

מצר¹ שהחזיקו בו רבים אסור לקלקלו –

It is forbidden to alter a boundary which a multitude occupied

OVERVIEW

ruled that if people took possession of a property; the owner may not remove them from this property. תוספות qualifies this ruling.

היינו כשהחזיקו ברשות –

- מצר This ruling is valid **provided that the רבים had permission to occupy this**

אבל אם באין להחזיק שלא ברשות יש למחות בידם ולנקוט פיזרא וליתב –

However if the רבים come to occupy this property without permission, the owner can protest, and hold a stick (to hit them if necessary), and sit by the property and [forcefully] not allow them to occupy it -

כדמוכח בהמניה² (בבא קמא דף כח,א ושם):

As this is evident in המניה פרק.

SUMMARY

The rule of מצר שהחזיקו בו רבים אסור לקלקלו is valid only if they occupied the property ברשות.

THINKING IT OVER

states that the owner is permitted to forcefully prevent them. What is the ruling if they were already ברשות, can he evict them (forcefully)?³

¹ מצר (which translates to a boundary) here means the (particular) area enclosed by a boundary.

² The משנה states (לקמן צט"ב) if the owner changed an existing public pathway in his field to another pathway, the public has the right to both ways. The המניה asks (assuming that the reason the public retains the original way is because the owner has no practical way to take them to court), let him forcefully not allow them to trespass the original path (since when there is a monetary loss, a person may take the law into his own hands). [The גמרא explains that they retain the original path since we are concerned that the new path will not be as direct as the old, and he cannot stop them from the new path since 'מצר שהחזיקו בו רבים וכו'.] If the rule is that מצר שהחזיקו בו רבים אסור לקלקלו even if it was occupied ברשות, what is the גמרא's question that he should forcefully prevent them from using the old path, it is אסור לקלקלו even if they (come to) occupy it ברשות. This proves that אסור לקלקלו is only if they occupied it ברשות.

³ See (בלוי) and ה"י הריטב"א (בלוי).