מעלינן ליה כנכסי דבר מריון –

We raise its assessment as the estates of בר מריון

Overview

A son bought property adjoining his father's property. רבה ruled that he can demand that his inherited share in the estate should be the field which adjoins his property. However רב יוסף argues that the brothers can say that we assess this adjoining property which you desire as to be very expensive as the properties of בר מריון. There is a dispute between רש"י and תוספות as to the meaning of מעלינן ליה כנכסי דבר מריון.

פירש הקונטרס בשדה[1] הבעל[2] שיכולים לומר שפעמים מתברכת משאר שדות –

רש"י explained that the claim of מעלינן כנכסי דבר מריון is **by a בית הבעל, where** the brothers can claim **that occasionally** this field which you want **is blessed** with rain **more than the rest of the fields,** and therefore it is worth more -

ובתרתי ארעתא אתרי נגרי[3] לא שייך למימר מעלינן –

However by two fields bordering two canals it is not applicable to say מעלינן -

כיון שצריך להשקות ואין מתברכת זו יותר מזו –

Since these fields (בית השלחין) **require irrigation, so one** field **is not more blessed than the other.** This concludes פירש"י.[4]

תוספות disagrees with the explanation of פירש"י:

ואין נראה דגם אותם שצריך להשקות מתברכת אחת מהם פעמים יותר –

And תוספות **does not** share **this view, for even** regarding **those fields which require irrigation one of them may occasionally be more blessed** than the others -

שאחת לוקה בשידפון[5] ואחת אינה לוקה –

For one field **may be stricken with שדפון and the other may not,** so the brothers should be able to argue מעלינן even by a שדה בית השלחין, so why did רב יוסף say that their argument by a בית השלחין is האי מדויל וכו' and not מעלינן וכו'.

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[1] A שדה הבעל is a field which relies only on rainwater for the crops to grow; it is not irrigated (as a בית השלחין).

[2] The הגהות הב"ח amends this to read; הבעל **ואיירי** שיכולים.

[3] Regarding the case of תרתי ארעתא אתרי נגרי we do not find רב יוסף saying that the brothers can claim מעלינן וכו'; the reason (according to רש"י) is, as תוספות continues to explain (פירש"י) that irrigated fields are all equally irrigated.

[4] According to רש"י the claim of מעלינן causes their refusal to give him the adjoining property, because this property is (possibly) worth more. See footnote # 8.

[5] שדפון is translated as 'blight' (a disease which causes the plants to wither and die)..

תוספות offers his interpretation of מעלינן:

ופירש רבינו תם מעלינן כנכסי דבר מריון לא ניתן לך זכות שיש לנו בשדה זו[6] –

And the ר"ת explained that **מעלינן כנכסי דבר מריון** means, **we** (the brothers) **will not give** up **to you our rights which we possess in this** (adjoining) **field -**

אם לא בדמים יקרים כמו בני מריון שהיו עשירים[7] –

Unless you pay for it **an expensive price, just as the בני מריון who were wealthy -**

ולא היו מוכרים קרקעותיהם אלא בדמים יקרים –

And they would not sell their fields unless they received **an expensive price.[8]**

תוספות continues:

ותרתי ארעתא אתרי נגרי לא קאי אעובדא דההוא גברא[9] אלא מילתא באנפי נפשיה –

And the case of **תרתי ארעתא אתרי נגרי is not referring** back to the episode of **that man** who bought property אמצרי דבי נשא, **but** rather **it is a separate case -**

כלומר שתי שדות שיש לכל אחד נגר–

Meaning if **there are two fields and each of them has** its **canal** to irrigate it -

ורוצה האחד שיחלקו כל אחת לשתים שיקח חצי שדה זו וחצי שדה זו –

And one of the heirs (or partners) **wants that each field should be divided into two** parcels, **so** each **one** (of the heirs/partners) **would take half of this field and half of the other field** (instead of each one taking one complete field); regarding this claim -

אמר רבה כופין על מדת סדום ויטול כל[10] שדה שלם כדי שיהא לכל אחד חלק אחד מצרא[11] –

רבה ruled that כופין עמ"ס and each one receives a complete field in order that each one should have a contiguous parcel.

תוספות responds to a seeming difficulty:

וכן יש לפרש תרתי ארעתא אחד[12] נגרא שהנגר מפסיק בין שתי השדות[13] –

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[6] The other brothers have a right to divide the fields with a גורל which may result that this adjoining field will belong to one of the other brothers. If one of the other brothers receives this adjoining field he will be able to sell it to this brother (who does not want the גורל) at a higher price. They may request to be paid (whatever price they want) to relinquish this right. רב יוסף maintains that this is not מדת סדום, for the other brothers possibly stand to profit if there is a גורל (and they will lose that potential profit if there is no גורל).

[7] Wealthy people have no 'cash flow' issue, and are willing to wait until they get the price they want (above the current market price).

[8] According to תוספות their refusal to give him the adjoining property is because they have a right for a גורל; they therefore claim that to relinquish this right we assess this property כנכסי בר מריון. See footnote # 4 & 6.

[9] רש"י בד"ה תרי learns that the case of תרתי ארעתא is referring to the case of זבן אמצרא דבי נשא. However תוספות cannot learn that way, for in that case רב יוסף should have objected to כופין עמ"ס by saying מעלינן just as he said by זבן אמצרא.

[10] The הגהות הב"ח amends this to read; כל **<u>אחד</u>** שדה.

[11] It seems (according to תוספות) that the two parcels were not adjacent to each other.

[12] In the case of תרתי ארעתא אתרי נגרי we can assume that the fields were not adjacent to each other; however by תרתי ארעתא אחד נגרי, seemingly the fields are adjacent to each other so why are we כופין עמ"ס since the fields join?

[13] The canal runs between the two fields. See the מהרש"א for an explanation how the fields can be divided.

And we can similarly explain the case of two fields bordering one canal, that the canal separates the two fields -

ואם יחלקו כל שדה לשתים לא יהיה חלקו אחד מצרא –

So that if each field was divided into two (and they would each take portions on both sides of the canal), **his parcel will not be contiguous.** Therefore even רב יוסף agrees that כופין עמ"ס (since the reason of האי מדויל does not apply) and it cannot be divided.

תוספות explains why we do not use the argument of מעלינן in the cases of תרתי ארעתא:

והשתא בהני לא שייך למימר[14] מעלינן[15] כנכסי דבי בר מריון –

And now we understand that **in these** cases of תרתי ארעתא (either אתרי נגרי or אחד נגרי), **it is not possible to argue מעלינן כנכסי דבי בר מריון** and require to divide the fields

דאטו אם האחד רצה לחלוק לעשרים נאמר שיחלקו משום מעלינן –

For is it then so that if one would want to divide the field **into twenty** parcels **would we consider dividing them because** of the **מעלינן** claim; obviously not![16]

תוספות presents an additional difficulty for פירש"י:

ולשון מעלינן[17] נמי אינו מתיישב לפירוש הקונטרס:

And the expression מעלינן is also not appropriate according to פירש"י.

Summary

רש"י maintains מעלינן is applicable only for a בית הבעל where there is a possibility that one field receives more rain than the others, but not by a בית השלחין. However תוספות maintains that מעלינן merely means that we do not want to release our rights to this field unless we receive a high price for it (it applies to all fields). מעלינן cannot override having one's (initial) parcel אחד מצרא.

Thinking it over

[14] Seemingly we could argue that each field should be divided into two for one brother may claim that either field is expensive כנכסי דבר מריון. Therefore תוספות rejects this argument.

[15] The claim of מעלינן is valid (according to רב יוסף) when one of the parties wants to claim a field without a גורל; therefore מעלינן denies him that request. However here where both parties wanted to divide with a גורל the only issue was whether to make the גורל on the two whole fields or the גורל should be on both halves of each field. The claim of מעלינן is insufficient to grant any party a right to divide parcels. The right to complete parcels (which is the 'normal' way to divide) overrides any claim of מעלינן. See following footnote # 16.

[16] It should be noted that in the case of זבן אמצרא the claim of מעלינן *denies* the son's request to divide without a גורל (to change the status quo). In the cases of תרתי ארעתא, the purported claim of מעלינן (which תוספות rejects) would have *supported* the claim of the one who wanted to break up the parcels (and change the status quo).

[17] מעלינן means we are assessing it at a high price (above the market value). However, according to רש"י the claim should have been לפעמים זו מתברכת וזו לא [so it is actually worth more (see נח"מ). See 'Thinking it over # 1].

1. When we say מעלינן, is there a limit as to how much[18] the brothers can claim?

2. In the case of תרתי ארעתא אתרי נגרא why is it that (according to רב יוסף) the claim of מעלינן is not sufficient to deny them אחד מצרא, however the claim of האי מדויל can deny them the right to be אחד מצרא?

3. How can we explain (according to תוספת) the מחלוקת between רבה ורב יוסף (regarding זבן אמצרא וכו') whether it is a מדת סדום or not?[19]

[18] It is obvious that the brothers will not claim such an exorbitant price that it will not be worth for the adjoining brother to buy it at that price. The question here is whether בי"ד will not allow the brothers to demand payment above a certain level (even if we maintain מעלינן).

[19] See סוכ"ד אות כט.