

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.12.2016

Pronounced on 03.01.2017

DATED: 03.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP.No.4587 of 2013 and  
M.P.No.1 of 2013

1.Bagyalakshmi  
2.S.Arulkumar  
3.S.Latha Magesh  
4.S.Jayaprakash .. Petitioners/Defendants

Vs.

1.Kanagaraj ...1<sup>st</sup> Respondent/Plaintiff

2.Ravikumar  
Ex-Branch Manager,  
Syndicate Bank, Park Square Branch,  
Avinashi Road, Coimbatore - 641 018.  
Now working as the Manager,  
REPCO Bank, Uppilipalayam,  
Coimbatore.

3.The Divisional Manager,  
Syndicate Bank,  
R.S.Puram,  
Coimbatore.

..Respondents/2&3

सत्यमेव जयते Proposed Defendants 5 & 6

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the Fair and Decreetal order dated 03.10.2013 made in I.A.No.381 of 2013 in O.S.No.760 of 2009, on the file of the IV Additional District and Sessions Judge, Coimbatore.

For Petitioners : Mr.R.Bharath Kumar

For Respondents : Mr.C.R.Prasannan (for R1)  
No Appearance (for R2)  
Mr.P.Sreenivasalu (for R3)

## O R D E R

The defendants are the revision petitioners before this Court, challenging the order passed in I.A.No.381 of 2013 in O.S.No.760 of 2009 dated 03.10.2013.

2.Originally, the suit has been filed by the first respondent/plaintiff against this petitioners/defendants for specific performance. On receiving of summons, this petitioners/ defendants have filed their written statement by denying the above allegations.

3.While pendency of the above suit, this petitioners/defendants has filed an application in I.A.No.381 of 2013 for impleading one Mr.Ravikumar, the Ex. Branch Manager, Syndicate Bank, Avinashi Road, Coimbatore, who is presently working as Manager, REPCO Bank, Upplipalayam, Coimbatore, as fifth defendant in the suit.

4.In the petition filed in I.A.No.381 of 2013, this petitioners/defendants stated that the husband of first petitioner /first defendant Late.D.Shanmugam approached the Branch Manager, Indian Overseas Bank, Sokkampalayam Branch, Coimbatore to raise the loan and the bank was also sanctioned a sum of Rs.8,00,000/- and thereafter the deceased D.Shanmugam was carrying on his business with the help of loan raised by bank during his life time.

5.The petitioners also states that during the life time of deceased D.Shanmugam, he was making the payment towards the interest and died leaving the petitioners/defendants as his legal heirs to succeed the assets and liability left by him. The petitioners also stated that the respondent/plaintiff is the brother of the first defendant, with the active aid and assistance of one Mr.Ravikumar, Ex. Branch Manager, Syndicate Bank, this respondent/plaintiff had received all the original title deeds of Late.D.Shanmugam and handed over to Syndicate Bank.

6.After the death of the deceased D.Shanmugam, the petitioners/defendants were approached the new Branch Manager, who is working now in the bank and requesting him to return the aforesaid documents to the petitioners in view of the settlements made by the petitioners and discharged the entire debt made by them. But, the New Branch Manager informed to the petitioners/defendants that the respondent/plaintiff was already received all the said documents, this petitioners/defendants stated that it is none of the business of either the present Manager or anybody to handover the documents without the knowledge of the petitioners and legal heirs of the deceased

D.Shanmugam. Therefore, it has become necessity of the petitioners to file this petition seeking indulgence of the trial Court and seek an order to implead Mr.Ravikumar, the Ex. Branch Manager, Avinashi Road, Coimbatore as necessary parties in the suit proceedings.

7.Denying the averments made by the petitioners/defendants in I.A.No.381 of 2013, this respondent/plaintiff has filed his counter. In the counter, the respondent/plaintiff states that for impleading a third party, the application filed by the petitioners/defendants ought not to be entertained at all, since it is an abuse of process of Court and the law. Though the suit has been filed only for specific performance and necessary parties in the suit are buyer and seller. There is no conveyance to any third party except the buyer and seller.

8.Apart from that, the respondent also states that no other parties can be introduced in a suit for specific performance, only a necessary and proper party can be impleaded.

9.The respondent also states that the Bank or the Manager are not necessary and proper parties in the present suit. The allegations set out in the affidavit, the apprehension is that the settlement has been reached between the bank and this respondent/plaintiff. The respondent further states that the bank is not a necessary party at all. The question of handing over of documents is not a relevance for the suit at all, it is absolutely no connection whatsoever.

10.The respondent also states that no party can be impleaded against the wishes of the plaintiff and the plaintiff must have some cause of action or relief against them and when the bank's claim is already settled, there is no dispute between the bank and parties. This is not the suit by the petitioners/defendants and in the affidavit itself, no where say that they are proper and necessary parties and what purpose they want to be impleaded the said Mr.Ravikumar, who is Ex. Branch Manager of the said Bank. Therefore, the respondent states that the petitioner is totally misconceived and only to delay the trial of the suit, the petition has been filed and hence he prays to dismiss the application.

11.Considering both sides arguments, the learned IV Additional District and Sessions Judge, Coimbatore has dismissed the application on the ground that whether the first respondent is competent to receive back the documents from Syndicate Bank is not an issue to be decided in the main suit, if at all, it can be only a relevant fact just to be taken into account to show the conduct of the parties. So the conduct of the parties can be brought on record by way of evidence during the trial. Except this, no other purpose will be served by impleading these

persons as parties in the suit. Therefore, in the present suit is only for specific performance and the issue to be decided in the suit is whether the plaintiff has proved the sale agreement, and his right to claim in the specific performance and for this dispute, the proposed parties are nowhere going to be necessary or proper parties. Challenging the said order, the present suit has been filed.

12.Heard Mr.R.Bharath Kumar, learned counsel appearing for the petitioners, Mr.C.R.Prasanan, learned counsel appearing for the first respondent and Mr.P.Sreenivasalu, learned counsel appearing for the third respondent.

13.Admittedly, the respondent/plaintiff has filed the suit only for specific performance and the prayer in the suit is as follows:

"a) directing the defendant to receive the balance price of Rs.2 lakhs and Execute and register the sale deed in respect of the suit property in favour of the plaintiff and on before a date to be fixed by this Hon'ble Court;

b) in default thereof direct that the Court to do execute the sale and register the sale deed as aforesaid in a manner known to law;

c) the deliver possession and delivery the suit property;

d) to grant a permanent injunction restraining the defendant from alienating or encumbering the suit property in any manner whatsoever;

e) to grant costs of the suit;

f) to grant such further or other reliefs as this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice."

14.The plaintiff states that the deceased Shanmugam while he was alive, had offered his property as security to Indian Overseas Bank, Sokkampalayam Branch, Coimbatore for loan facilities offered to M/s.Andavar Agencies. The borrower committed default and Creditor Bank initiated proceedings for recovery. Since the deceased Shanmugam had died, the defendants has approached the plaintiff to sell the property to the plaintiff to discharge the Bank liability.

15.The respondent/plaintiff also states that the defendants 2 to 4 are being children, they requested their mother (the first defendant) to represent them and finalise the terms of agreement of sale on behalf of the defendants. Both the plaintiff and the first defendant with the concurrence of the defendants 2 to 4 negotiated the terms. Originally on 14.08.2007 at the instance of the defendants a higher amount was mentioned to enable the plaintiff to get a loan from Bank, out

of which after settling the loan an extra amount was stipulated to be given to defendants. But realising that actual market price was far less and the arrangement to give an extra amount from Bank loan would be contrary to the actual market price, the earlier agreement was cancelled on 02.01.2009 and a fresh agreement entered into reflecting the actual price payable by the plaintiff which was accepted by both the parties. The agreement dated 21.09.2007 stipulates the price as Rs.13,50,000/-, a sum of Rs.3,50,000/- was paid as advance and received by the first defendant on behalf of all the defendants. A period of three months was agreed, but time was not stipulated as the essence of the agreement. Therefore, they sought for the relief of specific performance.

16. Denying the averments made in the plaint, this petitioner/first defendant has filed the written statement. When the respondent/plaintiff has filed the suit for specific performance, the trial Court must have considered only about the execution of sale agreement between the buyer and seller, but the petitioners/defendants wants to implead the third party namely the first respondent Ex-Manager of Syndicate Bank, but the impleading party namely the Bank Manager is no way connected in this suit, since the suit has been filed only for the specific performance that too between the buyer and sellers.

17. In the specific performance of the suit, the defendants must have either to denied or accept the sale agreement by way of proving through the examination of witnesses and marking the documents, but in the present case, the petitioners/defendants claiming that the documents were given to the said Ravikumar, Ex-Manager of Syndicate Bank. therefore they must be impleaded as party in the suit. But, if Ravikumar, Ex-Manager, Syndicate Bank has impleaded as party and what way it will help the defendants to improve the case.

18. This Court also considered in the case of Ms. Leelavati v. Sri Venkateswara Finance reported in (2009) 7 MLJ 761, this Court had held that in a suit for specific performance of an agreement for sale, the questions to be decided are

- (a) Whether the sale agreement has been validly executed,
- (b) Whether the sale agreement is enforceable,
- (c) Whether the plaintiff is ready and willing to perform their part of the contract and
- (d) Whether the plaintiff is entitled to get the equitable remedy of specific performance.

To decide the said issues the presence of a third party is not required. If the presence of a third party is not essential to decide the issues involved in the suit, impleadment of such a party would only enlarge the scope of the suit, unnecessarily.

19.This Court and the Hon'ble Apex Court in various judgments has considered the application filed under Order 1 Rule 10 for impleadment of parties in the specific performance in various judgments.

20.This Court held in the following cases:

(I) M.Sathiskumar v. M.Ramasamy and five others reported in 2008 (2) CTC 734

"9.The Suit was filed by the revision petitioner against the 6<sup>th</sup> respondent/defendant for the main relief of directing the defendant to execute and register the sale deed for Rs.22,56,000/-. The Suit claim is based on a sale agreement entered in to between the plaintiff and the defendant. If that being so, to decide the lis between the plaintiff and the defendant, respondents 1 to 5 who are not parties to the agreement are neither necessary parties not proper parties. In such circumstances, the order of the Trial Court holding that the respondents 1 to 5 are necessary parties is clearly vitiated and liable to be set aside."

(II) Krishnan v. P.Palanisamy and Others reported in (2010) 6 MLJ 371

"Code of Civil Procedure (5 of 1908), Order 1, Rule 10 - Impleadment of parties - Specific performance suit - A third party to the agreement is not entitled to be impleaded in a suit for specific performance, unless there a right to some relief against the party seeking impleadment, in respect of the controversies involved in the proceeding - Impleading a third party would change the nature and character of the suit - Since there is no claim against the third party, such third party cannot be impleaded - Impugned order directing impleadment of third party, set aside - CRP allowed."

(III) Manikandan and others v. Ismail and others reported in 2014 (1) CTC 59

"Code of Civil Procedure, 1908 (5 to 1908), Order 1, Rule 10 - Suit for Specific Performance - Stranger to contract - Whether necessary party - Suit for Specific Performance of Agreement of Sale - Petitioners sought to be impleaded in Suit on ground of having alleged share in property - Established that Petitioners not having any share in Suit property - Moreover, Petitioners not party to contract and only strangers to same - In such circumstances, presence of Petitioners not necessary to Suit and would enlarge character of Suit - Application filed by Petitioners rightly dismissed by Trial Court - Revision dismissed."

21. The following judgments are held by the Hon'ble Apex Court as follows:

I. In Anil Kumar Singh V. Shivnath Mishra @ Gadasa Guru (1995 AIR SCW 1782), the Supreme Court had held as follows:

"The obtaining of a decree and acquiring the status as a co-owner during the pendency of a suit for specific performance, is not obtaining, by assignment or creation or by devolution, an interest. Therefore, Order 22, Rule 10 would not be applicable.

Equally, Order I, Rule 3 is not applicable to the suit for specific performance because admittedly, the respondent was not a party to the contract. Since the suit is based on agreement of sale said to have been executed by the sole defendant in the suit, the subsequent interest said to have been acquired by the respondent by virtue of a decree of the Court is not a matter arising out of or in respect of the same act or transaction or series of acts or transactions in relation to the claim made in the suit.

In order that a person may be considered a necessary party, defendant to the suit, the conditions precedent must be (1) that there must be a right to some relief against him in respect of the dispute involved in the suit; and (2) that his presence should be necessary to enable the Court to effectually and completely to adjudicate upon and settle all the questions involved in the suit. Since the respondent is not a part to the agreement of sale, it cannot be said that without her presence the dispute as to specific performance cannot be determined. Therefore, she is not a necessary party."

II. In Vijay Pratap and Others V. Sambhu Saran Sinha and others (AIR 1996 SC 2755), it had been held as follows:

"This petition is against an order dismissing the application under Order 1, Rule 10, C.P.C filed by the petitioners to come on record in place of their father. The suit was laid for specific performance wherein the father during his life time is alleged to have entered into compromise and requested to delete his name from the arraignment of the parties as respondent No.1. The deletion of the first respondent came to be made after his demise. Pending suit before compromise memo was recorded, the petitioners sought to come on record under Order I, Rule 10 being that they were necessary and proper

parties. The trial Court recorded the finding that deletion had taken place and observed as under:

"At present I am not giving any finding with respect of Exhibit-6 and compromise petition in the light of an objections raised by petitioners in their other two petitions. Simple I have stated the facts which are available on record. If these petitioners are made parties in the suit as prayed then dispute will arise between petitioners and plaintiff No.1 with respect of compromise and Exhibit-6. Its result will be that there will be dispute between the co-plaintiffs with respect of their right, title and interest in suit property. This suit will turn into a regular title suit. To decide right, title and interest of co-plaintiffs in suit property is beyond the scope of this suit. Suit for specific performance of contract can't be turned into a regular Title Suit. So, in my opinion, these petitioners are not necessary and proper parties under Order I, Rule 10, C.P.C."

III. In *Kasturi V. Iyyamperumal and others* (AIR 2005 SC 2813), the Supreme Court had held as follows:

"In a suit for specific performance of a contract for sale the lis between the appellant-purchaser and the respondent-vendor shall only be gone into and it is also not open to the Court to decide whether the third party have acquired any title and possession of the contracted property as that would not be germane for decision in the suit for specific performance of the contract for sale. Two tests by which a person who is seeking addition in a pending suit for specific performance of the contract for sale must be satisfied. Two tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party. Applying the said two tests in the present case the third party or strangers to contract are not necessary parties as effective decree could be passed in their absence as they had not purchased the contracted property from the vendor after the contract was entered into. They were also not necessary parties as they would not be affected by the contract entered into between the appellant-purchaser and the respondent-vendor. Therefore order of Courts below allowing the application for addition of parties in the pending

suit for specific performance of contract for sale filed at the instance of third party to contract would be illegal and liable to be set aside.

In a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant-purchaser and the respondent-vendor and whether contract was executed by the appellant and the respondent for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against the respondent. It is an admitted position that the third party or stranger to contract did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on independent title and possession of the contracted property. It is, therefore, obvious that in the event, they are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law. Therefore, a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of the third party in respect of the contracted property they would not, at all, be necessary to be added in the suit for specific performance of the contract for sale. Moreover, the appellant, who has filed the present suit for specific performance of the contract for sale is dominus litus and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law."

IV. In *Bharat Karasondas Thakkar V. Kiran Construction Co. and others* [2008(5) MLJ 424(SC)], the Supreme Court had held as follows:

"A third party or a stranger to a contract

cannot be added as a party to a suit for specific performance. The scope of a suit for specific performance could not be enlarged to convert the same into a suit for title and possession. A third party or a stranger to the contract could not be added so as to convert a suit of one character into suit for a different character."

V. In Saivasamy Thevar V. Rajasekaran (2008 (6) CTC 630), this Court relying on the decisions reported in Bharat Karsondas Thakkar V. Kiran Construction Co. (2008(6) Scale 355) and Kasturi V. Iyyamperumal 2005(2) CTC 676 (SC), it had been held as follows

"Admittedly, the suit in O.S.No.170 of 2001 is for a decree for Specific Performance. The basis for filing the said Suit is a sale agreement executed by the fourth respondent with the revision petitioner on 17.4.1997, in and by which the fourth respondent agreed to sell the suit property to the first petitioner, since deceased. The lis involved in the matter is between the deceased first petitioner and the fourth respondent. The alleged right of the respondents 1 to 3 pertaining to the suit property is altogether a different matter to be agitated by them in an appropriate proceeding. The present suit being one for Specific Performance, the only issue to be decided is about the enforceability of the agreement in question. Such being the position, I am of the view that the learned Trial Judge committed a serious error in impleading the respondents 1 to 3 as party to the suit in O.S.No.170 of 2001.

The learned Trial Judge appears to have allowed the application filed by the respondents 1 to 3 for impleading them as a party to the proceeding in a casual manner without making an attempt to see as to whether the junction of the parties sought to be impleaded is absolutely necessary for the disposal of the suit in one way or the other. The right claimed by the respondents 1 to 3 is not related to the claim made by the revision petitioner and as such, the respondents 1 to 3 are unnecessary parties to the suit filed by the revision petitioner for a decree of specific performance. Therefore, I do not find any reason to sustain the order of the learned Trial Judge and accordingly, I am constrained to set aside the order, dated 10.10.2003, in I.A.No.119 of 2003, in O.S.No.170 of 2001."

8. The learned counsel appearing on behalf of the first respondent had relied on the decision, reported in Sumtibai and others V. Paras Finance Co. Mankanwar (2007(7) Supreme 2010), wherein it had been held as follows:

"In view of the aforesaid decisions we are of the opinion that Kasturis case (supra) is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced."

22. On fair reading of the above said judgments cited supra, for the impleadment of a third party, in a suit for specific performance, there must be a right to some relief against the party seeking impleadment, in respect of the controversies involved in the proceedings. Further, the following tests must be satisfied to implead a third party in a suit for specific performance:

(a) that there must be a right to some relief against such party in respect of the controversies involved in the proceedings; and

(b) that his presence should be necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit,

Impleadment of a third party cannot be allowed to change the character or the nature of the suit filed for specific performance of an agreement for sale. When the plaintiff in the suit for specific performance of the agreement for sale is the 'dominus litus' he cannot be forced to add parties, against whom he does not seek any relief, unless it is a compulsion of the rule of law.

23. Therefore, in all the above consideration of the records and judgments produced by either parties, I am of the firm opinion that in a suit for specific performance, the validity of

the sale agreement alone is to be decided. A party to the agreement, against whom no claim is made, is not entitled to be impleaded.

24. Apart from this, in a suit for specific performance of a contract for sale the lis between the purchaser and the vendor shall only be gone into and it is also not open to the Court to decide whether the third party have acquired any title and possession of the contracted property as that would not be germane for decision in the suit for specific performance of the contract for sale. Therefore, all the above judgments cited supra were made clear that a third party or a stranger to a contract cannot be added as a party to a suit for specific performance. The scope of a suit for specific performance could not be enlarged to convert the same into a suit for title and possession. A third party or a stranger to the contract could not be added so as to convert a suit of one character into suit for a different character. Therefore, this Court does not find any irregularity or illegality in the order in I.A.No.381 of 2013 in O.S.No.760 of 2009 warranting interference by this Court. Accordingly, this civil revision petition is liable to be dismissed.

25. In the result:

(a) this civil revision petition is dismissed by confirming the order passed in I.A.No.381 of 2013 in O.S.No.760 of 2009 dated 03.10.2013, by the IV Additional District and Sessions Judge, Coimbatore.

(b) the trial Court namely the IV Additional District and Sessions Judge, Coimbatore is hereby directed to dispose the suit within a period of three months from the date of receipt of a copy of this order, without giving any adjournment to either parties. Both the parties are hereby directed to co-operate for early disposal of the suit.

26. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed

s/d-  
Assistant Registrar

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Sub-Assistant Registrar

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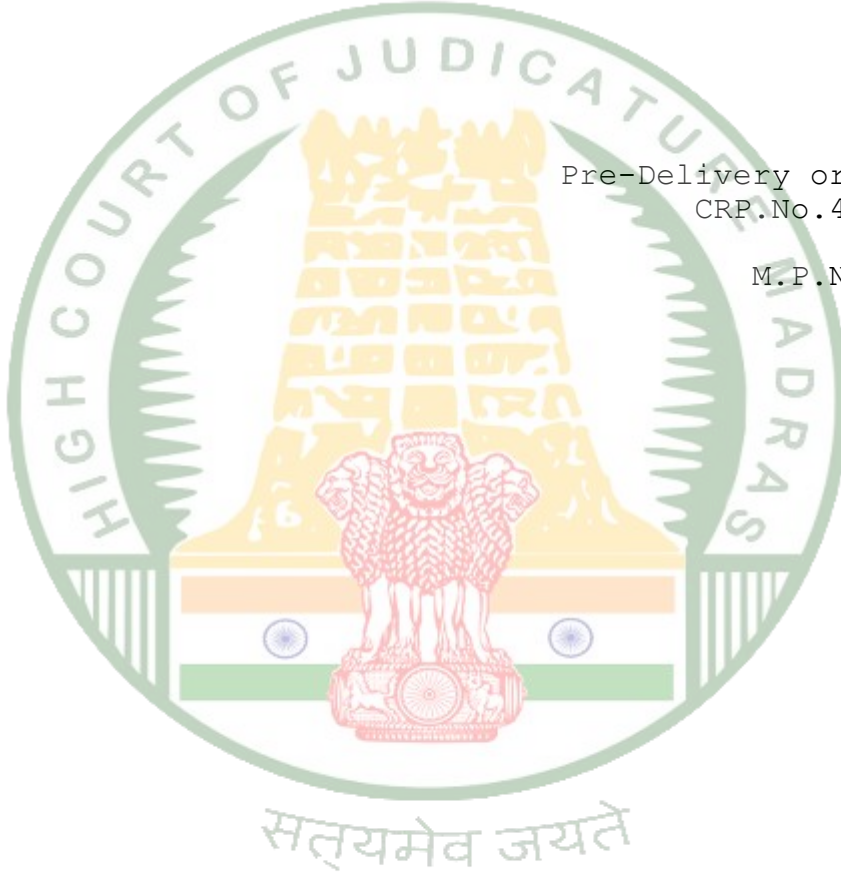
The IV Additional District and Sessions Judge,  
Coimbatore.

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+1 CC to Mr.C.R. Prasannan sr 515

RV (CO)  
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Pre-Delivery order made in  
CRP.No.4587 of 2013  
and  
M.P.No.1 of 2013



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