

**Do you not admit that this field is mine. – לאו קמודית דהא ארעא ידידי הוא**

### Overview

The גמרא presents the following case. The מערער claims that the field of the מחזיק belongs to the מערער. The מערער, however, did not produce any עדים that the field was ever his. The מחזיק responded that he bought the field from a מוכר who originally bought it from the מערער (the מחזיק did not have a חזקת ג' (שנים). The ruling is that since the מחזיק could not verify any connection between the מוכר and this field (and the מערער); the field reverts to the מערער. Our תוספות will be discussing the efficacy of various different claims of the מחזיק, in this setting.

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תוספות will first discuss, under what circumstances the מחזיק will be believed. First תוספות will cite the opinion of the רשב"ם and then תוספות will offer his view.

**The רשב"ם explained<sup>1</sup> – פירש רבינו שמואל**

**– דאם מוחזק זה שלש שנים – that if the מחזיק is in possession of the land for three years –**

**and the מחזיק claims 'I bought it from an individual who previously –**

**bought it from you (the מערער) in my presence; had the מחזיק claimed this, the ruling would be –**

**– מיגו<sup>2</sup> – that the מחזיק would be believed for he has a דנאמן במיגו**

**– for the מחזיק could have claimed – דאי בעי אמר**

**I bought it from you (the מערער) and I have consumed the produce of this field for the three חזקה years.**

The רשב"ם offered another situation in which the מחזיק would be believed:

**– or also if the מחזיק has witnesses who will testify –**

**– שהחזיק בה המוכר יום אחד – that the alleged seller (from whom the מחזיק bought the field) was in possession of the land for at least one day; then the מחזיק will be believed, and be allowed to keep the land.**

**and the רשב"ם brought proof to these two rulings; of קמי ידידי זבנה מיגו – והביא ראיה – דר ביה חד יומא and**

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<sup>1</sup> See רשב"ם ל,ב ד"ה אמר.

<sup>2</sup> Seemingly there should be no need for a מיגו; the claim of קמי ידידי זבנה מיגו should be a valid claim which is backed up by שנים ג' חזקה. Some commentaries claim that indeed no מיגו is required; it is merely an expression that the claim of קמי ידידי is as good as if he would have claimed זבנה מיגו. Others however maintain that the claim of קמי ידידי זבנה מיגו has a flaw. The מחזיק cannot provide proof that the מוכר lived there for even יומא (if there were דר ביה חד יומא he would be believed regardless). It is highly unusual that a person buys and sells property without being there for even a short while between the buying and selling. The מחזיק would not be believed. The מיגו removes that flaw. See ד"ה אמאי.

**from the גמרא which we learn later** **מההיא דדר בקשתא בעיליתא דלקמן**<sup>3</sup> concerning a person **who dwelt in an attic in the city of קשתא**. The גמרא there relates that there was a person who dwelt in an attic for four years and had witnesses to prove it. The מערער came and claimed the house as his. The מחזיק claimed (as in our גמרא) ruled that if the מחזיק can provide עדים that the person who sold him the house (four years ago) lived in the house (prior to selling it to the מחזיק) for even one day, then the מחזיק will keep the house.<sup>4</sup> רב remarked that רב חייא would have also given the field to the מחזיק if he had claimed מינך זבנה מינך.

רשב"ם comments on the תוספות:

**and what he says** (that [only] if the מחזיק has a שנים ג' חזקת ג' הוא דר ביה חד עדים that קמי ידי זבנה מינך or he has עדים that הוא יומא) **is correct** provided we are discussing a case –

**where the מערער has witnesses – היכא דיש עדים למערער**

**that the land was once his;** only then do we require that the מחזיק have a שנים ג' חזקת ג' in order to be believed if he claims קמי ידי זבנה or קמי יומא –

**however in the case before us – אבל בעובדא דהכא**

**[where] it seems that the מערער had no עדים** [ד<sup>5</sup>] **משמע שלא היה למערער עדים** – that the land was once his; we can infer that the מערער had no עדים at all –

**since the מערער said: 'do you not admit, etc. that this land was mine'.** The fact that the מערער said קא מודית לאו קא מודית כולי witnesses that he once owned the land, proves that the מערער had no witnesses that the land was once his. He is basing his claim on the testimony of the מחזיק, who stated מפלינא זבינתה מינך; admitting in essence that the מערער was a previous owner. Therefore, since the מערער has no עדים that he was a previous owner –

**if the מחזיק would claim – אי הוה טעין**

**in my presence – קמי ידי**

**he (the מוכר) bought it from you (the מערער) – זבנה מינך**

**or if the מחזיק would claim that the seller lived there for (at least) one day<sup>6</sup>;** in these two instances, the מחזיק –

<sup>3</sup> מא,ב. Our תוספות will shortly cite this incident.

<sup>4</sup> The רשב"ם there, in אפילו ד"ה explains that if we know that the seller lived there for even one day, בי"ד will not require the מחזיק to prove that the seller bought it from the מערער, but rather בי"ד will argue on behalf of the buyer-מחזיק, that the seller bought it from the מערער. This claim of בי"ד that the מוכר bought the field from the מערער, is supported by the חזקה. If however the מחזיק cannot prove that the מוכר lived there יומא, then we do not have a bona fide buyer. People do not buy properties from people in the street. A bona fide buyer will seek for some proof that the seller is indeed the owner of the property. בי"ד will argue on behalf of a bona fide buyer (in order to bolster trade and protect the consumers), however בי"ד will not argue on behalf of what may be a bogus buyer and seller.

<sup>5</sup> See הגהות הב"ח.

<sup>6</sup> דר. בה חד יומא seems to say that the מחזיק claims that he is personally aware that הוא יומא. The words 'קמי ידי' refer both to זבנה מינך and דר. בה חד יומא. It seems that תוספות maintains that it is not necessary for the מחזיק to prove that the מוכר was יומא, דר. בה חד יומא, it is sufficient if the מחזיק merely claims it (just as the מחזיק is believed when he claims זבנה מינך (קמי ידי זבנה מינך). The מחזיק is believed to claim דר. בה חד יומא since he has a מיגו; either the מיגו of זבינתה מינך (if the מערער has עדים and the מחזיק was שנים ג' חזקת ג') or the מיגו of להש"ם (if the

## –היה נאמן would be believed

**even if the מחזיק did not make a three year חזקה; the reason he is believed is because the מחזיק has a –**

**– מערער the מיגו – מיגו דאי בעי אמר –**

**it was never your field; the מערער has no עדים that it was ever his land.** When the מערער came to claim the land, the מחזיק could have simply stated it was never your field, and the field would remain by the 'מחזיק', even though he does not have a חזקה ג' שנים. Therefore when he claims קמי ידי מינך דזבנה or מפלניא זבינתה דזבנה מינך קמי ידי, he is also believed, with the מיגו of להש"ם. If however the מחזיק merely claims מפלניא דר ביה חד יומא קמי ידי or קמי ידי and does not add זבינתה דזבנה מינך admitting that the מערער is a מרא קמא and that he (the מחזיק) has no valid claim to the property. He may have a מיגו but he has no טענה.

In summation there is a dual מחלוקת between the רשב"ם and תוספות.

A. The רשב"ם maintains that in the case of מפלניא זבינתה דזבנה מינך, the מחזיק is believed only if he has a חזקה ג' שנים and he (originally) claimed קמי ידי זבנה מינך or he has עדים that דר ביה חד יומא. If the מחזיק does not have a חזקה ג' שנים then he is not believed<sup>7</sup> (with the מיגו of להש"ם) even if the מערער has no עדים that it was originally his. B. In addition, even if the מחזיק has a חזקה ג' שנים (but does not claim קמי ידי זבנה מינך) he will be believed only if he has עדים that the מוכר was יומא דר ביה חד יומא. However, if the מחזיק merely claims that דר ביה חד יומא that would be insufficient, even though he has a מיגו<sup>8</sup> of זבינתה<sup>9</sup>.

תוספות maintains (a) that if the מערער has no עדים then the מחזיק will be believed with a מיגו of להש"ם (even without חזקה ג' שנים) provided that the מחזיק claims initially either קמי ידי or קמי ידי דר ביה חד יומא. In addition (b), by all cases, תוספות maintains that קמי ידי is sufficient to substantiate the claim of יומא דר ביה חד יומא; עדים are not required (unless the מחזיק did not claim יומא דר ביה חד יומא initially<sup>10</sup>).

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However by the case of בקשתא בעיליתא, the גמרא there states clearly that the מחזיק would be believed only if he brought עדים that the מוכר was יומא דר ביה חד יומא. The difference is that by בקשתא בעיליתא, the מחזיק already made his claim that מפלניא זבינתה דזבנה מינך. Therefore, if he would subsequently claim that דר ביה חד יומא, that would be considered a מיגו למפרע, which is not a valid מיגו (as תוספות will shortly state). However if he originally claims יומא דר ביה חד יומא, then he has a valid מיגו and is believed.

<sup>7</sup> According to some commentaries (see בל"י אות צה) he is not believed if he claims (or even if he brings עדים) that דר ביה חד יומא (see the ר"י at the conclusion of our תוספות). If however he claims קמי ידי זבנה מינך then the רשב"ם agrees that the מחזיק is נאמן even if there was no חזקה ג' שנים, provided that the מערער has no עדים that he was a מרא קמא. Others however disagree (see סוכ"ד ל,ב אות לה) and maintain that if there was no חזקה ג' שנים the מחזיק is never believed. Their reason is that there is a flaw in his claim of זבנה מינך, since three years have not yet gone by and there is no שטר מכירה from the מערער to the מוכר. Others say that the מוכר would not want to claim להש"ם, for perhaps the מערער will eventually produce עדים that it was once his.

<sup>8</sup> The commentaries explain (שיטת הרשב"ם) that even after we verify that the מוכר was יומא דר ביה חד יומא, we still need the additional concept of טענין ללוקח in order to award the property to the מחזיק. The power of a מיגו does not extend that far. Other explain that if we assume that מיגו is a זכות הטענה (not a proof), then even with the מיגו, we still are not aware that the מוכר was יומא דר ביה חד יומא, and the טענה of יומא דר ביה חד יומא is not the claim that can vindicate the מחזיק on its own merit; rather the טענין (which does not take effect until we can verify that דר ביה חד יומא), as opposed to קמי ידי זבנה מינך which vindicates the מחזיק on its own merit.

<sup>9</sup> The מהרש"א maintains, however, that (even) according to the רשב"ם it is not necessary to have עדים that דר בו חזקה ג' שנים, but even if the מחזיק claims יומא דר בו חזקה ג' שנים, the מחזיק is נאמן when he has a חזקה ג' שנים.

<sup>10</sup> See previous footnote # 6.