

אביי אמר סומך דהא אינה עשויה לבורות -

Abayay said; he may place it near since it is not designated for pits

Overview

אביי maintains (in opposition to רבא) that one may dig his pit adjacent to his boundary line if the other field is not designated for digging pits. תוספות discusses this ruling.

והואיל וכן אינו מזיק לו אם הוא סומך -

And since this is so (that the adjacent field is not לבורות), **he is not damaging his neighbor, if he is סומך**, since the neighbor will not be digging any pits in his domain -

תוספות asks:

וקשה לרבינו שמשון בן אברהם דהא מפסיד הוא -

And the רשב"א has a difficulty; but his neighbor is losing, by his placing his בור adjacent to the property line -

שאם יטע אילן יצטרך להרחיקו יותר מחמת שסומך זה עד המיצר -

For if his neighbor will want to plant a tree, he will need to distance it further back on his property, because of this one who dug his pit adjacent to the border -

דמרחיקין¹ האילן מן הבור חמש ועשרים אמה² -

For the rule is one must distance, when planting a tree, twenty five אמות from an existing בור -

תוספות answers:

ויש לומר דמכל מקום אינו עושה לו היזק -

And one can say; that nonetheless the בעל הבור is not damaging the בעל האילן -

דהא דמרחיק יותר לא מפני שלא יזיקנו הבור אלא מפני שלא יזיק הוא לבור³ -

For the reason the בעל האילן distances himself more (from the boundary) is not in order so that the בור should not damage him, but rather because the בעל האילן

¹ This is the view of the ת"ק in the משנה on כה, ב.

² The בעל האילן is losing this extra space, since he could have planted his tree closer to his boundary, if not for the בור. See מהרש"א that תוספות question seems to be that if the בעל הבור would be מרחיק three טפחים, the בעל האילן would only need to be מרחיק twenty five אמה, so his roots will not penetrate the בור. However now that the בעל הבור was סומך, he needs to move back an additional three טפחים (besides the אמה כ"ה) on his own property. We can no longer say that הואיל ואין מזיק לו, and שהואיל ואין מזיק לו, since he is מזיק לו three טפחים (of his property). See סוכת דוד אות לה and ביאורים. והערות (להרי"מ קובלוביץ) אות ט. See 'Thinking it over'.

³ תוספות is distinguishing between one causing (direct) damage to his neighbor, where there is an obligation to distance oneself, and where one is causing that his neighbor needs to distance in order that the neighbor should not damage him (as in the case of the בור ואילן); in which case there is no need for the one who will be damaged to distance himself.

should not damage the בור -

ולהכי אין לזה להניח מלסמוך בשביל כך דאם לא כן ירחיק⁴ כל כ"ה אמה⁵ את בורו:

So therefore the בעל הבור is not required to give up his right לסמוך on account of the requirement for the בעל האילן to distance himself, for if this is not so, but the בעל הבור has distance himself on account of the אילן, he should be required to distance his בור from the boundary the entire twenty-five אמות (if it is a שדה העשויה (לאילנות)!

Summary

The חיוב of distancing is only if one is directly מזיק his neighbor, but if he is causing that the neighbor needs to take precautions not be מזיק him, there is no הרחקת נזיקין.

Thinking it over

1. Why does not תוספות ask the same question on רבא (that you cannot be סומך); but nevertheless he is causing the בעל האילן to be אמה כ"ה⁶?

2. Why does not תוספות also ask the question on רבא אביי according to the opinion that כ"ע בשדה שאינו עשויה לבורות סומך, and also on אביי if he maintains סומך even by a שדה העשויה לבורות⁷?

⁴ (בעל האילן), even though he inconveniences the בעל הבור is not required להרחיק (even though he inconveniences the בעל הבור), for if he were required להרחיק, he would need to be אמה כ"ה, and we do not find such a requirement anywhere.

⁵ See נחלת משה that תוספות means that the בעל הבור ובעל האילן would need to share equally that distance of אמה כ"ה; meaning that each one would need to distance himself twelve and a half אמות from the boundary.

⁶ See נחלת משה.

⁷ See the ספרים in footnote # 2.