

A בס"ד

Intro

Today we will Be"H learn of דף ל בתרא of מסכת בבא בתרא. Some of the topics we will learn about include:

The Gemara discusses several cases of disputed חזקות, an occupant's proof to of ownership of real property, including:

שכונני גוואי

If the original owner claims to have also used the property during the period of the חזקה, it is a מחלוקת whether the owner or the occupant bears the burden of proof.

נכסי דבר סיסין

If someone sells all the property he purchased from a certain individual, and one particular property's origins are unclear, it is a מחלוקת whether the seller or the buyer bears the burden of proof.

שוקי בראי

Whether the original owner can argue that he did not protest because he was away, occupied with his business, and did not hear of the חזקה?

A

Several cases of disputed חזקות

שכונני גוואי

נכסי דבר סיסין

שוקי בראי

B מפלניא זבינתה

דאמר לי דזבנה מינך

Whether the occupant can claim to have bought the property from someone else who claimed to have bought it from the last known owner, but the occupant cannot prove that the seller actually purchased the property from the previous owner?

פלוני גולנא הוא

If the original owner says that the person who sold the property to the present occupant stole it from him, whether his claim is undermined if

אתאי אימלכי בכך

ואמרת לי זיל זבין

He advised the occupant to purchase the property, OR

אתית באורתא

ואמרת לי זבנה ניהלי

If he offered to buy the property from the occupant;

B

מפלניא זבינתה
דאמר לי דזבנה מינך

פלוני גולנא הוא

אתאי אימלכי בכך
ואמרת לי זיל זבין

אתית באורתא
ואמרת לי זבנה ניהלי

1 So let's review...

The Gemara in the previous Daf began a discussion of a disputed חזקה:

ההוא דאמר ליה לחבריה

מאי בעית בהאי ביתא

If the previous owner of a house asked the current occupant to explain his presence, and he said

מינך זבינתיא

ואכלית שני חזקה

I purchased it from you, and I've already been residing here for three years, establishing a חזקה.

The previous owner then claimed

אנא בשכונאי גוואי הואי

During those years that you have been living in the outer apartment, I've been living in the inner apartment of this house, and I've also been using the outer apartment to enter and exit, thereby invalidating your חזקה. Tosfos explains

היה לו עדים

שהיה בשכונאי גוואי

אבל לא היו יודעים באיזה דרך היה יוצא

He can prove that he lived there, but he cannot prove that he also used the outer rooms.

The Gemara records a מחלוקת:

רוב נחמין ruled

זיל ברור אכילתך

The occupant must prove that he established a proper חזקה.

While רבא maintained

המוציא מחבירו עליו הראיה

The burden of proof is on the previous owner, because as the רשב"ם explains, we do not need to suspect that the previous owner used the disputed space as well, and so the חזקה establishes the occupant as the owner.

1

ההוא דאמר ליה לחבריה
מאי בעית בהאי ביתא

If the previous owner of a house asked the current occupant to explain his presence,

He said

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I purchased it from you, and I've already been residing here for three years, establishing a חזקה.

The previous owner then claimed

אנא בשכונאי גוואי הואי

During those years,

I've been living in the inner rooms of this house, and I've also been using the outer rooms to enter and exit, thereby invalidating your חזקה.

Tosfos explains

היה לו עדים

שהיה בשכונאי גוואי

אבל לא היו יודעים באיזה דרך היה יוצא

He can prove that he lived there,

but not that he also used the outer rooms.

רבא

המוציא מחבירו
עליו הראיה

The burden of proof
rests on the previous
owner

רב נחמין

זיל ברור
אכילתך

The occupant must
prove that he established
a proper חזקה.

because as the רשב"ם explains,

we do not need to suspect that the previous owner used the disputed space as well, and so the חזקה establishes the occupant as the owner.

- 2 The Gemara challenges this from a similar case where רב נחמן and רבא apparently reverse their opinions:
 ההוא דא"ל לחבריה
 כל נכסי דבי בר סיסין מזבינא לך
 One person said to another, "I am selling to you all of the property that I had purchased from someone named בר סיסין."
 הואי ההיא ארעא
 דהוה מיקרי דבי בר סיסין
 There was a specific property that was called "The field of בר סיסין," but the seller claimed that he did not buy it from בר סיסין, it was only called that way, and so it was not included in the sale.
 רב נחמן
 אוקמא בידא דלוקח
 He ruled that the buyer receives it as well.
 While רבא ruled
 המוציא מחבירו עליו הראיה
 It remains in the possession of the seller, because the burden of proof is on the buyer.
 The Gemara asks
 קשיא דרבא אדרבא
 קשיא דרב נחמן אדרב נחמן
 In the first Machlokes, רבא ruled for the seller, and רבא ruled for the buyer, and in the second Machlokes their positions are reversed, רב נחמן ruled for the buyer, and רבא ruled for the seller?

2

?

**ההוא דא"ל לחבריה
 כל נכסי דבי בר סיסין מזבינא לך**
*One person said to another,
 "I am selling to you all of the property that I had purchased
 from someone named בר סיסין."*

**הואי ההיא ארעא
 דהוה מיקרי דבי בר סיסין**
*There was a specific property that was called
 "The field of בר סיסין,"
 but the seller claimed that he did not buy it from בר סיסין,
 it was only called that way,
 and so it was not included in the sale.*

<p style="text-align: center;"><i>רבא</i></p> <p style="text-align: center;">המוציא מחבירו עליו הראיה</p> <p style="text-align: center;"><i>It remains in the possession of the seller, because the burden of proof is on the buyer.</i></p>	<p style="text-align: center;"><i>רב נחמן</i></p> <p style="text-align: center;">אוקמא בידא דלוקח</p> <p style="text-align: center;"><i>He ruled that the buyer receives it as well.</i></p>
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**קשיא דרבא אדרבא
 קשיא דרב נחמן אדרב נחמן**

3 The Gemara answers:

דרבא אדרבא לא קשיא

The rulings of רבא are not contradictory, because;

התם מוכר קאי בניכסיה

הכא לוקח קאי בניכסיה

In both cases רבא ruled in favor of whoever is currently in possession of the property.

Therefore, in the first case, the buyer established a valid חזקה, and the burden of proof is on the seller to invalidate the חזקה. However, in the second case, the seller owned the property, and the buyer must prove that it was included in the sale.

Similarly,

דרב נחמן אדרב נחמן

נמי לא קשיא

The rulings of רב נחמן are also not contradictory, because;

In the first case,

לא יהא אלא דנקיט שטרא

מי לא אמרינן ליה

קיים שטרך וקום בניכסי

A חזקה stands in place of a document. Therefore, just as the buyer must establish the validity of his document, he must establish the validity of his חזקה, and prove that the original owner did not use the house during the three years.

In the second case,

כיון דאמר ליה דבי בר סיסין

ומיקריא דבי בר סיסין

עליה דידיה רמיא לגלויי

דלאו דבי בר סיסין היא

It is far more likely that the property was originally owned by בר סיסין, as the name suggests. Therefore, it is assumed to be included in the sale, unless the seller proves that it was not truly the property of בר סיסין.

=====

3

דרבא אדרבא לא קשיא

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התם מוכר קאי בניכסיה

However, in the second case, the seller owned the property, and the buyer must prove that it was included in the sale.

הכא לוקח קאי בניכסיה

In the first case, the buyer established a valid חזקה, and the burden of proof is on the seller to invalidate the חזקה.

דרב נחמן אדרב נחמן נמי לא קשיא

The rulings of רב נחמן are also not contradictory, because;

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מי לא אמרינן ליה

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וקום בניכסי

A חזקה stands in place of a document. Therefore, just as with a document, he must establish the validity of his חזקה, and prove that the original owner did not use the house during the three years.

4 The Gemara discusses several cases where a חזקה may not be effective:

1.

ההוא דאמר ליה לחבריה
מאי בעית בהאי ביתא

If the previous owner of a house questioned the current occupant's presence, and he answered

מינך זבנתיה

ואכלתיה שני חזקה

I bought it from you and established a חזקה of three years.
The previous owner responded

בשוקי בראי הואי

I was away on business. And the Rashbam explains

בשאין שיירות מצויות

We're discussing a case of where people do not travel between these areas frequently. Therefore, I did not hear of your חזקה, and that is why I did not protest.

The occupant then answered

אית לי סהדי

דכל שתא הוה אתית תלתין יומי

I have witnesses that you came back to our city for 30 days of every year, and so presumably, you did hear of the חזקה, and should have protested?

The owner then responded

תלתין יומי

בשוקאי הוה טרידנא

During those thirty days I was occupied with the market and I did not hear of your חזקה.

רבא ruled

עביד איניש

דכל תלתין יומי טריד בשוקא

This is a reasonable claim, and the previous owner gets the property, because the חזקה is not valid.

4

Several cases where a חזקה may not be effective

1

ההוא
דאמר ליה לחבריה
מאי בעית
בהאי ביתא

If the previous owner
of a house questioned
the current occupant's
presence

מינך זבנתיה
ואכלתיה שני
חזקה

I bought it from you
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During those thirty
days I was occupied
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חזקה.

רבא
עביד איניש

דכל תלתין יומי טריד בשוקא

This is a reasonable claim.
The previous owner gets the property,
because the חזקה is not valid.

5

2.

ההוא דאמר ליה לחבריה
מאי בעית בהאי ארעא

If the previous owner of a property questioned the current
occupant's presence, and he answered

מפלניא זבינתה

דאמר לי דזבנה מינך

I purchased it from someone else who told me that he
bought it from you, and I have since established a חזקה.

The previous owner then argued

את לאו קא מודית

דהאי ארעא דידי היא

ואת לא זבינתה מינאי

You yourself admit that I am the last known owner of the
property and you did not buy it from me. Therefore,
זיל

לאו בעל דברים דידי את

You have no rights, because as the Rashbam explains,

חזקה שאין עמה טענה היא

His חזקה is not supporting a valid claim, since he does not
know if the person he bought it from truly bought it from
the previous owner.

רבא ruled

דינא קאמר ליה

This is a valid argument, and the previous owner gets the
property, because the חזקה is not valid.

5

2

ההוא דאמר
ליה לחבריה
מאי בעית
בהאי ארעא

If the previous owner of
a property questioned
the current
occupant's presence,

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דאמר לי
דזבנה מינך

I purchased it from
someone else who told
me that he bought it from
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את לאו קא מודית
דהאי ארעא דידי היא
ואת לא זבינתה מינאי

You yourself admit that I am the last known owner
of the property and you did not buy it from me.

Therefore,

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You have no rights.

As the Rashbam explains,

חזקה שאין עמה טענה היא

His חזקה is not supporting a valid claim,
since he does not know if the person he bought it from
bought it from the previous owner.

רבא

דינא קאמר ליה

This is a valid argument,
and the previous owner gets the property,
because the חזקה is not valid.

6 3.
On the other hand, in the same case, if the previous owner responds
פלניא גולנא הוא
The person you bought it from stole it from me, and the occupant argued
והא אית לי סהדי
דאתאי אימלכי בכך
ואמרת לי זיל זבין
I have witnesses that you advised me to purchase the property, indicating that you had no claim to it. And the owner answered him
השני נוח לי
הראשון קשה הימנו
I preferred that you buy it, since it is easier for me to deal with you in court.

6 3

ההוא דאמר ליה לחבריה מאי בעית בהאי ארעא
If the previous owner of a property questioned the current occupant's presence,

מפלניא זבינתה דאמר לי דזבנה מינך
I purchased it from someone else who told me that he bought it from you, and I have since established a חזקה.

פלניא גזלנא הוא
The person you bought it from stole it from me

והא אית לי סהדי דאתאי אימלכי בכך ואמרת לי זיל זבין
I have witnesses that you advised me to purchase the property, indicating that you had no claim to it.

השני נוח לי הראשון קשה הימנו
I preferred that you buy it, since it is easier for me to deal with you in court.

7

רבא ruled

דינא קאמר ליה

This is a valid argument, as we learned in the following Mishnah:

העורר על השדה

וחתום עליה בעד

If someone claims ownership of a land after serving as a signatory to its subsequent sale;

אדמון אומר

השני נוח לי

הראשון קשה הימנו

He can argue that he preferred the buyer to have it, since it would be easier to bring him to court. However,

חכמים אומרים

איבד את זכותו

He lost his rights to the field.

The Gemara explains

כמאן כאדמון

רבא apparently ruled according to אדמון, and he does not lose his rights.

Alternately,

אפילו תימא רבנן

רבא's ruling can be reconciled with the רבנן's opinion:

התם עבד ליה מעשה

אבל הכא דבורא

עביד איניש דמיקרי ואמר

If one actually signs a document, it indicates that he waives his rights to the property, but merely giving advice verbally, does not indicate that he waives his rights.

7



רבא

דינא קאמר ליה

This is a valid argument.



As we learned in the following Mishnah:

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וחתום עליה בעד

If someone claims ownership of a land after serving as a signatory to its subsequent sale.

חכמים אומרים

איבד את זכותו

He lost his rights to the field.

אדמון אומר

השני נוח לי

הראשון

קשה הימנו

He can argue that he preferred the buyer to have it, since it would be easier to bring him to court. However,

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8

4.
 However, in the same case, if the previous owner said
 פלניא גזלנא הוא
 The person you bought it from stole it from me, and the
 occupant argued
 והא אית לי סהדי
 דאתית באורתא
 ואמרת לי זבנה ניהלי
 I have witnesses that you requested to buy the property
 from me, indicating that you have no rights, and the owner
 then answered
 אמינא
 איזבון דינאי
 I preferred to spend money and avoid a court case.

 רבא ruled
 עביד איניש דזבין דיניה
 This is a reasonable claim, and the original owner gets the
 property.

8

4

מפלניא זבינתה
דאמר לי
זבנה מינך

I purchased it from
someone else who told
me that he bought it from
you, and I have since
established a מקח.

ההוא דאמר
ליה לחבריה
מאי בעית
בהאי ארעא

If the previous owner of
a property questioned
the current
occupant's presence,

והא אית לי סהדי
דאתית באורתא
ואמרת לי
זבנה ניהלי

I have witnesses
that you requested to buy
the property from me
indicating that you have
no rights

פלניא
גזלנא הוא

The person you
bought it from stole
it from me

איזבון דינאי

I preferred to spend
money and avoid a
court case.

רקא

עביד איניש דזבין דיניה

This is a reasonable claim,
and the original owner gets the property.

9

5. ההוא דאמר ליה לחבריה
מאי בעית בהאי ארעא
If someone questioned the current occupant's presence,
and he answered
מפלניא זבינא
ואכלתיה שני חזקה
I purchased it from someone and I established a חזקה.
The claimant then argued
והא נקיטנא שטרא
דזבני ליה מיניה הא ארבעי שני
I have a document stating that I purchased it from that
very same person four years ago, and I was the rightful
owner when your חזקה began. Therefore, since you admit
that you did not buy it from me, your חזקה is worthless.
The occupant answered
מי סברת
שני חזקה תלת שני קא אמינא
שני חזקה טובא קא אמינא
I did not mean that I occupied the property for the
minimal amount of three years, but for many years of
חזקה, and he presents witnesses regarding the past seven
years, thereby establishing a valid חזקה before the date of
the second person's purchase.

רבה ruled
עבידי אינשי
דקרו לשני טובא שני חזקה
This is a reasonable claim, and the occupant retains the
property.

However,
שית
אין לך מחאה גדולה מזו
If his חזקה only predates the date of the document by two
years, the previous owner's act of selling the field to
another person is the ultimate form of protest, and
invalidates the חזקה.

9

5

**מפלניא זבינא
ואכלתיה
שני חזקה**
*I purchased it
from someone
and I established
a חזקה.*

**ההוא דאמר
ליה לחבריה
מאי בעית
בהאי ארעא**
*If someone questioned the
current occupant's
presence,*

**מי סברת
שני חזקה תלת
שני קא אמינא
שני חזקה טובא
קא אמינא**
*I did not mean
that I occupied the property
for the minimal amount of
three years, but for many
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years, thereby establishing a
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**והא נקיטנא
שטרא
דזבני ליה מיניה
הא ארבעי שני**
*I have a document stating
that I purchased it from
that very same person four
years ago, and I was the
rightful owner when your
חזקה began.
Therefore, since you admit
that you did not buy it
from me, your חזקה is
worthless.*

רקא

**עבידי אינשי
דקרו לשני טובא שני חזקה**
*This is a reasonable claim,
and the occupant retains the property.*

However,

**שית
אין לך מחאה גדולה מזו**
*If his חזקה predates the date of the document by two years,
the previous owner's act of selling the field to another
person is the ultimate form of protest,
and invalidates the חזקה.*