

Its roots extended, etc.

היו שרשיו יוצאין כולי -

Overview

The גמרא asked how can we answer that we are discussing a case of צונמא (there is a rock in between) for how does the משנה state that if its roots extend to the other property, he may chop them off; how can they extend since it is מפסיק. The גמרא answered that the משנה meant if there was no צונמא, and his roots extended into his neighbor's field he may cut off the roots. Our תוספות is concerned how it came to be that he was so close that his roots extended into his neighbor's field.

תוספות asks:

ואם תאמר היאך סמך אי שלא ברשות¹ אם כן יקוצ'² -

And if you ill say; how did he plant the tree so close; if it was without permission from the neighbor, then the neighbor should be permitted to chop down the entire tree (and not just to chop off the roots) –

תוספות responds:

וצריך לאוקמי בלוקח³ -

And it will be necessary to establish this משנה by a buyer –

תוספות presents an alternate approach:

ולרבינו יצחק בן אברהם אין נראה להעמיד בלוקח מדלא מסיק לה כדבסמוך -

However the לוקח does not agree that this משנה is to be established by a גמרא, since the גמרא did not conclude here that we are discussing a לוקח, as the גמרא concluded shortly regarding another case; this proves that in this case we are not discussing a לוקח -

אלא נראה דמיירי בסמך שלא ברשות דאינו קוצץ האילן אלא בנתינת דמים⁴ -

¹ If he planted the tree with his neighbor's permission, obviously the neighbor cannot chop off the roots (see however משה).

² See the משנה later on כה, that if the tree was planted שלא ברשות, the neighbor may chop it down. Presumably קוצץ means that he may chop it down, provided he pays the owner the value of the tree as the משנה states there. See later in this תוספות (footnote # 4).

³ A person owned a field and he planted a tree in the middle of the field, and then he sold half the field (which was adjacent to the tree [but not the part which had the tree]) to a buyer. The tree is now adjacent to his neighbor's (the buyer's) field. The buyer may chop of the roots, but may not chop down the tree (since it was planted ברשות). See the גמרא shortly that other cases were established in a case of a לוקח (see רש"י ד"ה הכא נמי).

⁴ See footnote # 2.

Rather it is the view of the ריב"א that we are discussing a case where he was סמך without permission where the rule is that he may not chop down the tree, unless he pays its value to the owner -

ובזה לא רצה להאריך⁵ ולהשמיענו:

And regarding this rule (of קוצץ ונותן דמים) the משנה did not wish to elaborate and inform us of this rule (since it was taught already elsewhere).⁶

Summary

This משנה is either discussing a לוקה, or it was planted ברשות, however the משנה did not wish to elaborate that he is קוצץ ונותן דמים.

Thinking it over

Why is it that the משנה taught the rule of קוצץ ונותן דמים by an אילן ובור, but not in the case of אילן ושדה?

⁵ Instead the משנה stated the simpler rule that he may chop off the roots (without any payment).

⁶ See משנה כה,ב. See 'Thinking it over'.