

ממטע י' לבית סאה – בית סאה ten in which they were planted

OVERVIEW

בית סאה ten stated that if there were thirty trees planted in three סאה (ten trees to a סאה) and he ate the fruits of (only) ten different trees (spread out evenly throughout the three סאה) it is a חזקה. Our תוספות discusses what would be if the trees were planted more densely (ten in less than a סאה), or more sparsely (ten in more than a סאה).

פירוש הקונטרס דפחות מבית סאה לעשרה אילנות הו' סמיכי ביותר והו' כיער ולא הו' חזקה -
The רשב"ם explained² that less than a ס"ס for ten trees is too crowded and it is like a forest (and not like a fruit orchard) and therefore it is not a חזקה³ -

disagrees: תוספות

ואין נראה דהא מוכח בשמעתין⁴ דאכלן רצופין⁵ הו' חזקה -
And this is not the view of תוספות; for it is evident in our סוגיא that אכלן רצופין is a valid חזקה -

דפריך רבא אנהרדעי⁶ אלא מעתה ה' אספסתא⁷ במאי קני ליה⁸ -
For רבא challenged the נהרדעי (who maintain חזקה לא הו' חזקה), but now how will one acquire a row in an אספסתא field -

פ' הרשב"ם תוספות justifies the

ולרבינו שמשון בן אברהם נראה ליישב פירוש הקונטרס -
And the גמרא reconciles the פ' הרשב"ם with the abovementioned רשב"ם א -
דלקמן איירי שאוכל כל האילנות⁹ אף על פי¹⁰ שהן רצופים הו' חזקה -

¹ A 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 רשב"ם ד"ה ממטע.

³ He did not make a חזקה in a normal manner אינישי. Therefore even if he ate the fruits of the trees for three years he cannot keep the property (without a שטר).

⁴ דף לו, ב.

⁵ See the ד"ה אכלן there רשב"ם that it is a case where there were more than ten אילנות per ס"ס and he ate all the (thirty) אילנות for three consecutive years.

⁶ The נהרדעי maintained that חזקה אינה חזקה.

⁷ See ד"ה ה' אספסתא that ד"ה ה' אספסתא is considered רצופה, and nevertheless we learnt previously (on כה, ב) that one can make a חזקה in an אספסתא field, proving that אכלה רצופין is a חזקה.

⁸ רבא's challenge was not answered; indicating that נהרדעי were refuted and אכלה רצופין is a חזקה, this contradicts the view of the רשב"ם that more than ten trees per ס"ס is not a חזקה; since רצופין is a חזקה.

⁹ See footnote # 5.

¹⁰ The הגהות הב"ח amends this to read דאע"פ instead of אע"פ.

For later, the גמרא discusses a case where he 'ate' all the trees; [therefore] even though they are רצופין, nevertheless it is a חזקה -

שהרי אכל העומדים ליעקר ואותן¹¹ העומדים להתקיים -

For he ate the trees which will be uprooted and those that will remain -

אבל הכא שאינו אוכל כל אילנות אלא ג'¹² בכל שנה -

However here where he does not 'eat' all the trees but rather only (three) [a third of all the] trees each year, so for instance -

אם היו ל"ג אילנות בג' סאין הרי יש בהן ג' אילנות העומדין ליעקר¹³ -

If there were thirty-three trees in three ב"ס, so there are amongst these thirty-three trees, three trees to be uprooted -

וכשהוא אוכל י"א אילנות בכל שנה שמא באותן י"א שאוכל אותן בשנה זו -

And so when he 'eats' eleven trees each year, perhaps among those eleven which he 'ate' this year -

יש בהן ב' או ג' שעומדין ליעקר¹⁴ -

There are two or three which are to be uprooted -

ובעינן בכל שנה שיאכל ג'¹⁵ מאותן העומדין להתקיים¹⁶ -

And it is necessary that he 'eat' each year a third of those trees that will remain, and he did not, therefore here it is not a חזקה if רצופין אכלן.

וביותר מבית סאה לעשרה נראה דלא קנה קרקע כל עיקר -

And if it is more than a ב"ס for ten trees; it is the view of תוספות that he does not acquire any קרקע at all -

ולא כפירוש הקונטרס דפירש¹⁷ דדוקא בכל הקרקע הוא דלא הוי חזקה -

And not like the interpretation of the רשב"ם who maintains that if it is more than a ב"ס for ten trees, he does not acquire the entire קרקע (meaning the excess) -

¹¹ The הגהות הב"ה amends this to read ליעקר ׀העומדים להתקיים deleting the word ואותן.

¹² Others amend this to read 'שליש' (a third) instead of ג' (three).

¹³ A ב"ס can only handle ten trees; the extra trees will have to be uprooted in order not to stunt the growth of the remaining ten trees.

¹⁴ תוספות (seemingly) maintains that eating the fruits of trees ליעקר העומדים is not a proper חזקה (for the owner does not care about those trees since they will be uprooted anyway). The רשב"ם however maintains that it is not a חזקה because דלא אחזיק כדמחזקי אינשי.

¹⁵ Same amendment as in previous footnote # 12.

¹⁶ רבי אביי ruled that he must eat all the thirty trees in the three חזקה years; ten trees every year. In this case where (there are thirty-three trees and) he eats eleven trees each year, there is the possibility that in one of these years two or three (from the eleven) trees which he ate, are those that will be uprooted, so he actually ate eight or nine (permanent) trees; which is insufficient to make a valid חזקה. See 'Thinking it over' # 1.

¹⁷ רשב"ם ד"ה ממטע.

אבל במה שצריך לאילנות¹⁸ הוי חזקה:

However it is a חזקה for the amount of קרקע which is needed for the trees; this is the view of the רשב"ם. תוספות however disagrees and maintains that he receives no קרקע at all even במה שצריך לאילנות.¹⁹

SUMMARY

The רשב"ם maintains that if there are more than ten trees per ב"ס it is not a חזקה; תוספות maintains it is. The רשב"א differentiates whether he ate all the trees (it is a חזקה) or whether he ate some of them (it is not a חזקה). If there were less than ten trees per ב"ס the רשב"ם maintains he is קונה as per the need of the trees, while תוספות maintains he is not קונה any קרקע at all.

THINKING IT OVER

1. According to the רשב"א why is it that it is necessary to consume (exactly) one third of the trees each year;²⁰ why would it not be a חזקה if (for instance) one year nine trees are consumed and the next year eleven are consumed?
2. Why is it that when the trees are dense, תוספות maintains it is a חזקה and the רשב"ם maintains it is not; and when the trees are sparse תוספות maintains there is no חזקה at all, while the רשב"ם grants him a partial חזקה?

¹⁸ See footnote # 1, that each tree requires two-hundred-fifty square אמות.

¹⁹ See 'Thinking it over' # 2.

²⁰ See footnote # 16.