

ולא סולמות זה על זה – And no claim of ladders one on the other

OVERVIEW

taught that brothers after dividing the estate have no easement claims on each other, nor do they have 'rights of placing ladder' claims on each other. There is a dispute between רש"י and תוספות as to the meaning of זע"ז ולא סולמות זה על זה.

פירש בקונטרס¹ אם נטל זה בית וחצר וזה נטל עלייה –

explained the meaning of זע"ז ולא סולמות זה על זה that if one brother took the house and courtyard for his share and the other brother took the attic for his share -

אין לקבוע סולם בחצירו של זה לעלות לעלייתו –

The בעל (הבית ו) החצר cannot place a ladder in the חצר of the החצר, in order to go up to his עלייה.

פירש"י asks on תוספות:

וקשה לרבינו יצחק דהיינו ולא דרך זה על זה² –

And the ר"י has a difficulty with פרש"י for זע"ז ולא סולמות זה על זה is included in the ruling of זע"ז ולא סולמות זה על זה, nothing is being added by stating זע"ז ולא דרך זה על זה.

תוספות offers an alternate explanation:

ונראה לרבינו יצחק כגון שלקח זה בית וזה עלייה וחצר³ –

And it is the view of the ר"י that זע"ז ולא סולמות זה על זה is discussing a case where for instance one brother took the house for his share and the other brother took the attic, and the rule is that the עלייה (וחצר) and the חצר, and the rule is that the עלייה

אין לו לסמוך הסולם בכותל של זה⁴ ולעלות בעלייתו:

Cannot support the ladder on the wall of the הבית in order to go up to his עלייה.

SUMMARY

means either (רש"י) that the בעל העלייה cannot place the foot of the ladder in the other's חצר; or (תוס') that the בעל העלייה והחצר cannot support the ladder on the wall of the הבית.

¹ בד"ה ולא סולמות.

² Once the בעל העלייה relinquished his rights to the חצר he is not permitted to walk there and (certainly) not to place his ladder there.

³ See 'Thinking it over'.

⁴ One may have thought (based on זע"ז ולא דרך זה על זה) that one is precluded from using the חצר as a passage; however just using the wall as a support for the ladder may be permitted, therefore שמואל added that this too is precluded.

THINKING IT OVER

Is it necessary to say, according to the פירוש ר"י⁵, that the בעל העליה owns the חצר or will the ruling be the same if the בעל העליה and the בעל הבית share the ownership of the חצר?⁶

⁵ See footnote # 3.

⁶ See מהרש"א.