

He said to him: I am building in my property. – אמר ליה בדידי קבנינא

Overview

The גמרא relates the story of the brothers who divided the estate; one taking the garden, the other the house. Subsequently the garden owner built a wall, on his own property, blocking the light of the house. The homeowner complained, arguing that you are darkening my home; you are turning it into a dark room, etc. רב חמא ruled in favor of the garden owner. The issue at hand is to what degree is the garden owner permitted to block out the light of the homeowner. תוספות will discuss three opinions on this matter.

explained רש"י – פירש הקונטרס that the builder of the wall (בעל התרביצא) said to the owner of the building (בעל האספלידא) –

you have not acquired from me as of yet – אתה אין לך עלי
the rights of proper lighting which require **three years** to establish.¹ Therefore I am entitled to build on my property any building, even if it will deprive you from adequate lighting.

רש"י asks on תוספות:

and it is incredible that the garden owner **was permitted to darken his** house to the extent –
that he should have no light at all in his 'banquet hall'.³ – שלא יהא לו בטרקלין² אורה כלל

רש"י has an additional question on תוספות.

states – and furthermore, what is it that the גמרא **they did not** include the open air rights **when they assessed each others property values**⁴. How can the גמרא maintain that!
it is obvious that they also included in their **assessment** the value of the open air rights –
for a house without light is worthless⁵. – דבית בלא אורה אינה שוה כלום

¹ It is the opinion of רש"י (according to תוספות), that the window owner does not acquire any right of lighting for his window unless he had the window lighting for three years and his neighbor did not object. Otherwise the neighbor is permitted to build a wall on his own property immediately opposite the window depriving it from any light at all.

² See טרקלין יפה who translates אספלידא to mean רש"י ד"ה אספלידא.

³ תוספות assumes that he blocked the light of the טרקלין completely since רש"י states that the בעל התרביצא claims that the בעל האספלידא has no rights to any light (since there was no ג' שנים). This is supported by the fact that the בעל האספלידא stated: a) קא מאפלת עלי and b) השתא משוית לי אינדרונא, indicating there was no light at all. תוספות does not elaborate why it is a תימה; it seems self evident that this cannot be permitted.

⁴ The גמרא explains that the בעל האספלידא has no air/light rights, since when they assessed the value of the אספלידא, they only took into account the actual value of the building materials, not air/light value.

גמרא offers a different interpretation of the תוספות:

and the ר"ת explains the גמרא in the following manner – **that from within the אספלידא** the owner of the אספלידא **was able to see his own fields** that were distant from the אספלידא – **by way of the תרביצא**; until the בעל התרביצא built the wall which prevented the בעל האספלידא from observing his fields.

anticipates a difficulty with this interpretation:

and that which the גמרא quotes the בעל האספלידא **complaining you are darkening upon me**, this would seemingly indicate that the new wall did not merely prevent him from observing his fields but rather, as רש"י maintains, darkened his house –

מאפלת עלווי responds that the expression

means that the בעל התרביצא **was preventing** the בעל האספלידא – **היינו שהיה מעכבו**

so that he was not able to see his fields. The word ‘darkening’ need not be understood literally, but figuratively; I cannot see my fields because of your wall. My fields are in darkness they cannot be seen.

This approach will also resolve an additional difficulty:

and the אספלידא **also referred to** the אספלידא after the wall was built as an **אידרונא** – **a darkened room**; again it is not to be understood literally but rather the בעל האספלידא meant to say –

that he could not look afar; his view was blocked.

and the ר"ת similarly interprets that which the גמרא states **later**⁶ concerning brothers who divided inherited property that –

they have no window rights against each other; any brother can build against his brother’s window. ר"ת understands this to mean that any brother who inherited a window in his property cannot expect to have the same view as it was when the father owned the property. Another brother may build in such a manner to restrict the previous view. However it certainly does not mean that another brother may board up his windows entirely, depriving him of any light at all. This is not permitted. The brothers retain a right for (a minimal amount of) light; but not of a grand view.

⁵ The two brothers divided their father’s estate; one took the garden, the other the house. The house was worth more than the garden, therefore they evaluated the respective values of the house and the garden, after which the owner of the house paid the owner of the garden half the difference to equalize their portions. It is obvious that when they assessed the value of the house it was assessed as a normal house with sufficient lighting. Otherwise, if there was no lighting, the value of the house would be (next to) nothing. How then can the גמרא state that they did not evaluate the lighting!

⁶ ז.ב.

תוספות has a difficulty with the s't"r interpretation:

– **and the ר"י has a difficulty** with the s't"r interpretation – **וקשיא לרבינו יצחק – דמאי קפריך מאי שנא מהא דתניא כולי** **גמרא** **mean by asking** **‘how does the case of אספלידא differ from that which we learned in a ברייתא, etc’⁷.**

there in the ברייתא the הכרם definitely acquires **ד' אמות** **in the שדה הלבן ד' אמות** **for those ד' אמות are necessary to tend the vineyard⁸ –**

however here, concerning the view to his fields; this viewing is not a requirement of the אספלידא. An אספלידא is made to live in; not necessarily to have a grand view.

therefore the בעל התרביצא justifiably said to the בעל **משום הכי בדין קאמר ליה** **–** **אספלידא** **was not diminishing the intended use of the אספלידא. What is the s'גמרא question?!**

תוספות offers another interpretation:

– **and the ר"י is of the opinion – ונראה לרבינו יצחק – דודאי היה מאפיל עליו האורה** **that certainly this new wall darkened the אספלידא and diminished its light –**

for it did not have a large amount of light – שלא היה בו אורה גדולה –

– אכסדרה⁹ – כאשר צריך לאכסדרה –

however there was still plenty of light. Therefore the בעל התרביצא was able to build, since there was still sufficient light in the אספלידא (even though it was less than it is customary).

תוספות anticipates a difficulty with this interpretation:

and that which the ברייתא says¹⁰ that one must distance a wall **– והא דאמר – ד' אמות** **from opposite the windows a distance of ד' אמות** **– ומכנגדן ד' אמות** **– שלא יאפיל** **the windows. Seemingly even if he builds the wall within ד' אמות of the windows there is also light, and nevertheless since it is not the usual light that he is accustomed to, one may not block out that light. Therefore here too, since the אספלידא generally receives a great deal of light, he should be prohibited from diminishing the usual and customary amount of light.**

⁷ This is the ברייתא where two brothers divided the estate; one received the vineyard the other the wheat field. The vineyard owner retains ד' אמות adjacent to his vineyard in the wheat field. We derive from there that the original rights remain.

⁸ See the תוספות ב,א ד"ה אומר and ד"ה ד' אמות here רש"י, גמרא כו,א.

⁹ See previous אספלידא, where the (same) ר"י translates אספלידא to mean an אכסדרה.

¹⁰ ב,ב.

responds; there, concerning the prohibition from building a wall within אמות ד' of the windows; the term שלא יאפיל does not mean that he is merely darkening his room that it will not have as much light as before, but rather יאפיל means:

that he should not darken him completely – היינו שלא יאפיל לגמרי

to the extent that he cannot use the room properly. When a wall is built within אמות ד' of a window it is not merely that the light is diminished, but rather we consider the room entirely dark, that it cannot be used, in a normal manner. That is why it is prohibited from building within אמות ד'. However here by the אספלידה even after the wall was built, there would still be sufficient lighting in the אספלידה for normal use.

ר"י goes on to explain the גמרא according to the ר"י:

and the reason wherefore he called it an אידרונא – ומשום הכי קרי ליה אידרונא is -

because compared to the light required for an אכסדרה this is now considered an אידרונא, since it had much less light than an אכסדרה usually has.

and now it is also properly understood that the גמרא says –

that they did not take the airspace into consideration when they **assessed** the respective values of the תרביצה and the אספלידה; that airspace is referring to the airspace –

that is required for an אכסדרה; it was only that additional airspace that was not assessed. However the normal air space that is required that there should be sufficient lighting was certainly taken into consideration.

Summary

רש"י is of the opinion that if one does not have a חזקת ג' שנים for his air/light rights, a neighbor may block out his entire light, if he builds on his property. The ר"ת and the ר"י disagree with רש"י, and maintain that one's right to light must be respected, even without חזקת ג' שנים.

The ר"ת interprets the story of the אספלידה that merely his view was blocked. The ר"י interprets it, that the extensive light of the אכסדרה was diminished to a normal house light.

Thinking it over

1. Explain the differences between רש"י and the ר"ת concerning whether and why blocking entirely the light is permitted or prohibited.

2. Is there a difference להלכה between the ר"ת and the ר"י?