

He told him: I am building in my property - אמר ליה בדידי קבנינא -

OVERVIEW

The גמרא relates the story of the brothers who divided the estate; one taking the garden, the other the house. Subsequently the garden owner built a wall, on his own property, blocking the light of the house. The homeowner complained, arguing that you are darkening my home; you are turning it into a dark room, etc. רב חמא ruled in favor of the garden owner. The issue at hand is to what degree is the garden owner permitted to block out the light of the homeowner. תוספות will discuss three opinions on this matter.

פירש הקונטרס אתה אין לך עלי חזקת אורה של שלש שנים¹ -

רש"י explained that the builder of the wall (בעל התרביצא) said to the owner of the building (בעל האספלידא) **you have not acquired from me as of yet the rights of proper lighting which require three years** to establish. Therefore I am entitled to build on my property any building, even if it will deprive you from adequate lighting.

רש"י asks on תוספות:

ותימה שהיה יכול להאפילו עליו שלא יהא לו בטרקלין² אורה כלל³ -

And it is incredible that the garden owner was permitted to darken his house to the extent that he should have no light at all in his 'banquet hall'.

רש"י has an additional question on תוספות:

ועוד דמאי קאמר באוירא לא עלו אהדדי⁴ -

And furthermore, what is it that the גמרא states they did not include the open air rights when they assessed each other's property values. How can the גמרא maintain that!

פשיטא דעלו נמי באוירא דבית בלא אורה אינו שוה כלום -

It is obvious that they also included in their assessment the value of the open air

¹ It is the opinion of בדפנשאי רש"י בד"ה בדפנשאי (according to תוספות), that the window owner does not acquire any right of lighting for his window unless he had the window lighting for three years and his neighbor did not object. Otherwise the neighbor is permitted to build a wall on his own property immediately opposite the window depriving it from any light at all.

² See אספלידא who translates אספלידא to mean טרקלין יפה.

³ תוספות assumes that he blocked the light of the טרקלין completely since רש"י states that בעל התרביצא claims that בעל האספלידא has no rights to any light (since there was no ג' שנים). This is supported by the fact that the בעל האספלידא stated: a) קא מאפלת עלי and b) השתא משוית לי אינדרונא, indicating there was no light at all. תוספות does not elaborate why it is a תימה; it seems self-evident that this cannot be permitted. See מהרש"א and אור קנה.

⁴ The גמרא explains that בעל האספלידא has no air/light rights, since when they assessed the value of the אספלידא, they only took into account the actual value of the building materials, not air/light value.

rights, for a house without light is worthless.⁵

גמרא offers a different interpretation of the תוספות:

ומפרש רבינו תם שמאספלידא היה יכול לראות לשדותיו דרך התרביצא –

And the ר"ת explains that from within the אספלידא the owner of the אספלידא was able to see his own fields that were distant from the אספלידא by way of the תרביצא; until the בעל התרביצא built the wall which prevented the אספלידא from observing his fields.

תוספות responds to an anticipated difficulty with this interpretation:

ודקאמר מאפלת עילווי היינו שהיה מעכבו שלא היה יכול לראות שדותיו –

And that which the גמרא quotes the אספלידא complaining, ‘you are darkening upon me,’ which would seemingly indicate that the new wall did not merely prevent him from observing his fields but rather, as רש"י maintains, darkened his house; תוספות responds that the expression מאפלת עילווי **means that the אספלידא was preventing the אספלידא so that he was not able to see his fields.** The word ‘darkening’ need not be understood literally, but figuratively; I cannot see my fields because of your wall. My fields are in darkness they cannot be seen.

This approach will also resolve an additional difficulty:

וקרי לה נמי אידרונא⁶ שלא היה יכול להביט למרחוק –

And the אספלידא after the wall was built as an אידרונא – a darkened room; again it is not to be understood literally but rather the אספלידא meant to say **that he could not look afar;** his view was blocked.

וכן מפרש ההוא דלקמן⁷ אין להם חלונות זה על זה –

And the ר"ת similarly interprets that which the גמרא states later concerning brothers who divided inherited property that they have no window rights against each other; any brother can build against his brother’s window.⁸

⁵ The two brothers divided their father’s estate; one took the garden, the other the house. The house was worth more than the garden, therefore they evaluated the respective values of the house and the garden, after which the owner of the house paid the owner of the garden half the difference to equalize their portions. It is obvious that when they assessed the value of the house it was assessed as a normal house with sufficient lighting. Otherwise, if there was no lighting, the value of the house would be (next to) nothing. How then can the גמרא state that they did not evaluate the lighting!

⁶ See מסרות הש"ס that the word אידרונא should read איִדרוֹנא (throughout [תוספות]).

⁷ ז,ב.

⁸ ר"ת understands this to mean that any brother who inherited a window in his property cannot expect to have the same view as it was when the father owned the property. Another brother may build in such a manner to restrict the previous view. However it certainly does not mean that another brother may board up his windows entirely, depriving him of any light at all. This is not permitted. The brothers retain a right for (a minimal amount of) light;

תוספות has a difficulty with the s't"r interpretation:

ומיהו קשיא לרבינו יצחק דמאי קפריך מאי שנא מהא דתניא כולי⁹ –

However the ר"י has a difficulty with the s't"r interpretation; what does the גמרא mean by asking 'how does the case of אספלידא differ from that which we learned in a ברייתא, etc'.

התם ודאי יש לו ד' אמות לפי שהם צורך לעבודת הכרם¹⁰ –

There in the ברייתא the בעל הכרם definitely acquires ד' אמות in the הלבן for those ד' אמות are necessary to tend the vineyard -

אבל הכא זה לא היה צורך האספלידא משום הכי בדין קאמר ליה –

However here, concerning the view to his fields; this viewing is not a requirement of the אספלידא. An אספלידא is made to live in; not necessarily to have a grand view, **therefore** the בעל התרביצא **justifiably said to** the בעל האספלידא 'I am building in my own property'. The בעל התרביצא was not diminishing the intended use of the אספלידא. What is the s'גמרא question?!

תוספות offers another interpretation:

ונראה לרבינו יצחק דודאי היה מאפיל עליו האורה –

And the ר"י is of the opinion that certainly this new wall darkened the אספלידא and diminished its light –

שלא היה בו אורה גדולה כאשר צריך לאכסדרה¹¹ אבל עדיין היה בו אור גדול –

For it did not have a large amount of light which is appropriate for an אכסדרה however there was still plenty of light. Therefore the בעל התרביצא was able to build, since there was still sufficient light in the אספלידא (even though it was less than it is customary).

תוספות anticipates a difficulty with this interpretation:

והא דאמר¹² ומכנגדן מרחיק ד' אמות שלא יאפיל –

And that which the ברייתא says that one must distance a wall from opposite the windows a distance of ד' אמות in order that he should not darken the windows.¹³

but not of a grand view.

⁹ This is the ברייתא where two brothers divided the estate; one received the vineyard the other the wheat field. The vineyard owner retains ד' אמות adjacent to his vineyard in the wheat field. We derive from there that the original rights remain.

¹⁰ See the גמרא כו,א, תוספות ב,א ד"ה אומר and ד"ה ד' אמות here רש"י, גמרא כו,א.

¹¹ See previous ד"ה אספלידא, תוספות ד"ה אספלידא, where the (same) ר"י translates אספלידא to mean an אכסדרה.

¹² ב,ב.

¹³ Seemingly even if he builds the wall within ד' אמות of the windows there is also light, and nevertheless since it is not the usual light that he is accustomed to, one may not block out that light. Therefore here too, since the אספלידא generally receives a great deal of light, he should be prohibited from diminishing the usual and customary amount of light.

responds; there, concerning the prohibition from building a wall within ד' of the windows; the term שלא יאפיל does not mean that he is merely darkening his room that it will not have as much light as before, but rather שלא יאפיל means:

היינו שלא יאפיל לגמרי עד שלא יהא ראוי להשתמש בו יפה –

That he should not darken him completely to the extent that he cannot use the room properly.¹⁴

גמרא according to the ר"י goes on to explain the תוספות

ומשום הכי קרי ליה אידרונא משום דלגבי אכסדרה אידרונא היא –

And the reason wherefore he called it an אידרונא is because compared to the light required for an אכסדרה this is now considered an אידרונא, since it had much less light than an אכסדרה usually has.

והשתא נמי אתי שפיר דלא עלו להדדי באוירא שהוא צורך האכסדרה:

And now it is also properly understood that the גמרא says that they did not take the airspace into consideration when they assessed the respective values of the תרביצא and the אספלידא; that airspace is referring to the airspace that is required for an אכסדרה; it was only that additional airspace that was not assessed. However the normal air space that is required that there should be sufficient lighting was certainly taken into consideration.

SUMMARY

רש"י is of the opinion that if one does not have a חזקת ג' שנים for his air/light rights, a neighbor may block out his entire light, if he builds on his property. The ר"ת and the ר"י disagree with רש"י, and maintain that one's right to light must be respected, even without חזקת ג' שנים. The ר"ת interprets the story of the אספלידא that merely his view was blocked. The ר"י interprets it, that the extensive light of the אכסדרה was diminished to a normal house light.

THINKING IT OVER

1. Explain the differences between רש"י and the ר"ת concerning whether and why blocking entirely the light is permitted or prohibited.¹⁵

2. Is there a difference להלכה between the ר"ת and the ר"י?¹⁶

¹⁴ When a wall is built within ד' of a window it is not merely that the light is diminished, but rather we consider the room entirely dark, that it cannot be used, in a normal manner. That is why it is prohibited from building within ד'. However here by the אספלידא even after the wall was built, there would still be sufficient lighting in the אספלידא for normal use.

¹⁵ See סוכ"ד אות ז.

¹⁶ See רא"ש אות כ.