמר בהאי זכותא⁸ דמפיק לה מלוי ליפקה מיהודה -

For if indeed this is so (that יהודה only has עדים that it belonged to אבותיו), what is this which the גמרא states, 'with the same power that שמעון can dislodge לוי, he can dislodge יהודה', but according to the proposed solution this is not so -

הא בהאי זכותא דמצי לאפוקי מלוי לא מצי לאפוקי מיהודה -

For with the power that he can dislodge לוי, he cannot dislodge יהודה -

דבעדי גזילה המעידין שגזל ראובן ממנו מצי מפיק לה מלוי שבא מכח ראובן -

For with the witnesses of theft, who testify that ראובן stole from שמעון, he (שמעון) can dislodge לוי whose claim to ownership) comes from his purchase from ראובן, and when the witnesses will testify to the theft, ראובן and thus לוי, no longer have any claim to the field -

⁶ תוספות is asking two questions. Firstly why say כגון, since we always assumed that both שמעון and יהודה have עדים that it belongs to them (as תוספות just proved). Secondly, how could the מקשן ask that the same way שמעון can dislodge לוי, he should dislodge יהודה (and even if we say that the גמרא means that שמעון can dislodge יהודה just as he can dislodge לוי [even if it is not in the same manner]), but that is not true, since against לוי he has witnesses that לוי bought his stolen field from ראובן, however regarding יהודה (who, if he wins the case against לוי, will be in possession of the field), שמעון cannot dislodge יהודה, for they both have (contradicting) עדים and the land will remain in the possession of יהודה who is the מוחזק.

⁷ Since יהודה merely has witnesses that it belonged to his parents and שמעון claims that he (subsequently) bought it from יהודה and has חזקה שני, so obviously שמעון will win the case, so why is שמעון concerned that יהודה may win the case from לוי, since in any event שמעון will be able to dislodge יהודה? This would explain the גמרא question. Therefore the תרצן answered that we are discussing a situation where the עדים of שמעון and יהודה are contradicting each other (each set of עדים testify that שמעון/יהודה own the field currently). The result will be that יהודה will retain the field (if he wins against לוי and is currently the מוחזק). However, תוספות negates this solution. See 'Thinking it over' # 1.

⁸ תוספות now emphasizes that the גמרא when it states זכותא, it does not mean just as he can remove לוי he can remove יהודה (albeit in a different manner), but rather it is apparent from the language בהאי זכותא וכו', that the manner of removing לוי ויהודה are identical. תוספות therefore asks that they are different methods and are not identical.

ומיהודה לא מצי מפיק לה אלא בעדי חזקה -

However גמרא **cannot dislodge** יהודה, **only with** עדי חזקה, so how can the גמרא ask that he can remove יהודה, just as he can remove לוי.⁹

answers: תוספות

ונראה לרבינו שמשון בן אברהם דסלקא דעתין דמעיקרא דיהודה בעי לאפוקי מלוי -

And it appears to the רשב"א that initially the גמרא assumed that יהודה wanted to remove לוי from the field -

משום דאית ליה סהדי דראובן מכר לו וללוי אין עדים ובא שמעון להעיד ללוי דשל לוי היא -
Because יהודה had עדים that ראובן sold the field to him (יהודה), however לוי has no עדים that ראובן sold it to him (he merely claims it), and שמעון is coming to testify on behalf of לוי that it belongs to לוי -

ומשום הכי פריך כיון דמסהיד דהאי ארעא דלוי היא היכי מפיק לה מיניה -
So therefore the גמרא initially asked, since שמעון testified that this land belongs to לוי, how can he dislodge him -

והוה מצי לשנויי דלא מסהדי בהאי לי שנא דלוי היא אלא דאמר דראובן מכרה ללוי -
And the גמרא could have answered that he does not testify with this language, 'that it belongs to לוי', but rather שמעון stated that ראובן sold it to לוי; the גמרא could have answered that -

אלא דעדיפא מינה משני¹⁰ -

However that גמרא offered an even better answer -

והשתא פריך שפיר דבהיא זכותא דמפיק לה מלוי ליפקה מיהודה -
So now (that both לוי and יהודה claim that they bought it from ראובן), the גמרא properly asks that with the same power that שמעון can remove לוי, he can remove יהודה -

דשניהם באין מכח ראובן ואם יביא שמעון עדים דראובן גזלה ממנו מצי לאפוקי מתרווייהו:
Since they both (לוי ויהודה) are coming from the strength of ראובן, so if שמעון will bring עדים that ראובן stole it from him he will be able to remove both of them (לוי ויהודה).¹¹

⁹ The question of תוספות is how can the גמרא ask that יהודה ליפקה מיהודה, when we know that they are two different claims.

¹⁰ שמעון testified that he knows that it certainly does not belong to יהודה. This way לוי does not enter into the equation at all. See 'Thinking it over' # 2.

¹¹ The גמרא answered וכו' למר וכו' ליה סהדי; כגון דאית ליה סהדי ליה סהדי למר וכו' ליה סהדי; that יהודה has witnesses that it is his (but not that he bought it from ראובן), so therefore we can no longer say ליפקה מיהודה. The term כגון is appropriate since we are changing the scenario, where initially we assumed that יהודה claimed that he bought it from ראובן, but now we are saying that יהודה claims it was always and currently his; no connection to ראובן.

Summary

ראובן and יהודה both claim that they bought it from לוי.

Thinking it over

1. The proposed solution of the 'ואין לומר' was that יהודה claimed that it was של שמעון and אבותיו claims that he bought it from יהודה.¹² In this scenario, how is שמעון testifying on behalf of לוי against יהודה. He cannot claim that יהודה is not the owner, since שמעון's claim of his ownership is that he bought it from יהודה; so how is שמעון supporting לוי?!¹³

2. תוספות writes that the גמרא could have answered that שמעון merely stated that לוי bought it from ראובן, but not that it belongs to לוי; however the גמרא offers a better answer.¹⁴ Since the גמרא is עדיפא מיניה משני; why does תוספות mention his answer at all?! Is there any advantage in תוספות's proposed answer?

¹² See footnote # 7.

¹³ See מהודרא בתרא and מהרש"א.

¹⁴ See footnote # 10.