

No one ever said anything to me

שלא אמר לי אדם דבר מעולם –

OVERVIEW

The משנה teaches that a חזקה שאין עמה טענה (which is not considered a חזקה) is where the מוחזק claims his rights to the property by the virtue that no one (during these three years) ever complained to me that I am on their property. תוספות mentions another case of חזקה שאין עמה טענה and explains why the משנה chose this specific case.

והוא הדין דאפילו אם אמר זבינתיה מפלוני דזבנה מינך דלא הויא חזקה¹ –

And the law would also be the same even if the מחזיק claimed, ‘I bought it from him, who bought it from you’; that this is not considered to be a חזקה -

עד שיאמר אתה מכרת לי כדקתני סיפא –

Unless the מחזיק claims, ‘you sold it to me’, as the משנה states in the סיפא.

² מפלניא זבינתיה דזבנה מינך לא אמר לי אדם instead of חזקה משנה chose the case of תוספות explains why

אלא הא עדיפא ליה למינקט שלא אמר לי אדם דבר מעולם –

The משנה rather preferred to mention the case of **שלא אמר לי דבר מעולם -**

לאשמועינן דלא הוי פתח פיה לאלם³ כדאמר בגמרא:

To inform us that (even) in this case the concept of ‘open your mouth on behalf of the mute’, does not apply, as stated in the גמרא.

SUMMARY

The advantage of stating **לא אמר לי אדם** is not a חזקה, instead of זבינתיה, because there is the חידוש that we do not say **פתח פיה לאלם**.

¹ It is not a חזקה, since the מחזיק does not claim that he knows that the seller bought it from the מערער (or that the seller was יומא חד). See previously לאו בשם בתור"ה לאו.

² Seemingly there is a greater חידוש in זבינתיה where he at least makes some claim of purchase (albeit an unacceptable claim), as opposed to לא אמר לי וכו' where he has no claim at all.

³ בי"ד, in a case where one of the litigants is confused or unsure and cannot make a proper claim, to speak on his behalf or encourage him that perhaps he meant something else. In the case of לא אמר לי אדם, we are concerned that perhaps the מחזיק did buy it, however since he lost his שטר, he assumes that if he will say אתה מכרת לי and he cannot provide a שטר, we will assume him to be a גזול; however if he claims לא אמר לי אדם, we may accept his claim (see the גמרא and תוס' ד"ה אמרי). However when he claims מפלניא (תוס' ד"ה אמרי), there can be no acceptable reason why he is claiming זבינתיה instead of זבינתיה (or קמי ידי). [Alternately, we may say פתח פיה לאלם where indeed he is an אלם as in the case of לא אמר לי אדם which is no claim at all (and he is afraid to claim אתה מכרת לי), however in the case of זבינתיה, he is not an אלם; he is making (what he thinks) is a valid claim. בי"ד will not encourage someone to change his claim (and say זבינתיה). See ‘Thinking it over’.]

THINKING IT OVER

Why is there no חידוש by מפלניא זבינחיה that בי"ד does not say (and פתח פיד) that perhaps it was קמי דידי (or דר ביה חד יומא),⁴ and you forgot to mention it?

⁴ See footnote # 3. In that case בי"ד is merely reminding him that he may have forgotten a detail, but are not changing his claim.