

חצר – I might have said that they divide the חצר with just a ¹מסיפס. הוה אמינא במסיפס בעלמא.

Overview

The גמרא stated that (according to the מ"ד that מחיצה is a wall) if the משנה would have written בונין אותו instead of בונין את הכותל I would have thought that it meant merely with a מסיפס. It is not clear what the גמרא means by this. Seemingly it means to say that they would be required to divide the חצר with only a מסיפס. However this presents a difficulty. A מסיפס, as רש"י points out, and as is evident later in the גמרא, is the minimal division between two properties. If the שותפין agreed to divide, that implies that they agree to a מסיפס; how else can they divide?! Why would the משנה need to tell us that they are required to build a מסיפס? On account of this difficulty, רש"י offers a novel explanation. תוספות will offer his explanation first, then cite רש"י's interpretation and reject it.

הו"א The explanation² of the response גמרא's **הו"א** means that when the משנה states '**רצו**' they wanted, it is referring to a מסיפס; they agreed to build a divider³. There is no need to agree to divide, since it is a חצר שיש בה דין חלוקה.

anticipates a difficulty with this interpretation:

ואף על גב דבלא רצו – and even though that if they did not agree to build a מסיפס **ומי עושים מסיפס בעל כרחם – they can still be forced to build a מסיפס** by either party

גמרא⁴ **as is evident shortly** – כדמוכח בסמוך

דקאמר מאי לאו בכותל – for the גמרא says⁵; Does that not mean a wall; that they divide by making a wall. To which the גמרא replies -

לא במסיפס – no it refers to a מסיפס. They divide the חצר with a מסיפס. It is evident from that גמרא that each partner can coerce the other to divide and build a מסיפס. How can the גמרא have a הוה אמינא that they need to agree to build a מסיפת!

– במסיפס states that they divide גמרא When that תוספות answers:

היינו במסיפס גרוע – that means an inferior מסיפס; a מסיפס of inferior building materials, such as wood, etc.; that type of מסיפס one can coerce his neighbor to build jointly at their common border when they divide.

¹ A מסיפס is some type of demarcation between adjoining properties. The actual meaning of a מסיפס in this גמרא is a point of contention between רש"י and תוספות.

² תוספות is rejecting רש"י's interpretation that רצו refers to חלוקה. See our תוספות later,

³ It would be difficult to interpret תוספות literally; that they agreed specifically to build a מסיפס. If that were the case, then even according to the מסקנא they would be obligated to build a מסיפס not a כותל. Rather תוספות may mean that they agreed to build a מחיצה, without specifying whether it is a כותל or a מסיפס.

⁴ See the גמרא further on this עמוד.

⁵ The גמרא inferred from a later משנה that if there is a חלוקה דין, then one can coerce the other to divide.

However when they want and agree to build a divider; the case the משנה is discussing (according to this אמינא), then –

they are required on the insistence of either partner to build a divider from either גויל or גזית

as is the custom of the country.

is introducing us to a new type of מסיפס. It is a wall built from גויל וגזית. This type of מסיפס cannot be built by coercion; rather they both have to consent to build it.

How is this מסיפס מגויל וגזית distinguishable from a כותל מגויל וגזית?

and it is called a מסיפס, even though it is built from גויל וגזית –

for this מסיפס wall is full of windows

as the ערוך explains the meaning of this מסיפס

and this מסיפס does not protect one from ראייה, since it is full of windows. This distinguishes it from a כותל which is a solid wall and protects from ראייה.⁶

offers an alternate difference between a מסיפס and a כותל

another explanation why it is called a מסיפס, even though it is built with גויל וגזית, **is because it is not ten טפחים high**. For a wall to be considered a כותל it needs to be at least ten טפחים high. Less than ten טפחים is called a מסיפס.

will prove this latter point:

as is evident later in the גמרא⁸ concerning a roof adjacent to another roof. Concerning which –

he is required to make a (protective) fence ten טפחים high.

what is the purpose of this מעקה?⁹

if it is to prevent ראייה from one roof to the other –

we require a wall that is **four אמות** high, not ten טפחים

and if the purpose of the מעקה is to divide the roofs so if one trespasses into the other's roof he will be caught and deemed to be a thief, then

a מסיפס is sufficient for that purpose. We do not need a מעקה of ten טפחים. It is obvious from that גמרא that a מסיפס is less than ten טפחים high.⁹

According to תוספות there are three types of walls relevant to our discussion. 1. A מסיפס גרוע made up of inferior materials, 2. A regular מסיפס made of גויל וגזית that is either a) full of

⁶ This would fit in well with this מ"ד that מחיצה means a wall; and also maintains that היזק שמייה היזק. The משנה, if it would have stated אותו בונין, would be teaching us a different חידוש than it is currently teaching us. Even if they both agreed to build a מחיצה, nevertheless they are only required to build this מסיפס from גויל וגזית, even though it will not protect them from ראייה. The מסקנא is however, that since the משנה does state את בונין, that teaches us that even if they agreed to build a מחיצה without specifying whether it is a מסיפס or a כותל, nevertheless they have to build a כותל, even though היזק שמייה היזק. See "Thinking it over" # 1.

⁷ The gloss amends חצר to חצר. [עיי"ש בגמרא. מחיצה should then be amended to מעקה.]

⁸ דף ו,ב.

⁹ See "Thinking it over" # 2.

windows, or b) lower than ten טפחים. 3. A solid wall four אמות high. The גמרא says that if the משנה would have stated 'השותפין וכו' בונין אותו', instead of 'השותפין וכו' בונין את החול', I would have understood the משנה to mean as follows. Once the שותפין [divided (בע"כ), and] agreed to build a divider¹⁰, they must then follow the מנהג and build a מסיפס of גויל גזית וכו', but are not required to build a wall.

תוספות will now cite רש"י's interpretation and reject it:

הו"א that according to this גמרא **explained** רש"י **and** – ובקונטרס פירש:

that the word 'רצו' 'they wanted' that the משנה states is referring to the division of the חצר.

מ"ד understands רש"י as follows: The משנה is now discussing ([even] according to the מ"ד that מחיצה is a wall) a חצר שאין בה דין חלוקה. The שותפין agreed to divide this חצר. Once the שותפין agreed to divide, they can then be coerced to build a מסיפס but not a חול (presumably since היזק ראיה לא שמה היזק).

תוספות asks on רש"י:

and this interpretation is baffling!

גמרא just **concluded that the word 'מחיצה'** in the משנה **means a wall** (according to this לשון)

for if the word מחיצה would mean a division, then –

לעשות מחיצה **לחצות** **should have stated** the משנה **– לחצות מיבעי ליה**. The opinion of this לשון is that the word מחיצה cannot mean a division; it can only mean a wall. How can we now say that if the משנה would not say חול, I would think that שרצו לעשות מחיצה means they want to divide?! Whether the משנה writes חול or אותו cannot change the meaning of מחיצה.

תוספות now question the supposition that a מסיפס גרוע would be sufficient, since it says אותו and not חול.

and there is further difficulty with this interpretation,
How can the גמרא say –

that I may have thought (if it would say אותו and not חול) **merely with a מסיפס** and not with a wall –

but we know this from the סיפא of our משנה¹² –

that states: However if they both want to divide

even if the חצר is less than eight טפחים, they can divide.

What is the meaning of this division? How will it be apparent that the חצר is divided?

this obviously means that they will divide the חצר at least with a גרוע מסיפס. Why then would our משנה have to tell us the same דין again that they divide a חצר שאין בה דין חלוקה with a מסיפס?

תוספות asks a final question on רש"י

¹⁰ See footnotes # 3 & 6.

¹¹ רש"י ד"ה הוה.

¹² בע"כ. The משנה states that if the חצר is less than אמות ח' we cannot divide דף יא,א.

and furthermore how can we have thought that if the ועוד היכא הוי מצי למימר - would say 'אותו', that we divide -

only with a מסיפס, which according to רש"י means small pegs – **but the משנה clearly states** that you must build it with גויל וגזית. גויל וגזית are certainly not a מסיפס of pegs. How could there have been even such a הו"א?¹³

Summary

הו"א במסיפס בעלמא and רש"י differ as to the explanation of

introduces two types of מסיפס. A מסיפס גרוע is made of inferior materials. The מסיפס discussed here is a wall made of גויל וגזית; either with many windows or a wall less than ten טפחים (either case cannot protect from ראייה). The explanation of the גמרא is as follows: We are discussing a חצור שיש בה דין חלוקה. חצור שיש בה דין חלוקה. They agreed to build a מחיצה. If it would say חצור שיש בה דין חלוקה I would have thought that we can only obligate the partner to build a מסיפס of גזית, but not a כותל.

רש"י interprets the גמרא as follows: The משנה is now discussing a חצור שאין בה דין חלוקה. The חצור שיש בה דין חלוקה agreed to divide this חצור. Once the חצור שיש בה דין חלוקה agreed to divide, they can then be coerced to build a מסיפס but not a כותל.

poses three difficulties with this interpretation:

1. How can מחיצה meant to divide according to this לשון.
2. I know from the following משנה that if חצור שיש בה ד"ח divided a חצור, that they build a מסיפס. Our משנה is superfluous.
3. How could I have thought that they build a מסיפס (of pegs) when the משנה clearly states גויל וגזית.

Thinking it over

1. According to תוספות which would be the greater חידוש; if the משנה would have written אותו and it would mean a מסיפס or the משנה writing כותל and meaning a כותל?¹⁴

2. What proof is there from ר"נ that a regular מסיפס is less than טפחים? Perhaps the גמרא there is referring to a מסיפס גרוע?¹⁵

3. Usually תוספות cites רש"י's interpretation first, refutes it, and then presents his own interpretation. Why did this תוספות present his interpretation first?

4. Why would רש"י not agree to תוספות's interpretation?

¹³ For a clarification and defense of רש"י see רמב"ן (explained in צו).

¹⁴ See footnote # 6.

¹⁵ See footnote # 9.