

– לימא ליה בעל קרקע [לבעל אילנות] עקור אילנך שקול וזיל –

The owner of the land should say [to the owner of the trees], ‘uproot your trees, take them and leave’

OVERVIEW

זה קנה אילנות, זה החזיק באילנות וזה החזיק בקרקע maintains in the case where רב זביד only (while רב פפא maintains רב פפא asked ר"ז, according to you that the בעל אילנות, but not the קרקע, the בעל הקרקע could tell him שקול וזיל עקור אילנך. Our תוספות offers two interpretations of this question.

פירוש¹ לכשתייבשו² -

The explanation (of עקור אילנך וכו') **is** that you should uproot your trees **when they will wither** (but not now when they are alive).

anticipates and responds to an apparent difficulty with this interpretation:

ואף על פי שכך הוא אמת לרב זביד –

And even though that indeed this is the truth according to ר"ז, that once the trees die, he cannot replant them, so what is ר"ז asking ר"פ; indeed ר"ז agrees that the בעל הקרקע can claim – עקור אילנך וכו' –

replies:

מכל מקום פריך ליה רב פפא דאין סברא שידחוק אותו מיד לעקרו כשיבש³ –

Nevertheless ר"פ challenges ר"ז that it is not logical that he can pressure him to uproot it immediately as soon as it withers; the reason it is not logical -

כיון דג' אילנות מכר לו⁴ –

Since he presumably sold him three trees (and once someone buys three trees he is קונה

¹ The term פירוש (usually) indicates that תוסות is rejecting another (more obvious) interpretation. Here תוספות rejects the following interpretation in תוספות (the 'ועוד מצינו למימר'), that he should be able to force him to uproot the trees immediately even when they are alive, which conforms closer to the literal reading of the גמרא.

² The reason תוספות (prefers this interpretation and) rejects the following interpretation (see previous footnote # 1), may be because since ר"ז maintains that the בעל האילנות (three) קונה (and the בעל הקרקע was only קונה the בעל הקרקע, not the אילנות), what right should the בעל הקרקע have to force him to uproot the אילנות, while they are still alive!

³ ר"פ is saying to ר"ז since you claim that the בעל האילנות has no קרקע at all (even though he bought three trees, which usually gives him ownership in the surrounding area), the בעל הקרקע should have the legal right to evict him as soon as the trees are dead. [We assume that he has the ownership of live trees, but not of dead trees (which may not be considered trees at all)]. However this does not seem logical, since the בעל האילנות (who bought three trees) should have somewhat of a right in the קרקע (at least to the extent that he must not uproot his trees [immediately], or to keep his trees and (merely) not have the right to replant them).

⁴ See 'Thinking it over' # 3.

the surrounding (קרקע).

offers an alternate interpretation:⁵

ועוד מצינו למימר עקור אילנך לאלתר קאמר –

And in addition we can say; that indeed ר"פ meant to ask that he should force him to uproot the trees immediately (even while they are still alive) -

– והכי קשיא⁶ לרב פפא כיון דאפילו בג' אילנות אמרת דאין לו בקרקע כלום –

And this is the difficulty ר"פ had with ר"ז, since you (ר"ז) said that even if he bought three trees, he has no rights in the קרקע at all, and this is so -

– אף על גב דבעלמא בג' אילנות אית ליה קרקע משום דבשני לקוחות שאני –

Despite the fact that generally when one buys three trees he acquires the surrounding land, and the reason why here you maintain he does not acquire the land is because two buyers are different from one buyer, since the buyer of the קרקע -

– וקאמר⁷ ליה כי היכי דלדידי לית לי באילנות הכי נמי לדידך לית לך בקרקע –

Can say to the האילנות, 'just like I have no rights in the trees even though I bought the land (since he sold the trees to you), similarly you have no rights in the land even though you bought three trees (since he sold the land to me); ר"פ concludes -

– אי חשיב האי טעמא אם כן לאלתר נמי קודם שיבש לימא ליה עקור אילנך –

If you (ר"ז) consider this a valid reasoning, then he could even tell him immediately עקור אילנך, since he has no rights at all in the קרקע –

anticipates a difficulty with this logic:

– ואף על גב דבעלמא בחד לוקח בקנה שנים דלא קנה קרקע⁸ –

And even though that generally by one buyer who bought two trees, where the rule is that he did not acquire any land, but -

– מכל מקום יעמוד שם האילן עד שימות –

Nevertheless the tree can remain there until it dies, so why did ר"פ assume that here the עקור אילנך וכו' would have the right to tell the האילנות בעל הקרקע –

responds:

– הכא גרע טפי מהאי טעמא דאית לך⁹ כי היכי דלדידי כולי –

⁵ The difficulty with the previous interpretation is that ר"פ seems to be saying that he can force him to uproot the trees right now (while they are still producing fruits). The question on ר"ז is also not that clear since ר"ז agrees that he can tell him עקור אילך וכו'. (It is also not so clear why he may not force him to uproot the trees immediately after they withered, but he may coerce him to uproot them after some time.)

⁶ The הגהות הב"ח amends this to read קשיא ליה לרב.

⁷ The הגהות הב"ח amends this to read וקאמר (instead of וקאמר).

⁸ See 'Thinking it over' # 2.

Here by two buyers it is worse for the בעל האילנות than if there is only one buyer, **for this same reason that (you [ר"ז] maintain that)** the בעל הקרקע [can say to the בעל האילנות] **just like I have, etc.** [no rights in the trees you have no rights in the field at all]. And since ר"ז does not agree that the בעל האילנות must uproot his trees now -

אלא ודאי לית לך למימר האי טעמא -

So rather you (ר"ז) cannot assume this logic that כי היכא לדידי וכו', but rather the בעל האילנות has a certain right in the קרקע -

הלכך כשמכר לזה קרקע ולזה אילנות -

Therefore when the owner sold to one קרקע and to the other trees -

בעל אילנות קנה מקום הגזע ליטע אחרים במקומן כשיבשו¹⁰ -

The בעל אילנות acquires the space of the tree trunk to the extent that he may plant others in their place when they wither -

ומיירי בין בג' אילנות בין בב' כדפירש הקונטרס¹² -

And we are discussing any situation, whether there were three trees or whether there were two trees, as the רשב"ם explains.

ורשב"ם¹³ (which is not in total agreement with the תוספות clarifies the ruling according to ר"פ):

ואפילו¹⁴ בג' אין לו קרקע הצריך לאילנות [כיון] שפירש בהדיא¹⁵ לזה קרקע -

And even if there are three trees, the בעל האילנות does not acquire (even) the land which is necessary for the nourishment and harvesting of the trees (different from a single purchaser of three trees), [since] the seller explicitly stated, the קרקע is for the other one -

ואפי' בב' אילנות כשיבשו יטע אחרים במקומן¹⁶ משום כי היכי דלדידך בעין יפה זבין כולי:

And even if it were two trees (where by a single buyer he has no rights to replant, however here) when they wither he may plant others in their place because the בעל אילנות can say to the קרקע, just like he sold to you with a 'good eye' etc.,

⁹ Others substitute 'דאמר ליה' instead of לך דאית לך.

¹⁰ ר"פ is asking ממ"נ, if you maintain that the בעל האילנות has no rights in the קרקע at all even though he bought three trees (because two buyers are worse than one buyer, regarding trees), then he should be required to remove them now (even though a buyer of two trees does not need to remove them now, but we are now assuming the two buyers are worse than one buyer), and if the בעל האילנות has a right in the property (that he does to need to uproot them now), he should have the right to replant them, since he has a right in the property.

¹¹ ר"ז maintains in both cases he can keep the trees until they die (but he cannot replant them); this is what זה קנה means, while ר"פ maintains in both cases he can replant them; this is what קנה אילנות וחצי קרקע means. See חצי קרקע ורשב"ם, why ר"פ calls it חצי קרקע ורשב"ם, why ר"פ calls it חצי קרקע ורשב"ם.

¹² See רשב"ם ד"ה אמר וד"ה זה.

¹³ ד"ה זה.

¹⁴ The הגהות הב"ה amends this to read דאפילו (instead of ואפילו).

¹⁵ See 'Thinking it over' # 1.

¹⁶ See 'Thinking it over' # 2.

to me he also sold with a 'good eye' meaning that he allowed me to retain the right to replant the trees.

SUMMARY

ר"פ could either be asking that according to ר"ז the בעל הקרקע should have the right to force the בעל האילנות to remove his trees immediately after they wither (but not while there are alive), or ר"פ is asking that according to ר"ז the בעל הקרקע should have the right to force the בעל האילנות to remove the trees even while they are alive (since two buyers are worse than one buyer regarding the האילנות).

THINKING IT OVER

1. תוספות writes that even if he purchased three trees he has no rights to the land, since the seller 'explicitly stated' וכו' קרקע. ¹⁷ Seemingly according to תוספות we are discussing ג"ש ¹⁸ חזקת and so the מוכר in fact claims that he sold nothing to anyone, it is גזולה, so how can תוספות say, he 'explicitly stated'?! ¹⁹

2. תוספות distinguishes (regarding one who buys two trees) between two buyers (one bought trees and the other bought קרקע), where he retains the rights to replant (according to ר"פ), ²⁰ and one buyer where he cannot replant them. ²¹ Seemingly the same argument there is by two buyers that יפה מכר, should apply by one buyer as well! ²²

3. According to the first פ' of תוספות, what would ר"פ maintain if he was מחזיק in only two trees? ²³

¹⁷ See footnote # 15.

¹⁸ See previous תוס' ד"ה זה (TIE footnote # 6).

¹⁹ See גה"מ.

²⁰ See footnote # 16.

²¹ See footnote # 8.

²² See מהרש"א וקרני ראם.

²³ See footnote # 4 and בל"י אות רחצ.