

It is different there; שאני התם דאמר ליה בעל החצר לבעל הגג כולי -
for the owner of the חצר says to the owner of the roof, etc.

OVERVIEW

The גמרא attempted (seven times) and failed to prove that היזק ראיה שמייה היזק. The last time (even) resorting to a מימרא of an אמורא.¹ תוספות is of the opinion that we can prove הרש"ה from a ברייתא.

תוספות asks:

תימה אמאי לא מייתי מדתניא לקמן (דף ו:): שתי חצירות זו למעלה זו² -
It is astounding! Why does not the גמרא bring proof that ה"ר ש"ה from a ברייתא
which we learnt later that states, 'if there are two חצירות, where one חצר is higher
than the other -

לא יאמר העליון הריני בונה מכנגדי ועולה³ אלא מסייע מלמטה ובונה -
The owner of the higher חצר should not say, 'I will participate in our joint wall
by building from my ground level and upwards.' He cannot do that – **rather** he
is required to **assist from the lower level and build** the entire wall together⁴ -

אלמא שמייה היזק:

It is evident from this ברייתא that ה"ר is **שמייה היזק**. If ה"ר לאו ש"ה then neither the עליון
nor the תחתון have to participate at all.

SUMMARY

It would seem that we can prove הרש"ה, from the ברייתא, which states that in a case
of בזו למעלה מזו, the עליון must jointly build the wall from the bottom up. If
ה"ר לא ש"ה, there should be no requirement at all.

THINKING IT OVER

Seemingly we can refute תוספות proposed proof from the ברייתא. Perhaps the ברייתא
is discussing a case where both partners contractually agreed in principle to build a
joint wall. They did not however specify the details.⁵

¹ A refutation from a תנא is (much) stronger than a refutation from an אמורא (if indeed it can even be considered a refutation).

² Where the properties adjoin, the ground of one is higher than the other, thus naturally creating a wall between the properties. This natural wall was less than אמות ד', the amount required for ראיה.

³ However he does not wish to contribute for the part of the wall that is being built below his property level.

⁴ For a precise interpretation of this ברייתא and the associated מחלוקת between רב חסדא and רב הונא see the commentaries on the גמרא there.

⁵ See בל"י אות מ and נח"מ.