

However if he consumed the produce for (only) six years, etc. – אבל אכלה שית שנין כולי

Overview

The case at hand is as follows. The **מחזיק** first claims **מפלניא זבינתה** and I was there **שני חזקה**. The **מערער** produces a **שטר** that he purchased it from the same **מוכר** four years ago. If the **מערער** can produce **עדים** that he lived there for the past seven years¹ the field remains by the **מחזיק** [since **שני חזקה** can imply more than three years]. If however the **מחזיק** can produce **עדים** only for the past six years, then even if he claims that he purchased the field before the **מערער** (even seven years ago, but since he cannot provide **עדים**), the field reverts to the **מערער**.

תוספות has a question:

The ריב"ם presented a difficulty – הקשה רבינו יצחק בן מרדכי – even if he did not bring עדים for all seven years, but rather

– that he consumed the produce for only the past three years, nevertheless the מחזיק –

– should be believed to claim that – יהא נאמן לומר

I bought it from the original owner before you bought it² – לקחתיה קודם מינך

– מיגו the מחזיק has a מיגו – במיגו

– for the מחזיק could have said to the מערער – דאי בעי אמר

I bought it from you³. If the מחזיק would have claimed that he bought it from the מערער after the date on the שטר, the מחזיק would have been believed, since he has a valid חזקה and a טענה that זבינתה. Therefore he should be believed if he claims that he bought it before the מערער bought it. Why is it necessary to produce עדים that his חזקה predates the מערער's שטר by three years?

תוספות answers:

And the ר"י says that the מיגו of זבינתה is not a valid מיגו; ואומר רבינו יצחק דאין זה מיגו;

¹ It is self understood that if the **מחזיק** can present **עדים** that he purchased the field from the **מוכר** (even one day) before the **מערער**, then the field remains by the **מחזיק**.

² See 'Thinking it over' # 1.

³ Seemingly this seems to be a **מיגו למפרע** (see **לא ד"ה לאו**). Originally the **מחזיק** claimed **מפלניא זבינתה** **מוכר** (even one day) before the **מערער**, to which the **מערער** responded that he has a **שטר** that he purchased it four years ago. The **מחזיק** now claims that he purchased it more than four years ago. However, now he does not have a **מיגו** of **זבינתה**, since he already stated **מפלניא זבינתה**.

Perhaps, since in this **ה"א** we (seemingly) assume that the **מחזיק** is aware of the **שטר מכירה**, therefore it was certainly **אסיק** of the **מחזיק** that he needs this claim of more than three (four) years. In a case of **אסיק** **וצ"ב**; **מפרש דבריו** (minimally); especially since he is only being **מיגו למפרע** (see **הנ"ל**) we do say **אדעתיה**.

for originally when the מערער challenged him, the מחזיק **would never claim that 'I bought it from you** (the מערער) – **for he does not know whether** the מערער **possesses a שטר** –

מוכר⁴ **that he** (the מערער) **purchased** the field **from** the original. A valid מיגו is when the claim is equally presentable as the actual claim. In this case, the מחזיק would never claim that he bought it from the מערער, since he has no knowledge that the מערער ever bought this property from the same מוכר who sold it to him. Therefore if the מחזיק would claim that he bought it from the מערער, he would be placing himself in jeopardy of losing the field to either the original מוכר or anyone else who may produce a שטר מכירה from this מוכר. They could come and challenge his ownership to the field, using his own statement that he bought it from the מערער, as proof that he never bought the field from the original מוכר.

Summary

A מיגו (of זבינתיה) is not applicable where the litigant may jeopardize his position if he were to claim this מיגו (of זבינתיה).

Thinking it over

1. In תוספות question: would there be a difference whether the מחזיק claims I bought it seven years ago or whether he claims I bought it before you (but less than seven years ago)?⁵

2. The reason why the שטר מכירה of the מערער constitutes a מחאה is because the שטר has a קול; people know about it, and the מחזיק should have kept his שטר. How can תוספות argue that the מחזיק may not know⁶ whether the מערער has a שטר from the מוכר?!⁷

⁴ See 'Thinking it over' # 2.

⁵ See footnote # 2. See בל"י דף ל, ב אות קטז.

⁶ See footnote # 4.

⁷ See סוכ"ד אות ה'.