

That he never owned land

דלא הוה ליה ארעא מעולם -

Overview

The גמרא concluded that the reason the seller can testify on behalf of the buyer by מטלטלין is that we are discussing a case where there are witnesses that the seller never owned any land and therefore he could not have been משעבד his קרקע אגב. מטלטלין אגב קרקע משעבד. There is therefore no concern that the מלוה of the seller will collect these מטלטלי.

מכאן תשובה לאומרים דמה שנהגו לכתוב בהרשאות¹ ונתתי לו ארבע אמות בחצרי -

From the גמרא here (which states that witnesses testify that he never owned land) there is a rebuttal to those that say regarding this which is customary to write in שטרי הרשאות, 'and I gave him four אמות in my courtyard' and אגב the קרקע I am also giving him the item in dispute; we write this in the שטר הרשאה -

אף על גב דלית ליה קרקע משום דאין לך אדם שאין לו ארבע אמות בארץ ישראל -

Even though in reality the מרשה has no land. The reason we do this is because there is no person who does not own at least אמות ד' in א"י -

דקרקע² אינה נגזלת³ אי נמי דאין לך אדם שאין לו ד' אמות לקברו⁴ -

Since land cannot be stolen, or you may also say that there is no person who does not have the right to אמות ד' to bury him. This is how the 'אומרים' explain why we can write in the הרשה that בחצרי לי ד"א בחצרי that הרשה -

דהכא משמע דאפשר שאין לו קרקע⁵ -

For here it seems that it is possible that a ישראל has no קרקע at all.

וכן משמע בפרק שלישי דקדושין (דף ס,ב עיין שם) הרי את מקודשת לי על מנת שיש לי קרקע -

And so too it seems in the third פרק of קדושין, מסכת קדושין, where the משנה states in a case where a man said to a woman, 'you are betrothed to be with the stipulation that I have land', the rule is that she is מקודשת only if he has land, but not if he does not -

משמע דאפשר שאין לו -

¹ A הרשאה is a 'power of attorney'. In certain instances where one wishes to send an agent to claim on his behalf; the sender (מרשה) must grant the agent (מורשה) the ownership over the item in question. This is usually done through קנין. The מרשה states that he is granting the מורשה some of his קרקע and אגב the קרקע he is granting him the ownership of this item. Otherwise, the other party may refuse to deal with the agent, saying לאו בעל דברים דידי את.

² Land is always considered to be in the possession of the original owner, not the thief who may be occupying the land.

³ Our ancestors owned the land of א"י, so therefore we, as rightful heirs, own part of א"י, regardless who may be living on the land.

⁴ See 'Thinking it over' # 1.

⁵ If every ישראל has some קרקע what is the answer that the עדים testify that the seller never had land; but according to these 'אומרים', everyone has land. This proves that it is indeed possible not to have land, and we need to understand how the הרשאות are effective.

This implies that it is possible that he has no land –

תוספות rejects a possible answer:

ודוחק להעמיד בגר שאין לו חלק בארץ⁶ -

And it is improbable to establish (these גמרות) by a convert who has no share in the land –

תוספות has an additional difficulty with the 'אומרים':

ועוד דאם כן לא יעשה אדם שני שטרי הקנאה שהראשון קנה ארבע אמותיו -

And additionally; for if this is indeed so that one is using his ד"א בא"י, the rule should be that a person cannot make two notes of הרשאה, for the first agent already acquired his ד"א, what is he giving to the second agent; he has no more קרקע?!⁷

In summation תוספות rejects the notion that the reason one writes ד"א בהצרי is because we assume he has land (either in א"י, or to be buried in). The question therefore arises how do people, who have no land, write הרשאות.

ונראה לרבינו תם דהיינו טעמא כיון שמודה שיש לו קרקע וחוב הוא לו -

And it is the view of the ר"ת that this is the reason why one may write לו ונתתי לו (even though he owns no land), for since he admits that he has land and this admission is detrimental for him -

שהרי על ידי קרקע מקנה לחבירו⁷ -

Since through the land he is transferring his assets to his friend, so therefore -

אפילו יש כמה עדים שמכחישים אותו הרי הודאת בעל דין כמאה עדים⁸ -

Even though there are many witnesses who contradict him and testify that he owns no land, nevertheless the rule is the admission of a litigant is like a hundred witnesses –

תוספות responds to an anticipated difficulty:

ולא חיישינן למיחזי כשיקרא כדאשכחנא (לקמן דף קמט,א) גבי איסור גיורא -

And we are not concerned that 'it appears like a lie'; this is no concern, as we

⁶ Regarding a convert it is indeed possible that he has no land, since he did not inherit it from his ancestors; however it is very far-fetched to establish these גמרות that they apply only by a גר (which is very uncommon).

⁷ See footnote # 1. The מרשה is granting the מורשה this (virtual) land and, through אגב, also some of his assets.

⁸ really means that one's admission is greater than the testimony of (even) one hundred witnesses. [An example is if one responds, to a demand of payment for a loan, that he never borrowed the money, this is considered as an admission that he never paid it (if one did not borrow he certainly does not pay back). Therefore if there are witnesses that there was a loan, and witnesses that he paid back the loan, nevertheless he is obligated to pay, because his admission (by saying I did not borrow so therefore) that he did not pay back, is stronger than the testimony of the witnesses that he did pay back.]

find regarding⁹ גר the איסור -

דנפק אודיתא מבי איסור ואף על גב שהיה איסור משקר¹⁰ -

That an admission was issued from s' איסור house, and even though that איסור was lying, nevertheless the money went to מרי בר איסור, and not to רבא.

Based on this ר"ת¹¹ תוספות asks:

הקשה מוריננו הרב רבי חזקיהו דמכל מקום ניחוש הכא דלמא אקני ליה מטלטלין אגב קרקע -
הקשה מהר"ר חזקיהו **asked that notwithstanding** that there are witnesses here that the seller never owned any land, **we should still be concerned perhaps** the seller was his lender קרקע אגב מטלטלין and we will disregard the עדים because (perhaps) -

והודה¹² שיש לו מקרקע¹³ אף על פי שלא היה לו מעולם -

The borrower/seller admitted that he owns land, even though that in truth he never owned any land –

תוספות answers:

ונראה דכולי האי לא חיישינן שמא שיקרו להודות¹⁴ -

And it appears to תוספות that to such an extent we are not concerned that they will lie in their admission.

תוספות rules:

ונראה לו דבזמן הזה שרגילים לכתוב והקניתי לו ארבע אמות בחצירי -

And it is the view of מהר"ר חזקיהו that nowadays that it is customary to write, 'and I let him acquire ד"א in my courtyard' -

אם כן מילתא דשכיחא היא ואם כן מכר לו פרה וטלית אין מעיד לו עליה -

⁹ איסור had a son מרי בר איסור who was conceived before איסור was מתגייר, and so therefore legally he was not his son and not his heir. איסור had deposited 12,000 זוזים by רבא. When איסור was on his death bed, רבא assumed that he will be able to be קונה this deposit (מן ההפקר) when איסור died, since איסור has no heirs. However איסור falsely 'admitted' that the money which he deposited by רבא belonged to מרי בר איסור.

¹⁰ It is apparent that הודאה is effective even though we know it is a lie. Therefore here too, when the מרשה 'admits', to his detriment, that he has land, we accept it as so.

¹¹ See 'Thinking it over; # 2.

¹² This admission is to his detriment, since he is משעבד his מטלטלין to his מלוה.

¹³ According to the ר"ת that we accept the admission that one owns קרקע, even if in actuality he does not, the question of the גמרא remains; perhaps ראוּבן the seller was מקנה his קרקע אגב קרקע (in a manner of דאיקני) so even though the עדים testify that he never owned קרקע, but if he is admitting that he does own קרקע, he is believed, and so he is a נוגע בעדות because he wants to pay his מלוה, and should not be allowed to testify on behalf of the buyer.

¹⁴ When this case comes before us (where ראוּבן wants to testify on behalf of שמעון the buyer) we do not know whether ראוּבן owes money or not, we do not know whether he was קרקע אגב קרקע, etc. However we are concerned that perhaps this is what happened (that he borrowed and was קרקע אגב קרקע). Nevertheless once there are witnesses that he never owned קרקע, that concern is not there. You ask that we should be concerned that perhaps ראוּבן lied and said that he has קרקע, that concern is too far-fetched, and we can dismiss it.

