

ואחד אילן הנוטה¹ מביא וקורא –

Or whether it is a leaning tree, he brings and proclaims

Overview

ר' יוחנן ruled that a tree which is leaning over a neighbor's property, one is required to bring ביכורים from it. Our תוספות compares this ruling and a similar one

בפרק המקבל (בבא מציעא דף קז,א ושם) פליגי רב ושמואל באילן הנוטה על המיצר -

In פרק המקבל there is a dispute between רב and שמואל regarding a tree which leans over the boundary, to whom do the fruits belong -

רב אמר הנוטה לכאן לכאן והנוטה לכאן ושמואל אמר חולקין -

רב rules that those who lean to one side belong to that owner and those that lean to the other side belong to the other owner, and שמואל rules that they divide all the fruits -

ופירש בקונטרס התם דבנטיית שרשים איירי ולפיכך שמעתין דהכא כרב² דאזיל בתר שרשין -

And רש"י explained there³ that we are discussing the leaning of the roots, so therefore the ruling of ר' יוחנן here is according to רב who follows the roots⁴ -

ורבינו שמשון בן אברהם פירש שם⁵ בענין אחר:

However, the רשב"א there explained it in a different manner.

Summary

Our גמרא follows the ruling of רב, according to פרש"י in מ"מ.

Thinking it over

How will we reconcile the case of⁶ אילן הסמוך למיצר according to רב, since the roots extend to the neighbor's property?! Why is he מביא וקורא since the fruits are not his?!⁷

¹ This (seemingly) means that the roots are all in the property of the tree owner, it is only the branches that extend into the neighbor's property. The first case of הסמוך למיצר is where (all?) the roots extend to the other property.

² According to שמואל who rules חולקין, he would not be able to be מביא וקורא, since the fruits are not all his.

³ בד"ה ונהגו. It seems from פרש"י there that if all the roots of ראוּבן's tree were in שמעון's property, and vice versa, the rule (according to רב) will be that ראוּבן's fruits belong to שמעון, and שמעון's fruits belong to ראוּבן. However, שמואל maintains יחלוקו, since the tree is in one רשות and the roots in another.

⁴ See footnote # 1 that the case of אילן הנוטה is where the roots were all in the field of the בעל האילן so even though the branches are in his neighbor's property we follow the roots according to רב's view. See 'Thinking it over'.

⁵ See there אילן תוס' ד"ה אילן that תוס' ד"ה אילן על המיצר means that the tree straddles the property line; it has nothing to do with the roots.

⁶ See footnote # 1.

⁷ נחלת משה.