

And one year in the lifetime of the son

ואחת בחיי הבן -

OVERVIEW

The גמרא explains that when the משנה states that if there were עדים that it belonged to the father, the מחזיק is not believed; it is true even in a case where the מחזיק was in possession of the field for three years. The reason it is not considered a חזקה is because one of those years was after the demise of the father. The חזקה was completed during the lifetime of the son. This type of חזקה is not valid. תוספות will qualify this statement. There are times when a חזקה בחיי הבן is valid and times when it is not valid.

ודווקא כשהוא קטן¹ כפירוש הקונטרס² אבל אם הוא גדול הוי חזקה -

This is only when the son was a minor; that it is not considered a חזקה, as רש"י explains; **however if the son was an adult;** over בר מצוה it is considered a חזקה if the מחזיק ate the produce two years while the father was alive and one year after his demise, if the son was an adult -

כדאמרינן בחזקת הבתים (נבא בתרא מבא ושם) -

as the גמרא cites a ברייתא in פרק חזקת הבתים that if the מחזיק -

אכלה בפני האב שנה ובפני הבן שנה ובפני לוקח³ שנה הרי זו חזקה -

consumed the produce in the presence of the father for a year and in the presence of the son for a (second) year and in the presence of the buyer for a (third) year, this is a valid חזקה; he was in possession of the field for three consecutive years. He may retain the field even if he has no מכירה. It is obvious from that גמרא that a חזקה can be made בחיי הבן. It is therefore necessary to distinguish whether the son was a קטן (were a חזקה is not valid, as in our גמרא), or whether he was a גדול (where the חזקה is valid, as in the case in ב"ב).

תוספות offers an alternate view:

ורבינו שמואל פירש אהא דאמר בסמוך ואפילו הגדיל -

And the רש"י (ב"ב) explained concerning that which the גמרא shortly states that it is not a חזקה if the son was a קטן; that it means **and even if he matured;** the רשב"ם explains this גמרא to mean (that not only is it not a חזקה if the son

¹ It is not considered a חזקה (year) if the son is a minor, since he does not know to make a מחאה.

² ד"ה בשלמא.

³ The buyer bought the field from the son one year after the demise of the father. However it was the מחזיק who was in possession of the property, for three years (including the one year after the buyer bought it). The מחזיק claims that he bought it from the father one year prior to his demise.

matured after the demise of the father, but rather it is not a חזקה –

אפילו הגדיל בחיי האב דגדול לגבי מילי דאביו קטן הוא -

Even if the son matured in the lifetime the father; it is still not a חזקה.⁴

The reason is **because an adult in regards to his father's affairs is considered a minor;** he is not aware of his father's (previous) dealings.

anticipates a difficulty. According to the רשב"ם that a גדול is considered a קטן in his father's affairs even if הגדיל בחיי האב; then how is it possible to have a חזקה בפני הבן? תוספות answers:

ואומר רבינו תם דלפירושו הא דאמר בחזקת הבתים (גם זה שם) דהויא חזקה בפני הבן -

And the ר"ת says that according to the רשב"ם's interpretation we must say, that which the previously cited ברייתא says in חזקת הבתים that it is a valid חזקה if (some of) it took place in the presence of the son –

היינו כשהיה גדול בתחילת החזקה -

That is (only) if the son was an adult at the beginning of the חזקה. The son was then aware that his father owned this property. If the son makes no מחאה after the death of his father, while the מחזיק is in possession of the field, it is included in the חזקה years. If however when the חזקה began the son was a קטן, then even if he became a גדול while the father was alive, any time that the מחזיק was in possession of the field during the lifetime of the son cannot be included in the חזקה years. The son may have never been aware that this field once belonged to his father. This is what the רשב"ם meant when he said that אפילו הגדיל בחיי האב; that he became a גדול after the חזקה commenced.

SUMMARY

If the son was not a גדול at the beginning of the חזקה, there is no חזקה בחיי הבן. (However, according to רש"י it is not a חזקה, only if the son was a קטן when the father died.)

THINKING IT OVER

Why did the רשב"ם interpret 'ואפילו הגדיל' to mean even בחיי האב?⁵

⁴ This is in a case where he was a קטן when the חזקה began (as תוספות will shortly explain).

⁵ The גמרא states that if there was a two year חזקה בפניו and a one year חזקה שלא בפניו, if he was בורח מחמת, then it is פשיטא that it is not a חזקה. On the other hand if he was מחזיק two years האב בחיי האב and one year בפניו then it is not פשיטא that it is not a חזקה. According to the רשב"ם the difference is readily understood.