He had thirty trees   היו לו שלשים אילנות –

Overview

אביי stated that if there were thirty trees planted in three בית סאה (ten trees to a בית סאה)[1] and he ate the fruits of (only) ten different trees (spread throughout the three בית סאה) it is a חזקה.

The usual way of planting is that ten saplings are planted within one בית סאה. As the trees mature and become bigger they are uprooted and replanted three to a בית סאה. Our תוספות explains why אביי did not use a different case.

ונראה[2] דדוקא שלשים אבל ט' אילנות גדולים ממטע שלשה לבית סאה –

And it is the view of תוספות **that** this rule applies **specifically** if there were **thirty** saplings, **however if there were nine mature trees planted three to a בית סאה** -

ואכל אחת בשנה זו ואחת בשנה זו[3] לא הויא חזקה –

And he ate the fruits of **one** tree (from each בית סאה) **this year and one** (of each בית סאה) **in the** next **year,** etc. **it is not a חזקה** -

מידי דהוה אשלשים היכא דלא באזי בזויי[4] –

For it is like thirty saplings in a case **where they were not spread out** -

והני[5] אילנות לא בגדולים איירי דגדולים לא הוו אלא ג' לבית סאה –

And these thirty **trees are not mature** trees (but rather saplings), **for mature** trees are planted **only three to a בית סאה**; not ten to a בית סאה –

כדאמרינן בפרק לא יחפור (לעיל דף כו,ב):

As was stated in פרק לא יחפור.

Summary

The rule of אביי is by saplings but by mature trees it would not be a חזקה (in a case

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[1] A בית סאה is an area in which a סאה of wheat is planted. It is an area of fifty by fifty אמות (or twenty-five hundred square אמות; two hundred fifty square אמות per tree).

[2] The הגהות הב"ח inserts at the very beginning of תוספות, the end of תוספות, beginning with the words והני אילנות, etc. so that תוספות begins והני אילנות and ends with באזי בזויי. See footnote # 5. See 'Thinking it over' # 2. See (however) מהרש"א (who keeps the order in תוספות as we have it), who is גורס here אבל שלשה אילנות ממטע עשרה לבית סאה (deleting גדולים). See 'Appendix'.

[3] Each year he is consuming the פירות of three trees; one in each בית סאה. [However according to the מהרש"א (see previous footnote # 2) it means literally one tree a year only.]

[4] The חזקה by שלשים אילנות is only if the ten trees that he consumed each year were spread evenly throughout the entire three בית סאה, however if he ate ten trees (yearly) in which some were confined to one area [even] in each בית סאה, it would not be a חזקה (this is seemingly not in accordance with the רשב"ם on ד"ה והוא לז,א); similarly here since he is only eating one tree in each בית סאה it is not באזי בזויי. See רפא אות בל"י. See footnote # 9.

[5] See footnote # 2.

of ג' אילנות ממטע י' לבית סאה [or ט' אילנות ממטע ג' לבית סאה]).

Thinking it over

1. What would be the ruling if it is more than עשרה לבית סאה (by the שלשים אילנות), or if it was more than ג' לבית סאה (by the ט' אילנות); would it be a valid חזקה?[6]

2. Why does the הגהות הב"ח change the גירסא and reverses the order in תוספות?[7]

Appendix

According to the מהרש"א whose גירסא is אבל ג' אילנות ממטע י' לבית סאה; the explanation of תוספות is as follows. In order to acquire the קרקע when one purchases trees he must purchase at least three trees.[8] תוספות is explaining why אביי does not offer his ruling by three trees (the amount required to acquire the קרקע and thus there is the issue of חזקה). תוספות explains that if one acquires three trees in the ratio of ממטע י' לבית סאה (which equals to seven hundred fifty square אמות), he cannot make a חזקה by eating a different tree every year for it is not באזי בזויי; the אכילה is not spread out over the שדה.[9]

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[6] See בל"י אות רפב.

[7] See מהרש"א.

[8] See later פא,א in the משנה.

[9] The advantage of this פשט is that it seemingly avoids the complication mentioned in footnote # 4. It would therefore seem that according to the מהרש"א in the case of ט' אילנות as explained in footnote # 4 it can be a חזקה, since he ate three trees in three בית סאה; however from the מהרש"א it seems that he agrees with footnote # 4.