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Bava Basra Daf 38

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The Power and Importance of Protest

They said in Nehardea: If someone sold a tree to his friend, his friend acquires it from the bottom of the tree all the way down. [*The owner of the field cannot dig directly under the tree.*]

Rava asks: Why can't the seller say, "I sold you (*the equivalent of*) an eastern saffron plant. Take it away and go!" [*This is especially in light of the Mishna's statement that one does not acquire land with the purchase of tree. Why don't we take that statement at face value?*]

Rather, Rava says: The case is when the purchaser claims that the sale explicitly included the land under the tree. [*The Rashbam adds that he claims that being that he already owned the tree for three years he did not keep his document.*]

Mar Keshisha, the son of Rav Chisda, asked Rav Ashi: If the seller indeed sold him an eastern saffron plant, what is a seller supposed to do? [*Every buyer will claim after three years that he also received the land underneath it, and win the case!*]

The *Gemora* answers: He should have protested (*i.e. declared sometime during these three years that he did not sell the tree with the land*). Otherwise, the *mashkanta* of Sura, which is a condition that states:

"When these years are finished, this land should go back to its owner without him having to pay anything," could also lead to trickery. The lender could merely hide his document and state that he bought the field, and be believed. However, how is that possible? Would the Rabbis institute a mechanism which could easily lead to someone (*i.e. the lender*) losing his land? It therefore must be that he is supposed to declare within three years that this land is only a *mashkanta*, and does not belong to the lender. In our case as well, the seller should declare within three years that the tree was not sold with land. (37b – 38a)

Mishna

There are three lands for establishing *chazakah*: Yehudah, Eiver Hayarden, and Galil. If the owner of the property lived in Yehudah, but his property, which someone else was trying to establish a *chazakah* on, was in Galil, or the other way around, the *chazakah* is invalid unless the owner is in the same country as the person trying to establish a *chazakah* on his property. [*The Gemora below will explain the reasoning.*] Rabbi Yehudah says: The entire reason that three years is a *chazakah* is so that someone who is on another person's land in Aspamya (*far from Eretz Yisroel*) will be on it for a year, and it will take another year for the real owner to be informed, and he will then come and protest within a year. (38a)

The Reasoning of the Tanna Kamma

The *Gemora* asks: What is the reasoning of the *Tanna Kamma*? If he holds that a protest that is not stated in the physical presence of the occupier is valid, then even from Yehudah to Galil it should be valid! If he holds that it is invalid, it should not even be valid if both parties are in Yehudah! [*Why make a point of saying there are different lands for establishing a chazakah?*]

Rabbi Abba bar Mamal answers in the name of Rav: The *Tanna Kamma* holds that a protest that is not stated in the physical presence of the occupier is valid. However, our *Mishna* is discussing a situation where there is a state of war, and therefore no regular transportation is allowed, between the two countries. [*In such a situation, it is not possible for word of the protest to reach the one establishing a chazakah.*]

The *Gemora* asks: Why, then, did the *Tanna Kamma* give the specific case of Yehudah and Galil?

The *Gemora* answers: He was teaching us that normally relations between Yehudah and Galil are deemed to be as if there is a war between them, and there is therefore no transportation between the two countries. [*The Rashbam explains that even when there are peaceful relations between these two lands, transportation from one to the other is deemed uncommon, and therefore a protest from one to the other is invalid.*] (38a – 38b)

A Runaway Chazakah

Rav Yehudah says in the name of Rav: One cannot establish a *chazakah* on the property of one who ran away. When I (Rav Yehudah) said this before Shmuel (after Rav died), he said: Does he need to protest

before him? [*Shmuel held that a protest that is not stated in the physical presence of the occupier is valid.*]

The *Gemora* asks: What was Rav teaching with his statement? It must be that he held that a protest that is not stated in the physical presence of the occupier is invalid. This cannot be, as Rav explicitly stated that such a protest is valid!?

The *Gemora* answers: Rav explains the opinion of the *Tanna* of our *Mishna*, but does not agree with him.

Others say: Rav Yehudah says in the name of Rav that one can establish a *chazakah* on the property of one who ran away. When I said this before Shmuel, he said: This is obvious, as why would he need to protest before him?

The *Gemora* asks: What was Rav teaching with his statement (*as it is obvious*)? It must be he held that a protest that is not stated in the physical presence of the occupier is valid. However, Rav already explicitly stated that such a protest is valid! [*Why would he bother to state this again?*]

The *Gemora* answers: Rav is teaching that even if his protest was made before two people who will not end up spreading the word so that it reaches the person establishing the *chazakah* (*i.e. cripples who are not going to travel*), the protest is valid.

This is unlike Shmuel's position on this matter, as related by Rav Anan. Rav Anan says: Shmuel told me that if his protest was made before two people who can possibly end up spreading the word so that it reaches the person establishing the *chazakah*, the protest is valid. If they will not do so, the protest is invalid.



The *Gemora* asks: Why does Rav say that such a protest is valid?

The *Gemora* answers: This is because his friend has a friend, and his friend's friend has a friend. [*Even if the cripple will not go and tell the squatter on the land, he will tell it to his friend who will tell it to his friend until it eventually gets back to the squatter.*]

Rava says: The law is that one cannot establish a *chazakah* on the property of a person who ran away, and a protest that is not stated in the physical presence of the occupier is valid.

The *Gemora* asks: Can both of these be the law? [*Isn't the reason one cannot establish a chazakah on the property of a person who ran away because a protest that is not stated in the physical presence of the occupier is invalid?*]

The *Gemora* answers: In a case where he ran away because he has no money to pay monetary debts, he is expected to protest wherever he is, as he is not scared people will find him, as he has no money anyway. [*They therefore will not bother going after him.*] However, in a case where he ran for his life (*because he murdered someone*), it is not a protest, as protesting will give away his hiding place. He therefore has no ability to protest, making it impossible to establish a *chazakah* on his property. (38b)

DAILY MASHAL

Arguments

Our *Gemora* discusses cases where two people are arguing over their presumptuous rights. It is important to learn how to disagree with another, but

nevertheless, maintain common decency and respect for the other.

When the Rachover Rav (author of *j"hrvn hyuehk*) died suddenly in a bridge collapse, his son assumed the position as Rav. The first Din Torah that presented itself before him was brought by a man, whose daughter was supposed to get married that day. It seems that the father had not delivered the promised "Nadin" (dowry) to the Chasan, and the Chasan now refused to go through with the wedding. The man had brought the Chasan to the Rav, but no matter how much the Rav cajoled and begged him not to embarrass the Kallah and her family in this way, the Chasan was adamant in his refusal. Finally, the Chasan agreed to go forward with the Chasunah, but only if the Rav paskened that the Halacha required him to do so. The Rachover Rav did not take long to render his P'sak that the Chasan was obligated to go forward. (n.b. The Rema – *z"gv* 2:1 advises one to do exactly that, even when the father reneges on the Nadin) When the Chasan asked for the basis of the P'sak, the Rav explained that the Nadin had only been promised to him because of the assumption that he was a Ben Torah with *Yiras Shomayim* and good *Midos*. By his refusal to go forward with the Chasunah, he demonstrates that the assumption was false. As such, he is not entitled to the Nadin at all. The Chasan acknowledged the P'sak and went through with the Chasunah.