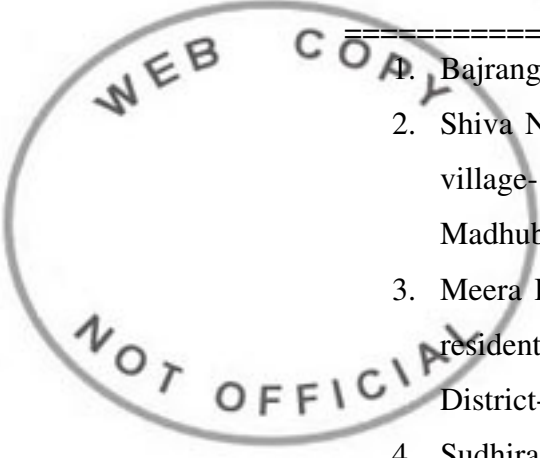


IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.433 of 1986

- 
1. Bajrangi Mishra.
 2. Shiva Nand Mishra, both sons of late Sri Mohan Mishra, both resident of village- Bishanpur Khajuri, P.S. Madhepur at present Bheja, District-Madhubani.
 3. Meera Devi wife of Sri Akhileshwar Mishra, D/o late Sri Mohan Mishra, resident of Village-Lakshmipur, P.O. Kathania, via Jhanjharpur (R.S) District-Madhubani.
 4. Sudhira Devi, wife of Ram Chandra Jha, daughter of late Sri Mohan Mishra, resident of village Navar Patti, P.O. Kasraur, via-Benipur, District-Darbhanga.

.... Appellant/s

Versus

1. Smt.Shail Kumari Devi @ Buchi Dai daughter of Chanramukhi Devi and late Ghanshyam Jha, resident of village Sirnia P.S. Parbatta District-Monghyer at present residing at village Rampur Barsam P.S. Madhepur at present P.S. Bheja District-Madhubani.
2. Ganganand Jha, son of Ghanshyam Jha, resident of village-Rampur Barsan, P.S. Madhepur, at present Bheja, District-Madhubani, at present residing at Mohalla-Balbhadrapur in the town of Laheriasarai, District-Darbhanga.
3. Sujan Devi wife of Nokhelal Sahu.
4. Gopal Sahu.
5. Gouru Sharan Sahu, both sons of Nokhelal Sahu.
6. Shobha Devi
7. Kisan Devi, daughter of Nokhelal Sahu, all of village Patania P.S. Biroul, district-Darbhanga.
8. Babujan Sahu son of Mahanthi Sah.
9. Mahindra Sahu.
10. Rajendra Sahu.
11. Jogi Sahu, all sons of late Soman Sah @ Sahu, resident of Village-Bishanpur Khajuri, P.S. Madhepur at present Bheja, District-Madhubani.
12. Urmila Devi wife of Mishri Lal Sahu daughter of late Soman Sah @Sahu resident of village Nawada, P.s. Madhepur, District-Madhubani.

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13. Pramila Devi wife of Ram Bilash Sahu, daughter of late Soman Sah @ Sahu, resident of village-Telwa, P.S. Mahisi, District-Saharsa.
 14. Hiralal Yadav.
 15. Laleshwar Yadav, sons of Sukhdeo Yadav.
 16. Bindi Devi.
 17. Panma Devi.
 18. Dhanma Devi.
 19. Mostt. Gulabia wife of Sukhdeo Yadav.
 20. Dahaur Yadav, sons of Sugmani Yadav, all of village Bishanpur, Khijuri, P.S. Madhepur at present Bheja District-Madhubani.
 21. Uttim Lal Yadav.
 22. Moti Lal Yadav.
 23. Rajo Yadav.
 24. Ram Sahu.
 25. Ram Bilas Sahu.
 26. Roghu Sahu.
 27. Ram Prasad Sahu.
 28. Baidya Nath Sahu.
 29. Jagarnath Sahu, all are sons of late Nebalal Sah @ Sahu, all resident of village-Bishanpur Khajuri, P.S. Madhepur, at present Bheja, District-Madhubani.
 30. Lukho Devi wife of Satya Narayan Sahu, daughter of Late Nebalal Sah @ Sahu, resident of village-Lalganj, P.S. Sarsopahi, District-Madhubani.
 31. Gangiya Devi wife of Ram Chandra Sahu, daughter of Late Nebalal Sah @ Sahu, resident of village-Lilja, P.S. Bheja, District-Madhubani.
 32. Bucchi Dai wife of Phul Kumar Sahu, daughter of Late Nebalal Sah @ Sahu, resident of village-Simesingpur, P.S. Lakhnour, District-Madhubani.
 33. Maha Devi wife of baidyanath Yadav and daughter of late Ram Kishun Yadav resident of village Pijur Garh, P.O. Pijur Garh, P.S. Ghoghardiha, District-Madhubani.
 34. Duro Devi wife of Jagarnath Yadav and daughter of Ram Kishun Yadav, resident of village Pijur Garh, P.S. Pijur Garh, P.S. Ghoghardiha, District-Madhubani.

..... Respondent/s
with

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Second Appeal No. 434 of 1986

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34. Duro Devi wife of Jagarnath Yadav and daughter of Ram Kishun Yadav, resident of village Pijur Garh, P.S. Pijur Garh, P.S. Ghoghardiha, District-Madhubani.

.... Respondent/s

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Appearance :

(In SA No. 433 of 1986)

For the Appellant/s : Mr. Srinandan Prasad Singh, Adv.
Mr. Manoj Kr.-1, Adv.

For the Respondent/s : Mr. T.N. Maitin, Sr. Adv.
Mr. Manish Kumar No.13, Adv.
Mr. Rohit Kumar, Adv.

(In SA No. 434 of 1986)

For the Appellant/s : Mr. Srinandan Prasad Singh, Adv.
Mr. Manoj Kr.-1, Adv.

For the Respondent/s : Mr. T.N. Maitin, Sr. Adv.
Mr. Manish Kumar No.13, Adv.
Mr. Rohit Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 15-09-2016

Heard Mr. Srinandan Pd. Singh, learned counsel for the appellants and Mr. T.N. Maitin, learned senior counsel for the contesting-respondents in both the appeals.

The plaintiffs are the appellants and have preferred these two second appeals against the judgment and decree of the appellate court below affirming the dismissal of the suit for specific performance of contract and allowing the cross-objection.

Admittedly the suit property originally belonged to Ghanshyam Jha who died in the year 1962. The plaintiff's case, in short, was that Ghanshyam Jha entered into an oral agreement for sale of the suit land with the plaintiff for total consideration money of Rs. 5500/- out of which he received Rs. 3500/- by way of advance on 15.11.1954 from the plaintiff and put him in possession. The execution of the sale deed was deferred till some 'Jhanjhat' (dispute)



over the suit property was sorted out. However, Ghanshyam Jha died before execution of the sale deed. It was further case of the plaintiff that soon thereafter the plaintiff approached the family members of Ghanshyam Jha including his widow who promised to execute the sale deed in favour of the plaintiff for the suit land as agreed by late Ghanshyam Jha and in sequence Chandra Mukhi Devi widow of late Ghanshyam Jha executed an agreement for sale on 14.04.1967 whereby she acknowledged the agreement for sale by late Ghanshyam Jha in favour of the plaintiff and further promised to execute the sale deed for the suit land in favour of the plaintiff within six months. It was also the case of the plaintiff that the defendant no. 1 Chandramukhi Devi received Rs. 1500/- at the time of execution of the Mahadnama out of the remaining consideration money and it was agreed that the balance consideration money of Rs. 500/- would be paid at the time of execution of the sale deed. The plaintiff filed the suit for specific performance of contract for sale of the suit land also alleging that subsequent to the execution of the Mahadnama on 14.04.1967, the defendant no. 1 (widow of late Ghanshyam Jha) executed eight sale deeds in favour of the defendant 2nd set and therefore the relief was prayed against both the sets of defendants.

The defendant no. 1 Chandramukhi Devi (widow of late Ghanshyam Jha) filed her written statement denying the case of the



plaintiff and denying the agreement for sale of the suit land in favour of the plaintiff by late Ghanshyam Jha. The defendant no. 1 also denied execution of the Mahadnama dated 14.04.1967 as propounded by the plaintiff alleging her signature over the same as forged and fabricated. The defendant 2nd set who were subsequent purchasers of the suit land from the defendant no. 1 also denied the assertions of the plaintiff and supported the case as pleaded by the defendant no. 1. They further claimed themselves to be bona fide purchasers of the suit land for value and without notice of the agreement for sale in favour of the plaintiff.

The trial court after scrutiny of the pleadings and evidence of the parties while dismissing the suit returned the following main findings:-

- (i) The Mahadnama dated 14.04.1967 was executed by defendant no. 1 Chandramukhi Devi and was a genuine document establishing agreement for sale of the suit land in favour of the plaintiff and the receiving part of the consideration money by late Ghanshyam Jha and after him by his widow.

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- (ii) The Mahadnama was, however, legally correct as all the legal heirs of late Ghanshyam Jha had not joined the same.
- (iii) The defendant 2nd set who were subsequent purchasers were not bona fide purchasers of the suit land.
- (iv) The plaintiff had been in possession from 15.11.1954 to 21.08.1967 whereafter the defendant 2nd set had got physical possession over the suit land.

The plaintiff filed T.A. No. 13 of 1978/10 of 1985 against the judgment and decree of the trial court. The defendant 2nd set preferred cross objection (appeal) which was numbered as Cross Objection (appeal) No. 82A of 1978/01 of 1986. The appellate court below by order dated 07.10.1983 in view of the objections on behalf of the defendants with regard to the valuation of the suit and limitation called for findings from the trial court on the aforesaid issues of valuation and limitation. The trial court returned the findings on the aforesaid issues holding that the suit was not barred by limitation and further holding that the value of the suit land was Rs.

2500/- per bigha in the year 1967. The appellate court below heard the appeal and cross objection analogously thereafter and has dismissed the appeal filed by the plaintiff and allowed the cross objection filed the defendant 2nd set by the impugned judgment and decree on the basis of following main conclusions:-

- (i) The suit was barred by limitation.
- (ii) The Mahadnama dated 14.04.1967 (Ext. 8) was neither genuine nor valid nor for consideration and the finding of the trial court to the contrary was wrong. However, the finding of the trial court that the Mahadnama (Ext. 8) was not legally correct was upheld.
- (iii) The defendant 2nd set (subsequent purchasers) were bona fide purchasers of the suit land for value and without knowledge of the alleged contract of sale dated 15.11.1954 and Mahadnama (Ext. 8) dated 14.04.1967.

The Second Appeal No. 433 of 1986 has been filed by the plaintiff against the judgment and decree dismissing the T.A. No. 13 of 1978/ 10 of 1985 and the Second Appeal No. 434 of 1986 has been

filed by the plaintiff against the judgment and decree passed in Cross Objection (appeal) no. 82A of 1978/01 of 1986 allowing the cross objection by the defendant 2nd set. By earlier order both the appeals have been directed to be heard analogously.

By order dated 17.07.1987 while admitting the two second appeals the following substantial question of law has been framed:-

“The question of law, inter alia, involved is whether non-consideration by both the courts below of some material pieces of evidence both documentary and oral recorded by them are sustainable or not?”

At the time of hearing Mr. Singh, learned counsel appearing for the appellants, has submitted that another question of law relating to legal sustainability of the finding by the appellate court below on the issue of bar of the suit by limitation also arises for consideration. Mr. Maitin, learned senior counsel for the contesting respondents, has expressed his agreement for hearing of this appeal on the additional substantial question of law relating to bar of the suit by limitation. After perusal of the judgments of both the courts below, this Court finds that the prayer on behalf of the appellants for framing additional substantial questions of law on the issue of limitation deserves to be allowed and accordingly the following additional

substantial question of law is framed for consideration:

- (i) Whether the finding as recorded by the appellate court below holding the suit to be barred by limitation, in the facts and circumstances of the case, can be sustained in law?

Criticizing the impugned judgment of the appellate court below, Mr. Singh, learned counsel appearing for the appellants has made two fold submissions. Firstly it has been submitted that the appellate court below has committed error in law in holding the suit to be barred by limitation after accepting the submission on behalf of the defendant respondents that the limitation of three years for filing the suit started to run from the date of death of the vendor Ghanshayam Jha which would have to be taken as the date of refusal of the performance of contract. It has been contended that Article 54 of the Limitation Act clearly envisages that the starting point for limitation for filing the suit for specific performance of contract would either be the date fixed for the performance or if no such date is fixed then the date when the plaintiff has notice of refusal of performance. It has been propounded that the date of death of the promisor (in the present case Ghanshayam Jha) cannot be introduced as either the date of performance of the contract or the date of refusal of performance of contract. It has therefore been posited that the finding by the appellate



court below on the issue of limitation is clearly illegal and cannot be sustained. It has been next submitted that the appellate court below has in fact recorded its findings on the material issues only on the basis of the surmises and conjectures and has abdicated its duty as an appellate court which requires re-appraisal of evidence in accordance with the settled principles of law. Elaborating his submission, learned counsel has placed the judgment of the appellate court below in order to demonstrate that after taking into notice the submissions as made by the learned counsel for the parties and making inventory of the oral and documentary evidence of the parties, the appellate court below has suddenly jumped to the conclusions leaving it for speculation as to what actually persuaded the court to take the view. It has also been submitted that the determination of the issues by the appellate court below after independent scrutiny of evidence is a valuable right of a litigant but the same has been denied to the appellants in the present case.

Per contra Mr. Maitin, learned senior counsel for the respondents has submitted that the judgment of the appellate court below is entirely in accordance with law and the submission in this regard on behalf of the appellants is only a fig of imagination. It has been submitted that the law is well settled that the demand for performance must be made before expiry of three years from the date



of agreement and therefore the suit filed by the plaintiff in the year 1967 for enforcement of the contract dated 15.11.1954 was clearly barred by limitation. It has also been submitted that the appellate court below has committed no error in accepting the submission on behalf of the contesting defendants that the death of the seller would be the starting point of limitation in counting the period of limitation. Mr. Maitin, learned senior Counsel has relied upon the decision of the Andhra Pradesh High Court in the case of **Kota Sivaram Prasad Vs. Nagandla Veera Brahmam, 2012 A.I.R. CC 1938 (AP)** and the **Chattisgarh High Court in the case of Paulus Tigga Vs. Xaxarious Ekka IR 2007 (NOC) 848 (Chhat.)** and has provided the copies of those decisions for perusal of this Court. It has been further submitted that the conclusions by the appellate court below are not on the basis of surmises and conjectures but have been recorded after taking into notice the submissions on behalf of the parties as well as the evidence on record. It has been emphasized that the manner of recording the findings might have different but for that reason alone it cannot be said that the findings are vitiated. It has been lastly submitted that the substantial questions of law deserve to be answered against the appellants and the two appeals are fit to be dismissed.

As elaborate submission has been made on behalf of the parties on the issue of bar of the suit by limitation, the additional



substantial questions of law in this regard is taken up first for determination. The case of the plaintiff as is evident from the averments made in the plaint was that the original owner Ghanshyam Jha entered into the oral agreement for sale of the suit land with the plaintiff on 15.11.1954 for Rs. 5500/- out of which he received Rs. 3500/- and promised to execute the sale deed after the 'Jhanjhat' (dispute) over the suit land was sorted out. Ghanshyam Jha died some time in the year 1962. It was further case of the plaintiff that his widow Chandramukhi Devi (defendant no. 1) acknowledged the said agreement for sale by her deceased husband and executed a Mahadnama on 14.04.1967 after receiving Rs. 1500/- out of the remaining consideration money and had promised to execute the sale deed within six months in favour of the plaintiff. As the defendant no. 1 Chandramukhi Devi did not execute the sale deed as promised and instead sold the suit land by executing sale deeds in favour of the defendant 2nd set, the suit was filed by the plaintiff on 28.09.1967. From the written statements filed by the defendant no. 1 or the defendant 2nd set it does not appear that any specific plea was taken regarding the bar of the suit by limitation though the general plea in that regard is there. From the judgment of the trial court also it does not appear that the issue of limitation was framed or the parties went to trial knowing the said issue to be involved. The appellate court



below however by order dated 07.10.1983 had called for the findings by the trial court on the issue of limitation and also on the issue of valuation of the suit lands. In pursuance to the order of the appellate court the finding on the issue of limitation was recorded by the trial court holding that the suit was not barred by limitation. The appellate court below however has reversed the finding of the trial court on the issue of limitation and has held that the suit filed by the plaintiff was barred by limitation.

From the perusal of the findings on the point of limitation as recorded by the appellate court below, it does not appear that the appellate court has recorded any specific finding with regard to the starting point of limitation. At this juncture it would be fruitful here to take into notice the principle in this regard as laid down by the Apex Court in the case of **Ahmadsahab Abdul Mulla Vs. Bibijan 2009 (5) SCC 462** while delving into the interpretation of the expression ‘date’ used in Article 54 of the Schedule to Limitation Act as follows:-

“.....The inevitable conclusion is that the expression ‘date fixed for the performance’ is a crystallized notion. This is clear from the fact that the second part ‘time from which period begins to run’ refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second

part the stress is on 'when the plaintiff has notice that performance is refused'. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances.

Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression 'date' used in Article 54 of the Act definitely is suggestive of a specified date in the calendar.....”(emphasis supplied)

In view of the authoritative pronouncement of law as above, there remains no scintilla of doubt that before holding a suit for specific performance of contract to be barred by limitation as prescribed under Article 54 of the Limitation Act, the court is required to determine the date from which the period of limitation will begin to run. As noticed above, the appellate court below has failed to determine the date from which the period of limitation is to start running and evidently therefore the conclusion that the suit is barred by limitation is based on surmises and conjectures.

Examining the finding of the appellate court below in this regard from another angle, it becomes transparent from the



discussions made in the judgment that the appellate court apparently has allowed it to be swayed by the submission made on behalf of the defendant-respondents cross-objectionist that the contract of the plaintiff with Ghanshyam Jha came to an end on the death of Ghanshyam Jha in the year 1962 and as such the suit ought to have been filed within three years from 1962. Before this Court also the learned senior counsel on behalf of the defendant-respondents in support of the said finding has made strenuous effort to develop the submission that there was refusal of performance before the death of Ghanshyam Jha and in that context the date of death of Ghanshyam Jha would be the starting point of limitation. However, it does not appear from the written statement filed by the defendants that such a plea of refusal of performance by Ghanshyam Jha before his death was ever raised and further from the judgment of the appellate court below also it does not appear that such a plea was raised and considered by the court. This Court has also not been persuaded, in the facts and circumstances of the present case, to align with the submission on behalf of the respondents on the basis of the decision in the case of **Kota Sivaram** (supra) that in the absence of any averment in the contract, the respondent is required to make demand for performance of the contract before expiry of three years from the date of agreement. In view of the decision of the Apex Court in the case of



Ahmadsahab Abdul Mulla (supra) this Court is also not inclined to accept the submission on behalf of the respondents, on the basis of the decision in the case of **Paulus Tigga** (supra), that such suit is required to be filed within three years of the date of death of the vendor. This view is further fortified by the law as laid down by the three judge Bench of the Apex Court in **Ram Baran Prasad Vs. Ram Mohit Hazra A.I.R. 1967 SC 744** where their lordships after considering the provisions as contained in Section 15 (b) and Section 27 (b) of the Specific Relief Act, 1877 (now Section 19 (b) of the Specific Relief Act, 1963) as well as Section 37 and section 40 of the Indian Contract Act have laid down as follows:-

“.....In substance these statutory provisions laid down that, subject to certain exceptions which are not material in this case, the contract in the absence of a contrary intention express or implied will be enforceable by and against the parties and their legal heirs and legal representatives including the assignees and transferees.....”

Tested on the anvil of the above well laid principles it becomes graphically clear that the death of the vendor in case of contract for sale will not by itself and without anything more be terminus a quo for counting the period of limitation for filing the suit



for specific performance against his heirs and his legal representatives because the contract for sale of the immovable property would not stand terminated on the death of the vendor whose heirs and legal representatives are still legally obliged to abide by the terms of the contract and execute the sale deed or to refuse such performance. It is, therefore, definitely discernible that the conclusion by the appellate court below that the suit is barred by limitation is not legally sustainable and deserves to be overturned.

The next contention on behalf of the appellants pertains to the findings by the appellate court below on the other material issues. From the impugned judgment of the appellate court, it appears that the consideration on other points by the court starts from paragraph no. 15 and continues up till paragraph no. 20, wherein, the court has taken into notice the submissions made by the learned counsel for both the parties. In paragraph no. 21, the court has noticed/catalogued the documentary evidence filed on behalf of the parties as well as witnesses examined respectively on their behalf. In some paragraphs thereafter, the court, after observing that it has discussed the importance of most of the documentary evidence, has proceeded to record the conclusion that the Mahadnama (Ext-8) is neither genuine nor valid nor for consideration. Again in the similar manner the court has recorded the conclusion in the next paragraph that the Mahadnama

(Ext-8) is forged and antedated document and the defendants second set are bonafide purchasers without notice of the earlier contract and have acquired valid title over the suit land on the basis of the eight sale deeds executed in their favour by the defendant no. 1.

The powers and duties of the first appellate court while deciding the appeal are well defined and settled in several pronouncements by the Apex Court clearly underlining that the judgment in appeal must reflect conscious application of mind by the court and recording of the findings on the issues of fact and law must be supported by reasons. The provision as contained in Order 41 rule 31 C.P.C also mandates that the appellate court in its judgment must state the reasons for its decision on the points arising in the appeal for determination. It would be fruitful here to take into notice the observations by a three Judge Bench of the Apex Court in case of **Santosh Hazari vs Purushottam Tiwari 2001(3) SCC 179** as follows:-

“First appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record the findings supported by reasons, on all the issues arising along with the contentions put



*forth, and pressed by the parties for decision
of the appellate
court.....
.....
while reversing a finding of fact the appellate
court must come into close quarters with the
reasoning assigned by the trial court and then
assign its own reasons for arriving at a
different finding. This would satisfy the court
hearing a further appeal that the first
appellate court had discharged the duty
expected of
it.....
.....”*

The same principle has been elaborated by the Apex
Court in the case of **H.K.N. Swami vs Irshad Basith 2005(10) SCC
243** as follows:-

*“The first appeal has to be decided on facts as
well as on law. In the first appeal parties have
the right to be heard both on questions of law
as also on facts and the first appellate court is
required to address itself to all issues and
decide the case by giving
reasons.....
.....”*

After going through the impugned judgment passed by the
appellate court below in view of the above principles, its vulnerability

for want of independent scrutiny of oral and documentary evidence in view of the rival submissions on behalf of the parties and also the absence of reasons in support of the conclusions becomes clearly discernible. This Court, therefore, is not inclined to uphold the findings by the appellate court below on other material issues as well. In the opinion of this Court the entire matter requires reconsideration by the appellate court below in accordance with the settled principles of law after granting opportunity of hearing to the parties.

This Court, therefore, answers the substantial questions of law as raised above in favour of the appellants. These two second appeals are, accordingly, allowed and the impugned judgment and decree in both the appeals are set aside and the matter is remitted back to the court below for a fresh decision to be passed in accordance with law after granting opportunity of hearing to the parties. The appellate court is further directed to take up the hearing of both the appeals i.e. Title Appeal No. 13 of 1978/ 10 of 1985 and Cross Objection (appeal) No. 82A of 1978/01 of 1986 expeditiously in view of the fact that the litigation between the parties is going on since long.

(V. Nath, J)

Devendra/-

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