מפלניא זבינתיה דזבנה מינך[1] ואכלתיה שני חזקה אמר ליה פלניא גזלנא הוא – I bought it from 'him' who bought it from you and I utilized it for the required three **חזקה years.** The מערער **retorted; 'he' is a thief.**

Overview

When a מחזיק claims that he bought the property from a third party (מוכר), not from the מערער, and he has עדים that the מוכר was in the property for (even) one day, then בי"ד argues on behalf of the מחזיק – לוקח, that (perhaps) the מוכר bought it from the מערער. If, under the current circumstances, the מוכר (and hence the מחזיק) would retain the field on the basis of this claim, had he indeed so claimed, then the field remains by the מחזיק. A case in point is if the מחזיק has a חזקת ג' שנים. This חזקה validates the purported claim of the מוכר (or the טענינן of בי"ד), that he bought it from the מערער.[2]

There is an additional ruling that a person, who is a confirmed גזלן, cannot substantiate his claim with a חזקה[3]; only with a valid proof such as עדים or a שטר.

In our case the מערער states that the מוכר is a גזלן. תוספות will discuss what that means, and how does it prevent the מחזיק from retaining ownership.

פירוש – The explanation[4] of the term פלניא גזלנא הוא, is that –

יש לי עדים שהוא גזלן – I have witnesses that the מוכר **is a thief[5];** and therefore –

ואפילו דר ביה חד יומא – even if the seller-thief **lived** in the disputed property **one day[6],** nevertheless –

הא קיימא לן – we have the established rule –

דגזלן אין לו חזקה – that a גזלן has no חזקה[7].

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[1] In our text the words 'דזבנה מינך' do not appear. See footnote 15.

[2] See ב,מא דף the case of בקשתא בעיליתא cited in the previous תוספות ד"ה לאו.

[3] The מערער can claim that he was not מוחה, because he feared the גזלן. This applies even if the מוכר-גזלן sold the property.

[4] The term 'פירש' in תוספות denotes that the meaning is somewhat different than one would surmise from a cursory reading of the text. The simple reading would indicate that the מערער is merely claiming that the מוכר is a גזלן (as the [רשב"ם] פירוש הקונטרס [as understood by תוספות] explains it), but he cannot prove it.

[5] This means that there are עדים that previously (before his alleged purchase of this field from the מערער) the מוכר preformed an act of גזילה, which places him in the status of a גזלן and all that pertains to it. If there were עדים that the מוכר actually stole the field from the מערער then the entire ensuing conversation is moot. It makes no difference what the מערער subsequently advised the מחזיק; the מחזיק has no טענה since we know that the field never belonged to the מוכר.

[6] See 'Overview'. See following footnote # 7.

[7] If the מוכר is a confirmed גזלן, then the טענינן of בי"ד that the מוכר bought it from the מערער is ineffective. A confirmed גזלן cannot support his claim of purchase even with a חזקת ג' שנים of his own (unless he has a valid שטר מכירה). There is nothing to support the טענינן of the בי"ד.

תוספות cites (and rejects) the פירוש הקונטרס:

ולא כפירוש הקונטרס דפירש – and not like the explanation of (רש"י[8]) [רשב"ם] who interpreted[9] that we are discussing a case –

דאין לו עדים – where the מחזיק **has no עדים –**

שהחזיק בה המוכר אפילו יום אחד – that the מוכר possessed it for even one day; for if the מחזיק had עדים that the מוכר was יומא חד בה דר –

דתו לא הוה מצי טעין – then subsequently the מערער **could not claim** that –

פלניא גזלנא הוא – 'he'- the seller **is a thief**[10]**.** This concludes פירשב"ם.

משמע שרוצה לפרש – it seems that the רשב"ם **wants to interpret** the phrase –

גזלנא הוא – 'he is a thief' –

לא שיש לו עדים שהוא גזלן – not to mean **that** the מערער **has עדים that** the מוכר **is a גזלן**[11] **–**

אלא כלומר – but rather the phrase פלניא גזלנא הוא **is to be understood to mean –**

בגזל (הוא) [בא לו[12]] הקרקע בידו – he[13] **acquired the land unlawfully**[14]**.**

תוספות explains why he rejects the פ"ה:

ואין נראה לרבינו יצחק – and the ר"י disagrees with the פ"ה; for if the מחזיק had no עדים that the מוכר was דר בה חד יומא (and he also did not claim קמי דידי זבנה מינך) –

דהוה ליה לאסוקי – then the גמרא **should have concluded –**

כדמסיק לעיל - as the גמרא **concluded** in the **previous** episode; that the מערער argues –

לא קמודית לי דארעא דידי הוא – do you not admit that this is my land originally[15] –

ואת מינאי לא זבינתיה וכו' – and you did not purchase it from me, etc.; leave this field for את דברים דידי בעל לאו. According to רש"י, the מערער should have concluded

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[8] As was noted elsewhere (see תוד"ה אמר (דף כט,א) , that פ"ה may refer to an earlier edition of פרש"י or תוספות refers to the פירוש רשב"ם as פ"ה.

[9] See רשב"ם ד"ה מפלניא.

[10] If the מחזיק has עדים that the מוכר was דר בה חד יומא and the מערער cannot prove that the מוכר is a גזלן, then the מערער cannot effectively claim that the מוכר is a גזלן. Rather בי"ד is טוען ללוקח that the מוכר indeed bought the property from the מערער, and since (as in our case) the מחזיק has a חזקה, that would verify the טענינן ללוקח', that the מוכר indeed bought the field from the מערער (and subsequently sold it to the מחזיק). The מחזיק would retain the field.

[11] For then, even if there are עדים that יומא חד בה דר, nevertheless as a confirmed גזלן there is no חזקה.

[12] See הגהות הב"ח.

[13] This should refer actually to the מחזיק. See following footnote # 14.

[14] It is difficult to interpret 'פלניא גזלנא' to mean that the מערער is claiming that he was a גזלן previously; since he cannot substantiate his claim, what purpose would it serve. What is relevant is only whether the מוכר purchased it from the מערער. Therefore it must refer to this field; that the מוכר sold it illegally. The term פלניא גזלנא הוא is therefore somewhat irrelevant. The מערער is claiming that he never sold the field to the מוכר, and therefore the מחזיק acquired it illegally.

[15] According to the גירסא of the רשב"ם (and our גמרא) the מחזיק merely said מפלניא זבינתה, he did not add דזבנה מינך, therefore the מערער could not have said לאו קמודית. See מהרש"א. See 'Thinking it over' # 3.

with this argument[16]. However, according to תוספות, the מערער could not have said לאו בעל דברים דידי את, since the מוכר has עדים that דר בה חד יומא. It is only because the מערער has עדים that the מוכר was a גזלן; therefore even with the טענינן ללוקח, בי"ד cannot effectively claim that the מוכר bought the field, since there are עדים that the מוכר is a גזלן.

Summary

תוספות maintains that the מערער has עדים that the מוכר is an established גזלן. Therefore even if the מחזיק has עדים that the מוכר was דר בה חד יומא, nevertheless the property reverts back to the מערער, since a גזלן אין לו חזקה.
רשב"ם maintains that there are no עדים that the מוכר was דר בה חד יומא and the מערער is merely claiming that the מוכר sold the field to the מחזיק illegally.
תוספות challenges that according to the רשב"ם the מערער should have concluded האי ארעא דידי הוא ואת מינאי לא זבינת וכו'.

Thinking it over

1. Are there any הלכה differences here between רשב"ם and תוספות?

2. What are the relative merits of each פירוש?

3. Did the מערער have עדים that this property belonged to him?[17]

[16] See however previous תוס' דף ל,א ד"ה לאו (footnote # 49) that according to שיטת הגאונים if there was a חזקת ג' שנים then the מערער cannot claim לאו בע"ד דידי את.
[17] See footnote # 15.