

שניה ושלישית לא – for the second and third wall he does not pay.

Overview

The גמרא explains the difference between the ת"ק and רבי יוסי (in one answer) that the ת"ק agrees that the ניקף must pay (jointly), but only for the fourth wall. The ניקף need not pay for the first three walls. ר"י maintains that he must pay (jointly) for all four walls. The question is according to the ת"ק, if the ניקף has to pay because he is deriving a benefit from the walls encircling his field, why is he exempt from paying for the first three walls. All four walls are contributing to the protection of his property. תוספות will discuss this issue.

The ר"י says ; that this is the reason why he pays (jointly) [only] for the fourth wall [and not for the prior three walls] –

– because you cannot find a person –

– שלא היה מסייע לרביעית fourth wall

– על מנת שיהא גדור מד' רוחותיו for the purpose of being fenced in from all four sides. Any person would be glad of this opportunity to pay (jointly) for only one wall and receive the protection of four walls. Therefore it is certain that (even in the mind of the ניקף) his field was improved at least for the (joint) cost of one wall¹. He must pay for the improvement to his field.

However רש"י explained that the reason the ניקף does not pay for the first three walls is –

– לפי שכבר יצא מן השלשה מבית דין זכאי because he was already acquitted by בי"ד from paying for the three original walls². When the מקיף built the first three walls, then בי"ד did not hold the ניקף responsible at all, since three walls alone did nothing for the ניקף. That case is over with. The מקיף can only initiate a new תורה, on the fourth wall only.

פירוש רש"י – **A gloss.** There is a question on **הג"ה**

– and there is a slight difficulty with **רש"י's** explanation –

– דאם כן for if this is so; the reason for non payment on the three walls is on account that בי"ד acquits him since these walls provide no protection for the ניקף, then –

– גם ברביעית also concerning the fourth wall

¹ The ניקף cannot claim that for me a נטירא בר זוזא is sufficient. See previous דמי. However תוספות ד"ה דמי. However concerning payment for the first three walls the ניקף can claim that for me נטירא בר זוזא is sufficient. I would never have paid so much money to have my property fenced in.

² תוספות (referring at least to the הג"ה in תוספות) does not understand רש"י to mean that the מקיף actually took the ניקף to a תורה and the ניקף was acquitted (for then the הג"ה would have no question). Rather it is to be understood that had the מקיף taken the ניקף to a ד"ת, the ניקף would have been acquitted.

acquitted בי"ד – **יצא זכאי**

טפה built the last **טפה** – **עד טפה אחרון** until the מקיף built the last **טפה**. Up to that point the ניקף is not properly protected; there is no reason that he should be responsible. The ניקף should only be responsible to assist in payment for the last **טפה** built in the fourth wall, when he receives adequate protection. The גמרא however says that the ניקף pays (jointly) for the entire fourth wall this would seem to contradict פירוש רש"י.

עד כאן – **Until here** is the הג"ה. The הג"ה concludes here.

Summary

and תוספות differ as to why the חכמים maintain that the ניקף is required to pay only for the fourth wall and not for the preceding three walls.

תוספות maintains that he cannot claim in regard to the fourth wall, when he is completely protected, that it is only worth for him a זוזא בר זוזא. It is obvious that anyone would be willing to assist in paying for (only) a fourth wall and receive in return a completed fence on all four sides.

רש"י maintains that he does not pay for the first three walls since he was already (symbolically) acquitted by בי"ד from having to pay for them; since at that time they were useless, for he was not protected on the fourth side.

The הג"ה asks, that according to רש"י he should only be liable for the last **טפה** on the fourth side. Up until the completion of the fourth wall he was not properly protected and בי"ד will acquit him from being responsible.

Thinking it over

1. תוספות mentions only the reason why he is חייב for the fourth wall; not why he is exempt from the first three walls. רש"י (quoted in this תוספות) explains only why he is פטור on the first three walls; not why he is חייב for the fourth wall. Can we combine the two פשטים?

2. Can we infer from תוספות, whether, according to the ת"ק, the ניקף has to pay for a גדר אבנים or דמי קנים (בזול) or any other type of payment for this fourth wall.