

But I made a חזקה for myself

והא אחזקי לי –

OVERVIEW

The case at hand: רב ענן replaced the dividing fence on his neighbor's property (thus extending his own property). ר"נ ordered him to return it where it was originally. ר"ע initially claimed לי, והא אחזקי לי, to which ר"נ responded it is not a חזקה. ר"ע then claimed that the neighbor was מוחל since he assisted me in putting up the fence; ר"נ responded that it is a מחילה בטעות. The רשב"ם and תוספות differ in their explanation of this episode.

פירש הקונטרס¹ בניתי כותל על פיו והוא סייע לי –

The רשב"ם explained the claim of ר"ע was, 'I built the wall with his consent and he (even) helped me to erect it -

וכיון שבמצותו² עשה הוי חזקה שיש עמה טענה³ –

And since [I] did it at his insistence, it is a חזקה with a valid claim.

פ"ה הרשב"ם disagrees with תוספות:

וקשה דמדקאמר בתר הכי והא אחיל משמע דעד השתא לא הוה מחזיק בה מטעם מחילה⁴ –
And this explanation is difficult; for since ר"ע stated later, 'but he was אחיל', this indicates that up to that point (where ר"ע claimed אחיל), ר"ע was not claiming the field because of מחילה, but rather he had a different claim on the field –

פ"ה הרשב"ם has another difficulty with תוספות:

ועוד דלאלתר הוה ליה לרב נחמן למימר מחילה בטעות הואי –

And in addition, if the basis of ר"ע's claim was מחילה, then ר"נ should have told him immediately (when ר"ע said לי, והא אחזקי לי) that it was a mistaken מחילה (and

¹ See רשב"ם ד"ה והא.

² The שבמצותו עשיתי הוי amends this to read שבמצותו עשיתי הוי.

³ According to (the understanding of) the רשב"ם, the claim made by ר"ע was that his neighbor gifted him this land. [We will need to say that the expression והא אחיל does not mean he forfeited, for (generally) there is no such act as מחילה (regarding transferring of assets), but rather he gifted it to me, by telling me where to place the fence.] The רשב"ם understands that the neighbor indeed told ר"ע where to place the fence, since later ר"ע stated that he helped me put up the fence. However ר"ע had no proof that the neighbor told him where to place the fence, so he argued that his חזקה in the presence of the neighbor for a few days (without a מחילה) is sufficient to support his claim that the neighbor gifted him the area. [ר"ע was קונה the קרקע through חזקה by building the fence.] ר"נ responded that a few days is no חזקה, so there is no proof that he gifted the area to you. ר"ע argued that since he helped me build the fence (for which there were witnesses) that act is an act of gifting me the area, and it should be mine. ר"נ responded that it was a mistaken מחילה (gift); the neighbor never realized you were on his property.

⁴ See 'Thinking it over' # 1.

– (והא אחיל ר"ע claimed not wait until

גמרא offers his interpretation of the תוספות:

ונראה לפרש דרב ענן הוה טעין שלקח ממנו⁵ ולא היה לו עדים שלקחה –

And it is the view of תוספות to explain the גמרא as follows, that ר"ע was claiming that he bought this area from his neighbor, but ר"ע did not have עדים that he bought it from his neighbor -

– והיה רוצה להיות נאמן מתורת חזקה

And ר"ע wanted that he should be believed by the rules of חזקה (since the person saw me build a wall in his presence and he did not protest that proves that he sold me this land) -

וכי אמר ליה רב נחמן דלאו חזקה היא השיב לו רב ענן והא אחיל –

And when ר"נ told ר"ע that such a short period of time is not a חזקה, so ר"ע responded 'והא אחיל'; meaning -

דאף על פי שאינו נאמן לומר לקחתיה –

That even though that ר"ע is not believed on the basis of this short חזקה to claim, 'I bought it', nevertheless -

– תהא שלי מטעם מחילה⁶ דסייע בגודא בהדאי והיה לו עדים או היה מודה בסיועו –

It should be mine because of מחילה, for he helped to build the wall together with me, and ר"ע had witnesses or the neighbor admitted that he was helping.

תוספות concludes, however:

ואין הסוגיא מוכחת כן:

But the flow of the גמרא does not indicate so that he claimed initially that he bought it. There is no mention at all that ר"ע claimed he bought the land.⁷

SUMMARY

The רשב"ם maintains that both claims of ר"ע were based on מחילה (that the neighbor gifted him the field), while תוספות maintains that the first claim of ר"ע was that he purchased it, and only the second claim was on account of מחילה.

THINKING IT OVER

⁵ ר"ע claimed that he actually bought the additional property from his neighbor, and not (merely) that his neighbor gifted him the property, by telling him where to erect the wall (as the רשב"ם maintains).

⁶ See 'Thinking it over # 2.

⁷ In addition the expression הדר גודא בארעיה does not indicate that he bought it. Also ר"נ answered him that you also did not know, but according to this פ"י he knew that he was on his neighbor's land, but he claims he bought it. See נה"מ for a possible solution to some of these difficulties.

1. והא asks on פי' הרשב"ם, how can he say that initially when he claimed מחילה, he meant on account of מחילה, when the claim of מחילה was later when he said 'והא אחיל'.⁸ However according to the רשב"ם⁹, even though both claims were on account of מחילה, however the first claim was that we should believe him that there was מחילה because of the חזקה, however the second claim was we know that there was מחילה since he assisted me. They are two different claims!¹⁰

2. תוספות explains that ר"ע's second claim (of והא אחיל) was that even if you do not believe me that I bought it, but it should be mine because of מחילה.¹¹ Why did ר"ע have to change his claim from buying to מחילה, when he could have maintained his claim of buying and proven it¹² by the fact that the neighbor helped him erect the wall?!¹³

⁸ See footnote # 4.

⁹ See footnote # 3.

¹⁰ See בל"י אות שפ.

¹¹ See footnote # 6.

¹² See previously ב, לה, that חזקה הוי חזקה.

¹³ See בל"י אות שפא.