

And do they not argue when it – ובהתנן שתי גנות כולי – took root; but be learnt, ‘two gardens, etc.’

Overview

The גמרא said that אביי ורבא both agree that if the עציץ נקוב took root in the ground, that we follow the root, but not the branch. The גמרא challenged this assumption that we follow the root, from a משנה where there is a dispute¹ whether we follow the root or the plant.

קא סלקא דעתין דהא דקתני סיפא אמר רבי מאיר ומה אם ירצה העליון כולי² -

The questioner (who asked ובהתנן שתי גנות כולי) assumed that this which it states in the סיפא of that משנה (cited here), ר"מ argues, and what if the upper owner will want, etc.'; regarding this statement, the questioner assumed -

שאין זה עיקר הטעם מדקתני נמי התם -

That this logic of ומה אם ירצה העליון וכו' is not the main reason why ר"מ maintains that it belongs to the עליון, since the משנה also states there -

אמר רבי מאיר מאחר ששניהן יכולין למחות זה על זה³ רואין מהיכן ירק זה חי⁴ -

ר"מ said; since both of them can protest one on the other, we should see from where this vegetable is sustained'; from this statement of ר"מ -

משמע דבסברא פליגי אי זה מהן עיקר -

It seems that they argue in the logic which one of them is the main sustenance –

תוספות supports this contention:

ואמרינן נמי התם בגמרא בפרק הבית והעלייה (בבא מציעא דף קיח, ב) ואזדו לטעמייהו -

And the גמרא there also states that ר"מ ור"י follow their reasoning elsewhere,

¹ The case there (which the גמרא cites here) is regarding a terraced garden (where one owns the higher step, and another owns the lower step) where a vegetable is growing from the vertical rise between the two steps. רבי מאיר rules that it belongs to the upper owner (for it is rooted in his property) and ר' יהודה rules that it belongs to the lower owner (because the plant is in his air space). We see that there is still a dispute whether we follow the root or the plant.

² Initially the משנה records their argument as follows; ר"מ says that the עליון can remove the earth where this plant is rooted in; thus destroying the plant (proving that the plant is his); ר"י says that the תחתון can fill his land with soil, thus destroying the plant (proving that it is his plant). If indeed this is the basis for their argument, it would not be relevant to our discussion here; whether בדאשרוש all agree that we follow the שורש and not the נוף. Their argument there is merely who can destroy the plant, so he and not the other should be considered the owner.

³ This means that each party can deny the other the benefit of the plant, by either removing or adding earth.

⁴ ר"מ is now saying that regardless who can destroy the plant, the fact is that the plant is receiving its nourishment from my earth. However ר"י would counter that it is receiving its nourishment from the airspace over my property. This would contradict our assumption that בדאשרוש לא פליגי, since here we see that even בדאשרוש there is an argument which is primary, the root or the plant

regarding -

אילן היוצא מן הגזע כולי⁵ ותנן נמי גבי ערלה כי האי גוונא⁶ -

‘A tree that emerges from the trunk, etc.’, and we also learnt regarding ערלה in a similar fashion –

תוספות asks:

ותימה דלא מייתי הכא⁷ מערלה:

And it is astounding, that the גמרא here did not cite the case of ערלה, where we see that even בדאשרוש there is still a dispute.

Summary

Initially we assumed that the basis of the מחלוקת between ר"מ ור"י (is not who can destroy the plant, but rather it) is whether we follow the root or the plant.

Thinking it over

תוספות asks why the גמרא did not cite the case of ערלה.⁸ Why did not תוספות ask, why the גמרא did not cite the (previous) case of אילן היוצא וכו' regarding a sale?!⁹

⁵ The case there is where a person bought a single tree in someone's property, and another tree sprouted from the trunk of the original tree; ר"מ maintains that the new tree belongs to the בעל הקרקע, while ר"י argues and maintains that it belongs to the אילן. We see that ר"מ is of the opinion that we look at its nourishment from the ground, and ultimately this new אילן is nourished from the ground of the בעל הקרקע (while ר"י maintains that it receives its nourishment from the initial tree [see 'תניא ד"ה ותניא תוס' there]). The fact that the גמרא relates these two cases proves that the reasoning by the ירק is not because of the רצה העליון וכו' for this reasoning is not applicable by the אילן הגזע; proving that their ultimate reasoning is whether we follow the root or the plant.

⁶ The issue is whether this new אילן is חייב in ערלה; according to ר"מ it is, but according to ר"י it is part of the old tree and is not בערלה. The advantage of citing the case of ערלה (over the משנה of שתי גנות), for in that instance there are no סברות of רצה העליון וכו' (See footnote # 2 [and # 5]); it only depends on whether the root or the plant is primary.

⁷ See 'Thinking it over'.

⁸ See footnote # 7.

⁹ See 'תוס' קיט, א ד"ה ותניא (see there סופר and מהרש"א (הארוך)).