

עביד איניש דקרי לשני טובא שני חזקה –

It is usual for a person to call many years, years of חזקה

OVERVIEW

The מחזיק originally claims he was in the field for שני חזקה after purchasing the field from the original owner. The מערער presents a שטר from the original owner to the מערער dated four years ago. The מחזיק brings עדים that he is occupying the field for the past seven years; three years prior to the שטר. The ruling is that the מחזיק retains the field since the statements of שני חזקה and שבע שנין can be reconciled.

אבל אי לא עביד אף על גב דאית ליה סהדי דאכלה שבע שנין¹ לא מהימנינן –

However if it were not usual to refer to many years as years of חזקה, then **even though** the מחזיק **has** עדים **that he utilized** the field **for seven years**¹, nevertheless **we do not believe** him that he was there for seven years; which would have given him a valid חזקה. The reason we do not believe him is –

דהא איהו דמכחיש להו דמודה שלא אכלה אלא שני חזקה דהיינו שלש שנים:

for he contradicts these witnesses who claim that he was in the field for the last seven years. **For** the מחזיק **admits that he did not utilize** the field **only** for the required חזקה **years which are three years**, and no more. If we were to assume that חזקה שני means only three חזקה years, then the מחזיק by stating that he was occupying this field for שני חזקה is implying that he was there for only three years, not more. בי"ד accepts the testimony of an individual, to his detriment, more than the testimony of עדים. Therefore his testimony of a three year occupation contradicts and cancels the testimony of the עדים of a seven year occupation.

SUMMARY

תוספות maintains that if it were not usual to refer to seven years as שני חזקה, then the claim of שני חזקה would contradict any testimony of more than three years occupation.

THINKING IT OVER

What is the חידוש of תוספות; seemingly the גמרא is saying this clearly?!

2. What would the ruling be if initially the מחזיק states שנים ג' שנים² וואכלתיה ג'?

¹ One may have (mistakenly) assumed that if there were עדים that he lived there for seven years, then it would be irrelevant whether עביד איניש וכו' or not.

² See בל"י אות קיד.