

דאי לא מצי למימר ליה עקור אילנך שקול וזיל –

For if not, he could tell him uproot your trees, take them and go

OVERVIEW

The גמרא rules that if one sold his land to another and retained (even) two trees for himself, the seller retains the right to the land needed for the nourishment and harvesting of the trees. The גמרא explains that if we will maintain that the seller did not retain any rights to the area surrounding the trees, that landowner could tell him 'עקור אילנך וכו'. Our תוספות clarifies this ruling.

פירוש לכשייבש¹ –

The explanation of this ruling, that if we assume לא שייר, he can tell him 'עקור אילנך', is that he can tell this to him **when** the trees **will wither** (but not when the trees are still alive).

תוספות comments:

ובלאו טעמא דמכחשי ארעא² אי לא משייר מצי אמר ליה עקור אילנא –

And even without the reasoning that the trees weaken the land, the land owner **would be allowed to say to** the בעל אילנות, **uproot your tree** (לכשייבש), **if** we assume that **לא משייר**; the reason is that since לא משייר, the בעל אילנות –

דעל כרחו לא יעכב האילן בשדהו³ –

Cannot retain the (dead) tree in his field against the will of the landowner -

ועוד שרוצה לזרוע מקום האילן:

And in addition the landowner **wants to seed the area** where **the tree** is standing.

SUMMARY

The reason of מכחשי ארעא is not necessary to grant the landowner the right to say 'עקור אילנא וכו' לכשייבש.

THINKING IT OVER

According to תוספות that the reason of מכחשי ארעא is not necessary, why indeed does the גמרא mention it?!⁴

¹ The rule is that if one buys two trees even though he has no קרקע he can retain the trees as long as they are alive

² The גמרא states the reason the landowner has the upper hand (אי לא שייר), is because the roots of the (dead) tree make the land less fertile. תוספות claims even without מכחשי ארעא the landowner would still have the upper hand.

³ The roots of the tree (besides being מכחשי ארעא) do not allow him to plow near the tree. See 'Thinking it over'.

⁴ See סוכ"ד אות כג.