A year in the presence of the father, etc. – בפני האב שנה כולי

Overview

The גמרא cites a ברייתא which states that if the מחזיק made a חזקה for a year while the father was alive and two more years (after the father passes away) in the lifetime of his son (or vice versa) it is a valid חזקה. Our תוספות reconciles this ברייתא with another seemingly contradictory ruling.

תוספות anticipates a difficulty:

והא דאמרינן בפרק שני דכתובות (דף יז,ב ושם דיבור המתחיל ואחת)**–**

And regarding this **which** the גמרא **states in the second פרק of כתובות** מסכת -

אמר רב הונא אין מחזיקין בנכסי קטן ואפילו הגדיל –

רב הונא ruled, 'one cannot make a חזקה in the estate of a minor; and even if he reached **maturity** a חזקה is ineffective'; the explanation of ואפילו הגדיל -

לא כמו שיש מפרש שם[1] דיתום אפילו גדול במילי דאבוה קטן הוא[2] –

Is not like the one who interprets it there to mean **that even a גדול is considered a קטן regarding the affairs of his father -**

ואין מועלת חזקה לגביה אפילו שהיה גדול כשמת אביו –

And therefore **the חזקה will be ineffective regarding** this son, **even if he was a גדול when his father died;** this interpretation is incorrect -

דהא הכא אמר בהדיא דהוי חזקה כשאכל בפני הבן והאב שני חזקה[3] –

For here the ברייתא **explicitly states that it is a חזקה when** the מחזיק **consumed** the produce **in the presence of the son and the father** for the duration of the required three **חזקה years –**

תוספות offers his interpretation of אין מחזיקין בנכסי קטן:

אלא דוקא שהיה קטן כשמת אביו אינה חזקה אף על פי שאחרי כן הגדיל.

Rather the ruling of ר"ה that אין מחזיקין בנכסי קטן means **that it is not a חזקה, only**

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[1] See תוספות there ד"ה ואחת; this is the פירוש of (רשב"ם) ר' שמואל.

[2] The חזקה began during the lifetime of the father. The son during that חזקה period even if he was a גדול (sometime during this period) is not aware of his father's assets, and never realized that someone is making a חזקה in his father's property, therefore he did not make a מחאה after his father's death..

[3] According to the (הרשב"ם) פי' this law (stated in the ברייתא that חזקה זו הרי הבן ובפני האב אכלה) can never be since he maintains that even if the בן was a גדול when the father dies it is not a חזקה. So what case is the ברייתא discussing?! See the ר"ת in תוספות there who defends this (הרשב"ם) פי' from תוספות question here and explains that according to the רשב"ם the rule of the ברייתא is in a case where the son was already a גדול before the חזקה began. However if the son was a קטן when the חזקה began, even though he became a גדול before his father's death it is not a חזקה. See 'Thinking it over' # 1 & 2.

if the son **was a קטן when his father dies, even though he became a גדול later** and the מחזיק made a חזקה during the time the son was a גדול. However if the son was a גדול when the father died it is a חזקה if אכלה שני חזקה בפני הבן והאב.[4]

רבינו יצחק:

The forgoing is attributed to the **ר"י.**

Summary

When the son reached maturity in his father's lifetime the חזקה is valid by the son. If he reached maturity after his father passed we apply the rule of אין מחזיקין בנכסי קטן.

Thinking it over

1. Why does תוספות here not accept the explanation of the ר"ת[5] offered in מס' כתובות?

2. Seemingly תוספות understands the (הרשב"ם) פי' that אין מחזיקין בנכסי קטן ואפי' הגדיל to mean that even if he was a גדול when the חזקה began, nevertheless it is not a חזקה בפני הבן (otherwise there would be no question from the ברייתא[6]). According to this understanding, there is an additional difficulty in the words of רב הונא when he said 'ואפילו הגדיל'; for ר"ה meant (according to this understanding) even if he was a גדול (not that he became a גדול). Why did not תוס' ask this question (as well)?![7]

[4] Presumably a father informs his mature children regarding his assets (and would have told his בנו גדול) regarding this (disputed) field; however he would not share this information with his minor children.
[5] See footnote # 3.
[6] See footnote # 3 and 'Thinking it over' # 1.
[7] See נח"מ.