

Two courtyards one above the other. – שתי חצירות זו למעלה מזו

Overview

The גמרא discusses the case of two adjoining חצרות, where the ground level of one is higher than the other. There is a dispute whether the owner of the upper חצר must contribute to that part of the wall which is below his ground level. However there is no dispute as to the responsibility of the lower חצר's owner. He is required to assist in building the dividing wall for the full ד' אמות above the ground level of the upper חצר¹. תוספות will be discussing the reason for this ruling.

תוספות asks a question:

you may say; and why should the owner of the lower חצר – ואם תאמר והתחתון למה

– יסייע לעליון – assist the owner of the upper חצר to build up to four אמות above the ground level of the upper חצר?!

– דמכי מטי לארבע אמות – for when the wall reaches four אמות from the ground level of the lower חצר, at which point –

– the owner of the lower חצר cannot see into the upper חצר; that should be sufficient for the תחתון, since he can no longer cause היזק ראייה to the חצר העליון. In order to prevent היזק ראייה from the חצר העליון to the תחתון, that upper part of the wall –

– should be built by the owner of the upper חצר; who alone is causing the היזק ראייה.

תוספות answers:

– ואומר רבינו תם כגון and the ר"ת says, that we are discussing a situation where for instance –

– שחצר התחתון אינו נמוך – that the lower חצר is not lower than the upper חצר in its entirety but rather it is lower –

– אלא אצל חבירו של עליון – only where it is close to the חצר of his higher neighbor –

– (אלא מצד א') ומצד אחד הוא גבוה כחצר חבירו (only on one side) however from the other side of the lower חצר where it is not close to the חצר העליון, there the חצר is as high as his neighbor's חצר (as the חצר העליון). The חצר slopes. It is low adjacent to the חצר העליון and it rises when it is at a distance from the boundary of the חצר העליון, in such a manner –

– שיוכל לראות משם – that it is possible to see from the rise in the חצר התחתון into the חצר העליון, even after the wall, of ד' אמות high from the חצר התחתון, has been built.

¹ See 'Thinking it over' # 1.

² See מסורת הש"ס, that some delete this phrase.

Therefore since the חצר התחתון can see into the חצר העליון he must contribute to the entire wall, until it is אמות ד' high from the ground of the חצר העליון (and the rise in the חצר התחתון).

תוספות offers an alternate solution:

and the ר"י explains that it is not necessary to assume that we are discussing a sloping חצר; but rather a regular חצר, that in its entirety is lower than the upper חצר. The reason the תחתון must assist the עליון up to אמות ד' from the ground of the עליון, is –

– **עליון damages the תחתון for the** – דהתחתון מזיק לעליון
[**when the עליון is standing [at the edge of his own חצר];** next to the dividing wall, which is אמות ד' higher than the ground of the תחתון. It is however less than אמות ד' higher than the ground of the עליון. Therefore when the עליון stands next to the (original [shortened] wall) he can be seen by the תחתון, if the תחתון is not immediately next to the wall, but at some distance from it.

תוספות proves his contention that even though the wall is אמות ד' high from the ground of the תחתון, the עליון can be seen when he stands⁴.

– **as the גמרא previously stated⁵** – כדאמרין לעיל
– **when I stand up** the people of the רה"ר **can see me⁶**.

תוספות concludes

– **and therefore;** since the תחתון can see the עליון standing –
he is required to assist up to four אמות above the ground level of the upper חצר; to prevent the תחתון from seeing the עליון even when he stands.

Summary

There are two ways to understand why the תחתון must build up to אמות ד' above the ground level of the חצר העליון. A. The חצר of the תחתון slopes upwards as it recedes from the dividing wall enabling the תחתון to see over the lower wall. B. The תחתון can (usually) see the עליון above the lower wall when the עליון stands up.

Thinking it over

1. תוספות assumes that the גמרא maintains that the תחתון must assist in building the wall אמות ד' above the ground level of the עליון. How does תוספות deduce this?

³ See הגהות הב"ח.

⁴ See 'Thinking it over' # 3.

⁵ Concerning two roofs on opposite sides of a רה"ר.

⁶ It is assumable that a roof is more than אמות ד' higher than the גג; nevertheless, the people of the רה"ר can see the גג when he stands.

2. According to the פירוש ר"י, would there be any difference depending on how wide the חצר התחתון is (from the wall to the opposite boundary)?
3. Why was it necessary for תוספות to prove that it is possible to see someone over a ד' אמות high wall, from the previous גמרא? It seems quite factual.
4. What are the relative advantages and disadvantages of both פירושים in להלכה? What are the practical differences תוספות?