מפלניא זבינתיה דזבנה מינך[1] ואכלתיה שני חזקה אמר ליה פלניא גזלנא הוא –

I bought it from 'him' who bought it from you and I utilized it for three חזקה years. He replied to him; 'he' is a thief.

Overview

When a מחזיק claims that he bought the property from a third party (מוכר), not from the מערער, and he has עדים that the מוכר was in the property for (even) one day, then בי"ד argues on behalf of the מחזיק – לוקח, that (perhaps) the מוכר bought it from the מערער. If, under the current circumstances, the מוכר (and hence the מחזיק) would retain the field on the basis of this claim, had he indeed so claimed, then the field remains by the מחזיק. A case in point is if the מחזיק has a חזקת ג' שנים. This חזקה validates the purported claim of the מוכר (or the טענינן of בי"ד), that he bought it from the מערער.[2]

There is an additional ruling that a person, who is a confirmed גזלן, cannot substantiate his claim with a חזקה;[3] only with a valid proof such as עדים or a שטר. In our case the מערער states that the מוכר is a גזלן. תוספות will discuss what that means, and how does it prevent the מחזיק from retaining ownership.

פירוש[4] יש לי עדים שהוא גזלן[5] –

The explanation of the term פלניא גזלנא הוא, is that **I have witnesses that** the מוכר **is a thief;** and therefore –

ואפילו דר ביה חד יומא[6] הא קיימא לן דגזלן אין לו חזקה[7] –

even if the seller-thief **lived** in the disputed property **one day,** nevertheless **we**

---

[1] In our text the words 'דזבנה מינך' do not appear. See footnote # 15.

[2] See ב,מא דף the case of בקשתא בעיליתא cited in the previous תוספות ל,א ד"ה לאו.

[3] The מערער can claim that he was not מוחה, because he feared the גזלן. This applies even if the מוכר-גזלן sold the property.

[4] The term 'פירש' in תוספות denotes that the meaning is somewhat different than one would surmise from a cursory reading of the text. The simple reading would indicate that the מערער is merely claiming that the מוכר is a גזלן (as the פירוש הקונטרס [רשב"ם] [as understood by תוספות] explains it), but he cannot prove it.

[5] This means that there are עדים that previously (before his alleged purchase of this field from the מערער) the מוכר preformed an act of גזילה, which places him in the status of a גזלן and all that pertains to it. If there were עדים that the מוכר actually stole the field from the מערער then the entire ensuing conversation is moot. It makes no difference what the מערער subsequently advised the מחזיק; the מחזיק has no טענה since we know that the field never belonged to the מוכר.

[6] See 'Overview'. See following footnote # 7.

[7] If the מוכר is a confirmed גזלן, then the טענינן of בי"ד that the מוכר bought it from the מערער is ineffective. A confirmed גזלן cannot support his claim of purchase even with a חזקת ג' שנים of his own (unless he has a valid שטר מכירה). The rule of טענינן does not apply to a גזלן.

have the established rule **that a גזלן has no חזקה.**

תוספות cites (and rejects) the פירוש הקונטרס:

ולא כפירוש הקונטרס דפירש[8] דאין לו עדים שהחזיק בה המוכר אפילו יום אחד –

And not like the explanation of the [רשב"ם][9] **who interpreted** that we are discussing a case **where** the מחזיק **has no** עדים **that the** מוכר **possessed it for even one day**; for if the מחזיק had עדים that the מוכר was יומא חד בה דר –

דתו לא הוה מצי טעין פלניא גזלנא הוא[10] –

then subsequently the מערער **could not claim** that **'he'**- the seller **is a thief.** This concludes פירשב"ם.

משמע שרוצה לפרש גזלנא הוא לא שיש לו עדים שהוא גזלן[11] –

It seems that the רשב"ם **wants to interpret** the phrase **'he is a thief' not** to mean **that** the מערער **has** עדים **that** the מוכר **is a** גזלן **–**

אלא כלומר בגזל[12] היא הקרקע בידו –

But rather the phrase פלניא גזלנא הוא **is to be understood to mean, he[13] acquired the land unlawfully.[14]**

תוספות explains why he rejects the פ"ה:

ואין נראה לרבינו יצחק דהוה ליה לאסוקי כדמסיק לעיל –

And the ר"י **disagrees** with the פ"ה; for if the מחזיק had no עדים that the מוכר was יומא חד בה דר (and he also did not claim קמי דידי זבנה מינך) **then** the גמרא **should have concluded as** the גמרא **concluded** in the **previous** episode; that the מערער argues –

לא קמודית לי דארעא דידי הוא[15] ואת מינאי לא זבינתיה וכולי:

---

[8] See רשב"ם ד"ה מפלניא.

[9] As was noted elsewhere (see תוד"ה אמר א,טז דף footnote # 1), that פ"ה may refer to an earlier edition of פרש"י or תוספות refers to the פירוש רשב"ם as פ"ה.

[10] If the מחזיק has עדים that the מוכר was יומא חד בה דר and the מערער cannot prove that the מוכר is a גזלן, then the מערער cannot effectively claim that the מוכר is a גזלן. Rather בי"ד is טוען ללוקח that the מוכר indeed bought the property from the מערער, and since (as in our case) the מחזיק has a חזקה, that would verify the טענינן ללוקח that the מוכר indeed bought the field from the מערער (and subsequently sold it to the מחזיק). The מחזיק would retain the field.

[11] For then, even if there are עדים that יומא חד בה דר, nevertheless as a confirmed גזלן there is no חזקה.

[12] The הגהות הב"ח amends this to read הקרקע **<u>בא לו</u>** בגזל.

[13] This should refer actually to the מחזיק. See following footnote # 14.

[14] The 'כלומר' of תוספות may be understood as follows. It is difficult to interpret 'פלניא גזלנא' to mean that the מערער is claiming that the מוכר was a גזלן previously; since he cannot substantiate his claim, what purpose would it serve. What is relevant is only whether the מוכר purchased it from the מערער. Therefore פלניא גזלנא הוא must refer to this field; that the מוכר sold it illegally. The term פלניא גזלנא הוא is therefore somewhat irrelevant. The מערער is claiming that he never sold the field to the מוכר, and therefore the מחזיק acquired it illegally.

[15] According to the גירסא of the רשב"ם (and our גמרא) the מחזיק merely said מפלניא זבינתה, he did not add דזבנה מינך, therefore the מערער could not have said לאו קמודית. See מהרש"א. See 'Thinking it over' # 3.

Do you not admit that this is my land originally **and you did not purchase it from me, etc.;** leave this field for לאו בעל דברים דידי את. According to פ"ה, the מערער should have concluded with this argument.[16] However, according to תוספות, the מערער could not have said לאו בעל דברים דידי את, since the מוכר has עדים that יומא חד בה דר. It is only because the מערער has עדים that the מוכר was a גזלן; therefore even with the טענינן ללוקח, בי"ד cannot effectively claim that the מוכר bought the field, since there are עדים that the מוכר is a גזלן.

Summary

תוספות maintains that the מערער has עדים that the מוכר is an established גזלן. Therefore even if the מחזיק has עדים that the מוכר was יומא חד בה דר, nevertheless the property reverts back to the מערער, since a גזלן אין לו חזקה.

רשב"ם maintains that there are no עדים that the מוכר was יומא חד בה דר and the מערער is merely claiming that the מוכר sold the field to the מחזיק illegally.

תוספות challenges that according to the רשב"ם, the מערער should have concluded האי ארעא דידי הוא ואת מינאי לא זבינת וכו'.

Thinking it over

1. Are there any הלכה differences here between רשב"ם and תוספות?

2. What are the relative merits of each פירוש?

3. Did the מערער have עדים that this property belonged to him?[17]

[16] See however previous תוס' דף ל,א ד"ה לאו (footnote # 50) that according to שיטת הגאונים if there was a חזקת ג' שנים then the מערער cannot claim לאו בע"ד דידי את.

[17] See footnote # 15.