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Bava Basra Daf 82

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The Mishna had stated: [If the trees] grew large, [the landowner] must not cut down their branches, etc.

The Gemora asks: What is considered [to be] from the stem and what is considered [to be] from the roots?

Rabbi Yochanan said: Whatever is exposed to the sun is of the stem, and whatever is not exposed to the sun is of the roots.

The Gemora asks: [How can it be said that all that grows from the stem belongs to the buyer?] Is there not cause to apprehend that soil deposits will build up [covering up the knots of the lowest shoots] and that [the buyer] would say [to the landowner], “You have sold me three [trees] and I have, [therefore, a share of the] ground”?

But Rav Nachman replied: [The buyer] must cut [them] off. Rabbi Yochanan also said: He must cut [them] off.

Rav Nachman said: We have it by tradition [that] a date tree has no stem.

Rav Zevid was of the opinion that this means [that] the owner of the date tree has no [rights to that which grows from the] stem, because since [the tree] is destined [when it dries up] to be dug and taken out with the roots, [the buyer] discards [the shoots] from his mind.

Rav Pappa, [however], raised [the following] difficulty: Surely, [the case of one who] buys two trees [includes also such trees] as are destined to be dug up and taken out with the roots, and [yet] the Mishna teaches that the buyer has [a title to] the stem!?

Rather, said Rav Pappa, [the reason why] the owner of the date tree has no [title to the] stem [is] because the stem does not [usually] produce [any shoots].



The Gemora asks: According to Rav Zevid, however, [there remains] the difficulty of our Mishna!

The Gemora answers: [Our Mishna deals with the case] where [the trees] were sold for five years.

The Mishna had stated: One who bought three [trees] has [implicitly] acquired [ownership of the] ground.

The Gemora asks: And how much [ground]?

Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: He has acquired [the ownership of the ground] beneath [the trees] and between them, and outside of them - as much as is required for a picker (to stand) and his basket.

Rabbi Elozar raised a difficulty: Since he has no [right of] passage, would he have [a right to the ground required by a] picker and his basket? [If] he has no [right of] passage because [the trees grow in] another field, should he, then, have [a right to the ground required for a] picker and his basket?

Rabbi Zeira said: From the words of our teacher, we may infer that only [when the

buyer has purchased] three [trees] does he have no [right of] passage, but [if he has purchased] two [trees] he does have [the right of passage]; for he can say [to the landowner]: They stand in your [own] field, [and since you have sold me the trees inside, you must also allow me access to them].

Rav Nachman bar Yitzchak said to Rava: Does this imply that Rabbi Elozar is in disagreement with Shmuel his teacher? For Shmuel said: The law is in accordance with Rabbi Akiva's opinion that he who sells does so liberally [and one selling liberally would surely include in the sale a right of passage]?

He replied to him: [Rabbi Elozar may agree with Shmuel, but] our Mishna cannot be attributed to Rabbi Akiva. How is this proved? Because it states: If they grew large, [the landowner] may cut down their branches: Now, if you would think that the Mishna should be attributed to Rabbi Akiva, why may [the landowner] cut down their branches? Surely [Rabbi Akiva] said that he who sells does so liberally!

He said to him: It is possible that Rabbi Akiva said [so] in the case [only] of a pit and a cellar because these do not cause deterioration of the ground, [but] did you hear him [say the



same thing] in the case of a tree [which does cause deterioration to the field]? Doesn't Rabbi Akiva [in fact] agree that in [the case of] a tree [whose branches] hang over the field of one's neighbor, [the latter] may cut off [the overhanging branches to such a height as will allow the] full [passage of the] handle that protrudes over the plough!

It has been taught in agreement with Rabbi Chiya bar Abba: He [the buyer of three trees] has acquired ownership [of the ground] beneath them, and between them and outside them, as much as is required for a picker and his basket.

Abaye said to Rav Yosef: Who seeds on that [land reserved for] the picker and his basket?

He replied: You have learned it: The external [field owner] seeds the pathway.

He said to him: Are these two cases alike? There, the buyer is not involved in any loss; but here, the owner of the tree is involved in a loss; for he can point out [to the seller] that the fruit [that would drop on the scattered seed] would be soiled.

This case rather resembles the final clause [of the Mishna, in accordance with which]

neither the one nor the other may seed [on the allotted space].

It has been taught in agreement with the opinion of Abaye: He has acquired [the ground] beneath them, and outside them, and outside them as much as is required for the picker and his basket, and neither of them is allowed to seed it. (82a – 82b)