

You caused me a greater encirclement – את גרמת לי הקיפא יתירא –

OVERVIEW

The גמרא inferred from a משנה that if someone encircled his friend's property and built a fence around all four sides, the insider (the ניקף) must contribute to the cost of the fence, even though it is seemingly זנוזל"ה for the מקיף (since he made the fence for his property). The גמרא rejected this proof because the מקיף is indeed a חסר for he claims that the ניקף caused him to make a larger fence. There is a dispute between רש"י and תוספות regarding this fence and the הקיפא יתירא.

מתוך פירוש הקונטרס משמע¹ דמיירי בגדר שבין שדה לשדה ניקף² –

It is apparent from פרש"י that we are discussing a fence between the fields of the ניקף and the field of the מקיף.

פרש"י asks on תוספות:

וקשה דהיכי חשיב ליה זה נהנה וזה אין חסר –

And there is a difficulty with פרש"י, for how can this be considered a case of זנוזל"ה –

הואיל שכל אותו הגדר לא נעשה אלא להפסיק בין שדותיו לשדה ניקף³ –

Since that entire inside wall was only made to separate between the fields of the מקיף and the field of the ניקף?!

תוספות poses an additional question:

ועוד דהוה ליה למימר את גרמת לי כל זה ההיקף –

And additionally, the מקיף should have said, 'you caused me this entire encirclement', but not (only) יתירא –

דהקיפא יתירא משמע שגרם ליה להרבות –

Since יתירא means only that the ניקף caused the מקיף to increase the length of the fence, when in truth he caused him to build the entire (inside) fence.

¹ See רש"י (ד"ה וגדר וד"ה הא) than we have; for in our גירסא תוספות had a different לחם אבירים it states so clearly (it is not 'merely' משמע).

² According to רש"י the מקיף had a fence on the outside perimeter of his property, and in addition he made another fence between him and the ניקף. The מקיף therefore claims that the ניקף caused him to make the inside fence.

³ זנוזל"ה would mean (in this case) since the מקיף is building (an outside) wall for his benefit, so why should he claim money from the ניקף who is automatically also receiving a benefit. However according to רש"י the only reason the מקיף is building the (inside) wall is to protect him from the ניקף; this cannot be called a חסר! See 'Thinking it over'.

תוספות offers his interpretation:

אלא נראה שמבחוץ סביב לד' רוחות הקיף⁴ –

But rather view is that the מקיף encircled with a fence on the outside on all four sides -

והקיפא יתירא משום שמחמת שדה האמצעי ההיקף גדול⁵ יותר מדאי:

And it is referred to as a הקיפא יתירא because on account of the middle field (which belongs to the ניקף) the perimeter of the מקיף is much greater.

SUMMARY

According to רש"י the fence was between the מקיף and the ניקף; according to תוספות it was around the outside perimeter of the מקיף.

THINKING IT OVER

Why does תוספות assume that according to פרש"י it cannot be considered לא חסר since he is building the fence only because of the ניקף?⁶ However the ניקף did not force the מקיף to build this fence; the מקיף did it for his own benefit, why is this considered a חסר?⁷

⁴ We are discussing the outside fence which the מקיף made on his outside perimeter (not between him and the ניקף). Therefore initially the גמרא assumed that the מקיף is לא חסר (on account of the ניקף), since he needs this outside fence for himself (regardless where the ניקף is), and the ניקף derives a benefit from it, so it is a case of זנוז"ח.

⁵ The response was that the מקיף is חסר because of the ניקף, for if the middle field (of the ניקף) would not be there, the מקיף would require less fencing to encircle the area of his property.

⁶ See footnote # 3.

⁷ חי' ר' נחום אית צז (בסופו בד"ה והנה בגמ' ובד"ה ונראה) See. בל"י אות פח and רמב"ן.