

ואי חבריה בטינא לאלתר הוי חזקה –

And if he bonded it with cement, it is a חזקה immediately

OVERVIEW

The גמרא states that if a כשורא דמטללתא is placed on a neighbor's wall and cemented there, it is immediately considered a חזקה. This תוספות maintains that it is a חזקה in regards that the owner of the כשורא may keep it there forever, without having to remove it.

ואומר רבינו שמואל¹ דחזקות דלעיל לאו דשלוש שנים² אלא לאלתר³ כדאמרינן הכא:

And the [ב"ם] רש"י says that the חזקות mentioned previously, such as אחזיק להורדי or אחזיק לנטפי are not חזקות which require three years to be established but rather they take effect immediately. If the aggrieved party is aware of the action taken and does not protest, it is a חזקה immediately, as the גמרא states here that if he bonded the beam to the wall with cement it is a חזקה immediately, similarly with the other חזקות mentioned previously in our גמרא.

SUMMARY

חזקת תשמישין is accomplished immediately.

THINKING IT OVER

1. Why (according to the רשב"ם וסייעתו) is there a difference between חזקת קרקע which requires three years and חזקת תשמישין where it is a חזקה לאלתר?⁴
2. If חזקת תשמישין is established immediately by אחזיק להורדי וכו', why are thirty days required to establish a חזקה by a כשורא דמטללתא?⁵

¹ See in 'תוס' ד"ה תוס'.

² A חזקה to establish ownership of קרקע requires three years. However a חזקה to establish a right of usage in a neighbor's property – חזקת תשמישין – that can be accomplished immediately (if the owner does not protest).

³ This viewpoint of the רשב"ם is in opposition to the viewpoint of the ר"ת brought in the previous ד"ה האי, who maintains that חזקת תשמישין also require three years to be established. The ר"ת maintains that the discussion about a כשורא דמטללתא is in regards to the question if he is to be considered בחזקת שנתן or not, in the case of אחר לו כותל אחר, but not in regard to חזקת תשמישין.

⁴ See נח"מ ו,א בגמ' ד"ה ונ"ל להסביר.

⁵ See סוכ"ד אות כד.