

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Appeal Suit No.567 of 2013

&

M.P.No.1 of 2013

P.Sankar

...Appellant/Plaintiff

Vs..

1.Sundaramoorthy

2.Sundari @ Ganasundaram

...Respondents/Defendants

Appeal Suit filed under Section 96 C.P.C., 1908 against the Judgement and Decree dated 11.10.2013 passed in O.S.No.108 of 2006 on the file of the Principal District Judge, Puducherry.

For Appellant : Mr.V.Ayyadurai, Senior counsel
For Mr.V.Balamurugane

For Respondents : Mr.D.Ravichander

JUDGMENT

The judgement and decree dated 11.10.2013 passed in O.S.No.108 of 2006 is under challenge in the present First Appeal.

2.The plaintiff is the appellant in the First Appeal and the defendants are the respondents in the First Appeal. The suit was instituted for specific performance and the contention of the plaintiff before the Trial Court was that the first defendant offered to sell the plaint schedule property to the plaintiff for a sum of Rs.5,15,000/- and entered into a written sale agreement on 11.02.2004. On the said date of agreement, the plaintiff paid an advance amount of Rs.2,00,000/- and agreed to pay the balance on fulfilment of conditions scribed in the agreement. The plaintiff states that he was ready and willing to perform his part of contract but the defendant was postponing the same without any reason. Thus, on 03.03.2006, the plaintiff issued a pre-suit notice to the first defendant calling upon him to perform his portion of the contract.

3.It is stated that the first defendant in order to defraud the plaintiff disposed the suit property in favour of the second defendant after receipt of the pre-suit notice. The second defendant was fully aware of the sale agreement between the plaintiff and the first defendant. Therefore, the sale by the first defendant in favour of the second defendant is non-est, void ab-initio. The second defendant is not a bonafide purchaser. Hence, the plaintiff made a relief of specific performance for execution of sale deed in respect of the suit property on receipt of the balance sale consideration of Rs.3,15,000/-.

4.The first defendant in his written statement denied the averments, he first denied the execution of the sale agreement and contended that the sale agreement itself is a bogus one. The first defendant has stated that on 13.08.2003, he entered into a sale agreement with the second defendant and the sale price was fixed at Rs.2,60,000/- and he received a sum of Rs.50,000/- as advance. Time for execution of sale deed was fixed as 3 years from the date of agreement of sale. Thereafter, the plaintiff approached the first defendant to purchase his fathers property for more price for which the defendant disclosed the said sale agreement with the second defendant.

5.The first defendant approached the second defendant about the contentions in the plaint and for which she told that the plaintiff never approached her. The first defendant came to know about the fraud played by the plaintiff and requested for blank papers on which defendants signed for the which the plaintiff gave evasive reply and said that he misplaced the said papers. The father of the defendant executed a sale deed in respect of the suit property and based on the settlement deed, the first defendant executed and registered sale deed after receiving the balance sale consideration. Two sale deeds were registered on 19.04.2006.

6.The second respondent filed a written statement stating that he is a bonafide purchaser of the suit property. The father of the first defendant executed the settlement deed in respect of the suit schedule properties in favour of the first respondent on 31.03.2006. As per the settlement deed, the first defendant became the absolute owner of the suit property. Thereafter, the first defendant executed the sale deeds in favour of the second defendant on 31.03.2006 and therefore the sale deeds are valid in the eye of law. The second defendant state that he is in possession of the suit property and the plaintiff has no right whatsoever and accordingly the suit is liable to be quashed.

7.The Trial Court framed the following issues;

"(i)Whether the first defendant entered into a sale agreement dated 11.02.2004 with the plaintiff to sell the schedule property?

(ii).Whether the sale agreement is legally sustainable in law?

(iii).Whether the plaintiff was ready and willing to perform his part of contract?

(iv)Whether the plaintiff is entitled for the relief of specific performance of contract?

(v)To what relief?

8. The learned Senior counsel appearing on behalf of the appellant made a submission that under Section 13 of the Specific Relief Act, even in case, there is a defect in the title or in the case of an imperfect title, the rights are conferred. Therefore, in the present case, though these defendants (seller) was not having clear title in respect of the suit property at the time of entering into the suit agreement. Subsequently, the father of the defendant executed a settlement deed in favour of his son and therefore, the title was acquired by the 1st defendant and in such circumstances, the trial Court ought to have decreed the suit in favour of the plaintiff. In support of the said contentions, the learned Senior counsel appearing on behalf of the appellant cited the judgment of the Hon'ble Supreme Court of India in the case of Renu Devi Vs. Mahendra Singh and others, reported in (2003) 10 SCC 200 and the relevant paragraph 12 is extracted hereunder:

"12. There is yet another aspect of the matter. Assuming it for a moment that on 22-3-1979 the donors had not actually acquired title to the property and yet they had gifted this property to their daughter-in-law and grandsons it cannot be denied that they had a pre-existing interest in the suit property by virtue of their being members of a joint Hindu family and their interest and right to partition having been upheld by the so-called preliminary decree dated 13-2-1978. By the subsequent decree dated 24-5-1979 they did acquire a clear and complete title in the same property which they had gifted on 22-3-1979. On the principle of feeding the grant by estoppel the subsequent acquisition of title under the decree dated 24-5-1979 shall enure to the benefit of the donee under the deed of gift dated 22-3-1979 for whatever infirmity there was (though we have held that there was none) in the title of Rameshwar Singh and Dhaneshwari Devi it stood cured by the final decree dated 24-5-1979. The doctrine of feeding the grant by estoppel which is in essence a principle of equity stands statutorily recognised in India by Section 43 of the Transfer of Property Act. Section 43 of the TP

Act does not in terms apply to the facts of the present case, inasmuch as the deed dated 22-3-1979 is not a transfer for consideration; we are referring to Section 43 abovesaid as illustrative of the doctrine and its statutory recognition in Indian law."

The Hon'ble Supreme Court in the above cited case, discussed Section 43 of the Transfer of Property Act and arrived a conclusion that the said provision does not in terms apply to the facts of that case.

9. In the case of Tanu Ram Bora Vs. Promod Ch.Das (dead) through Legal representatives and Others, reported in (2019) 4 SCC 173, the Hon'ble Supreme Court of India held as follows:

"6.4. Section 43 of the TP Act provides that where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Thus, if at the time of transfer, the vendor/transferor might have a defective title or have no title and/or no right or interest, however subsequently the transferor acquires the right, title or interest and the contract of transfer subsists, in that case at the option of the transferee, such a transfer is valid. In such a situation, the transferor cannot be permitted to challenge the transfer and/or the transferor has no option to raise the dispute in making the transfer.

6.5. The intention and objects behind Section 43 of the TP Act seem to be based on the principle of estoppel as well as the equity. The intention and objects seem to be that after procuring the money (sale consideration) and transferring the land, thereafter the transferor is estopped from saying that though he has sold/transferred the property/land on payment of sale consideration, still the transfer is not binding on him. That is why Section 43 of the TP Act gives an option to the transferee and not the transferor. The intention of Section 43 of the Act seems to be that nobody can be permitted to take the benefits of his own wrong. In the facts and circumstances of the case, Section 43 of the Act would come into play and protect the rights of the original plaintiff."

In this case also, the Hon'ble Supreme Court of India discussed about Section 43 of the Transfer of Property Act. More specifically, where a person fraudulently or erroneously

represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

10. The High Court of Allahabad in the case of Pahunchi Lal Vs. Man Singh, reported in 1971 SCC ONLINE ALL 308, held as follows:

"12. The third ground that since the Court itself could not acquire Bhumidhari rights in the Sirdari plots as it could not make any application under the provisions of the U.P. Zamindari Abolition and Land Reforms Act is devoid of substance. The undertaking of the defendant as vendor that he shall take steps under the U.P. Zamindari Abolition and Land Reforms Act to obtain Bhumidhari rights in the Sirdari land agreed to be sold is by itself enforceable under the terms of the contract evidenced by the document Ext. I dated 4-5-1963. Section 13(b) of the Specific Relief Act can usefully be referred to in this connection which says that if the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence. I think the Court has the power and jurisdiction under Section 13(b) of the Specific Relief Act to compel the defendant to take steps and obtain Bhumidhari rights in the Sirdari land agreed to be sold. This argument also fails."

11. The Andhra Pradesh High Court, in the case of Muthabathula Arjaya Vs. Rambala Venkata Surya Gopala Krishnamurthy and another, reported in 1971 SCC ONLINE AP 177, held as follows:

"30. In Silla Chandra v. Rama chandra Sahu, (AIR 1964 SC 1789) the Supreme Court applied the provisions of Section 18(a) to an agreement of sale executed by a person who styled himself as the Managing Member and Karta of the family. The agreement also contained a condition that he and his mother would execute a deed of sale within a period of one year from the date of the execution of the agreement of sale. The vendor did not execute the sale deed and the vendee instituted a suit for specific performance of the contract. Their Lordships observed that the vendor had interest in the entire house and so had his mother, though in case of actual partition the interest of each would have been fixed at half. If the vendor was not competent to pass

title with respect to the entire house during the lifetime of his mother, he can be said to have imperfect title to it. On the death of the mother, he obtained title to and interest in the portion of the house which on a private partition subsequent to the contract to sell had taken place between him and his mother and that therefore he has to make good his contract out of the property he acquired subsequent to the contract to sell.

31. The aforesaid cases are akin to the case before us and applying the principles enunciated in those cases, it can be held that in the instant case the inamdar has only an imperfect title and is not a case of absence of title.

32. Section 18 of the Specific Relief Act has been applied also to cases where a person, at the time of agreement of sale, had no title in the property agreed to be sold. Clause (a) of Section 18 gives right to the purchaser to compel the vendor to make good the contract out of any interest the vendor has acquired in the property after the contract of sale. The expression "any interest" is very wide in its amplitude and also denotes a case in which a vendor who has no title to the property acquires title after the contract of sale. There is nothing in clause (a) to limit the expression "any interest" only to cases where a person has title to the property and later he acquires an interest which enables him to give a valid title to the purchaser. This view was taken by a single Judge of the Nagpur High Court in *Pundlik Daryaji v. Jainarayan Maliram Shop*, (AIR 1949 Nag 83). The defendant therein purchased certain properties at an auction sale for arrears of land revenue. Before the sale was confirmed in his favour, he entered into an agreement to execute a sale deed in favour of the plaintiff. On confirmation of the sale in favour of the defendant, he refused to execute a sale deed and the plaintiff brought a suit for specific performance. It was argued before the learned Judge that the expression 'imperfect title' in Section 18 did not include absence of title. On the date of the agreement of sale, the defendant therein had no title to the property as the sale had not been confirmed. The learned Judge repelled this argument observing that by virtue of clause (a) of Section 18, the vendee can compel the vendor to make good the contract out of any interest in the property subsequently acquired by the vendor. This, according to the learned Judge, indicated that the words 'imperfect title' would include even complete absence of title. The learned

Judge then referred to the rule of English law that if a man sells an estate to which he has no title and, after the conveyance acquires the title, he will be compelled to convey it to the purchaser and relied upon (1864) 10 HLC 191. This case has been distinguished by a learned Judge of the Bombay High Court in Bhiku Keru v. Dashrath, (AIR 1967 Bom 267). While distinguishing, the learned Judge has held that in the circumstances of the case, the Nagpur High Court came to the conclusion that it was a case of imperfect title and not a case of absence of title. While making this remark, the learned Judge of the Bombay High Court has not taken into consideration the interpretation of clause (a) of Section 18 of the Specific Relief Act made by the Nagpur High Court. The Supreme Court case referred to above, namely, Silla Chandra's case, (AIR 1964 SC 1789) has not expressed any opinion on this aspect of the matter and left the question open. The Supreme Court in Kalyanpur Lime Works case, (AIR 1954 SC 165) also had no occasion to consider whether the expression 'imperfect title' can take in the case of absence of title. Pundalik Darya ji's case, (AIR 1949 Nag 83) has been referred to in Mulla's Commentary on Contract and Specific Relief Act and no adverse comment has been made in regard to that decision."

12. Paragraph 30 of the above cited Judgement, wherein it is held that on the death of the mother, he obtained title to and interest in the portion of the house which on a private partition subsequent to the contract to sell had taken place between him and his mother and that therefore, he has to make good his contract out of the property he acquired subsequent to the contract to sell.

13. Relying on the said judgment, the learned Senior counsel appearing on behalf of the appellant reiterated that in the present case also, at the time of entering into the suit agreement, the seller may not have the valid title and he signed the agreement on behalf of his father. However, his father executed a settlement in his favour, who is none other than son and therefore, the 1st defendant acquired title and under these circumstances, by invoking Section 13 of the Specific Relief Act, the trial Court ought to have considered for grant of relief of specific performance in favour of the plaintiff.

14. The learned counsel appearing on behalf of the respondents disputed contentions by stating that the suit property had already been sold in favour of the 2nd respondent and the said circumstances narrated by the appellants would not

have any application in respect of the facts and circumstances of the present case.

15. The 1st sale agreement was entered into between the 1st respondent and the 2nd respondent, which is marked as EX.B1 document and dated 13.08.2003. As per Ex.B1, the sale agreement dated 13.08.2003 is the first sale agreement and therefore, there is no irregularity in executing the sale in favour of the 2nd respondent by the 1st respondent. The suit sale agreement was entered into between the appellant and the 1st respondent, which is marked as Ex.A1 and dated 11.02.2004, more specifically, subsequent to the sale agreement entered in favour of the 2nd respondent in Ex.B1. This apart, the sale deed executed by the 1st respondent in favour of the 2nd respondent in Document No.1925 of 2006 is also marked as Ex.B6, dated 31.06.2006. This being the factum, the trial Court is right in rejecting the relief of specific performance.

16. The learned counsel for the respondent is of an opinion that the relief of specific performance is an equitable relief and weighing the entire facts and circumstances, the trial Court rejected the relief of specific performance in favour of the appellant and there is no irregularity as such.

17. The learned Senior counsel appearing on behalf of the appellant, while rebutting the contentions mainly contended that Ex.B1 sale agreement is a fraudulent document, which was a created one. After entering into a sale agreement with the appellant on 11.02.2004, Ex.B1 document dated 13.08.2003 was created in order to validate the sale executed in favour of the 2nd respondent by the 1st respondent on 31.03.2006. In other words, Ex.B1 is a fraudulent document, created for the purpose of defending the suit before the trial Court and therefore, the said document cannot be relief upon.

18. The plaintiff Mr.Sankar was examined as P.W.1, Mr.Vaithianathaswamy, the attester of the sale agreement is examined as P.W.2 and Exs.A.1 to A.6 are marked. On the side of the defendants, the first defendant Mr.Sundaramurthy is examined as D.W.1, Smt.Rani was examined as D.W.2, the second defendant Tmt.Sundari @ Gnanasundaram is examined as D.W.3, Thiru G.Selvaraj, one of the attester of the sale agreement is examined as D.W.4 and Exs.B.1 to B.6 are marked.

19. With reference to Issue No.1, the Trial Court considered the fact that whether the sale agreement was entered between the plaintiff and the first defendant under Ex.A.1 sale agreement, dated 11.02.2004. The contention of the first defendant was that he never executed Ex.A.1 sale agreement. The plaintiff has stated that he entered into a sale agreement with the second

defendant under Ex.B.1 dated 13.08.2003 to sell the suit schedule property and at that point of time, the plaintiff requested the first defendant that he will meet the second respondent and get the Ex.B.1 sale agreement cancelled and for that the plaintiff obtained the signatures of the first defendant and his wife in blank papers and using that blank papers Ex.A.1 sale agreement is fabricated and the suit is instituted.

20.The Plaintiff P.W.1 deposed that the first defendant offered to sell the plaint schedule property for a sum of Rs.5,15,000/- and both of them entered into a sale agreement and on that day he paid an advance amount of Rs.2 lakhs. P.W.2 corroborates the testimony of P.W.1 by saying that the first defendant Ex.A.1 sale agreement dated 11.02.2004 was attested by D.W.2, the wife of D.W.1. Therefore, the Trial Court found that the agreement entered into between the plaintiff and the defendant i.e., Ex.A.1 Sale agreement was executed and the contention of the first defendant that Ex.A.1 is fabricated cannot be sustained.

21.With reference to Issue No.2, whether the sale agreement is legally sustainable, the Trial Court found that the suit schedule property is not belonging to the first defendant. It was not disputed by the parties that the father of the first defendant Mr.Kothandaraman is the absolute owner of the suit schedule property. Under Ex.B.2 settlement deed dated 06.04.2004, the first defendant's father settled the schedule property and other properties in favour of his son, the first defendant. Therefore, till 06.04.2004 i.e., the date of settlement, the first defendant is not the owner of the suit schedule property. Ex.A.1 sale agreement was dated 11.02.2004, prior to the date of settlement deed. Therefore, as on the date of the agreement Ex.A.1, the first defendant was not the absolute owner of the suit schedule property. He became the owner of the suit schedule property only after the settlement deed Ex.B.2 dated 06.04.2004 executed by the father of the first defendant.

22.Based on these documents, the Trial Court came to the conclusion that at the time of execution of the suit sale agreement, the first defendant was not the owner of the suit schedule property and therefore, he had no capacity to execute any such agreement and the agreement itself is null and void as he was not the owner of the property. There was no power of attorney or otherwise in respect of grant of permission in favour of the first defendant by his father to deal with the suit schedule property. In the absence of any such documents, the Trial Court arrived at a conclusion that the first defendant, who was not the owner of the suit schedule property

at the time of execution of Ex.A.1 sale agreement, the suit for specific performance cannot be granted.

23.This being the factum established before the Trial Court, this Court is of the considered opinion that the first defendant, with reference to the documents filed, was not the absolute owner of the suit schedule property so as to specifically enter into an agreement from the plaintiff on 11.02.2004. The contract itself is void. The agreement entered into between the plaintiff and the first defendant cannot be executed at all. Thus, the Trial Court has rightly arrived at a conclusion that the agreement is an invalid one and based on such invalid agreement, relief of specific performance cannot be granted at all.

24.With reference to issue No.3, the Trial Court found that since Ex.A.1 sale agreement is not an enforceable contract, the question of execution of Ex.A.1 sale agreement and the question of readiness and willingness does not arise at all. With reference to the alternate relief, the Trial Court considered the same in favour of the plaintiff and directed the first defendant to return the advance amount of Rs.2,00,000/- to the plaintiff with interest @ 12% per annum from 11.02.2004 till date of decree and thereafter 6% till payment. Consequently, the suit for specific performance was dismissed.

25.This Court is of the considered opinion that the plaintiff could not able to establish that he entered into a valid sale agreement with the the first defendant. On verification of the documents, the Trial Court found that, on the date of sale agreement Ex.A.1 the first defendant was not at all the owner of the suit schedule property. The father of the first defendant was the absolute owner of the property and he settled the property subsequently after the agreement, which is marked as Ex.B.2. Thus, the Trial Court is right in arriving at a conclusion that as on the date of the sale agreement, the first defendant was not the owner of the suit schedule property and therefore, the agreement cannot be enforced and the relief as such sought for cannot be granted in favour of the plaintiff. However, the Trial Court considered the grant of alternate relief in favour of the plaintiff and directed the first defendant to return the advance amount of Rs.2,00,000/- with interest @ 12% per annum from 11.02.2004 till date of decree and thereafter 6% till payment.

26. Considering the arguments advanced by the learned Senior counsel appearing on behalf of the appellant with reference to Section 13 of the Specific Relief Act, this Court is of an opinion that even presuming that the trial Court arrived a conclusion that the agreement between the appellant

and the 1st defendant is a void document as the 1st respondent was not having a valid title in respect of the suit schedule property. Even, in such circumstances, this Court is of the considered opinion that the entire facts and circumstances are to be considered, more specifically, for grant of the relief of specific performance. Even in case, the 1st respondent acquired title after execution of the settlement deed by his father, the same would not provide an absolute right to claim the relief of specific performance. The inequity, if any would arise in the event of grant of specific performance is also to be considered by the Court.

27. Under these circumstances, this Court would like to refer the recent judgment of the Hon'ble Supreme Court of India in the case of Surinder Kaur v. Bahadur Singh, reported in 2019 (8) SCC 575 and the relevant paragraph 14 is extracted hereunder:

"14. A perusal of Section 20 of the Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the plaintiff is legally right, the court is not bound to grant him the relief. True it is, that the court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub-clause (c) of sub-section (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the court can refuse to grant such discretionary relief. Explanation (2) to the section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the plaintiff."

28. Applying the said principles with reference to the facts and circumstances of the present case, this Court is of an opinion that the judgment of the trial Court is to be upheld and accordingly, the judgment and decree 11.10.2013 passed in O.S.No.108 of 2006 stands confirmed and the Appeal Suit stands dismissed. No costs. Consequently, the connected Miscellaneous Petition also stands dismissed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mrm/kak

To

The Principal District Judge,
Puducherry.

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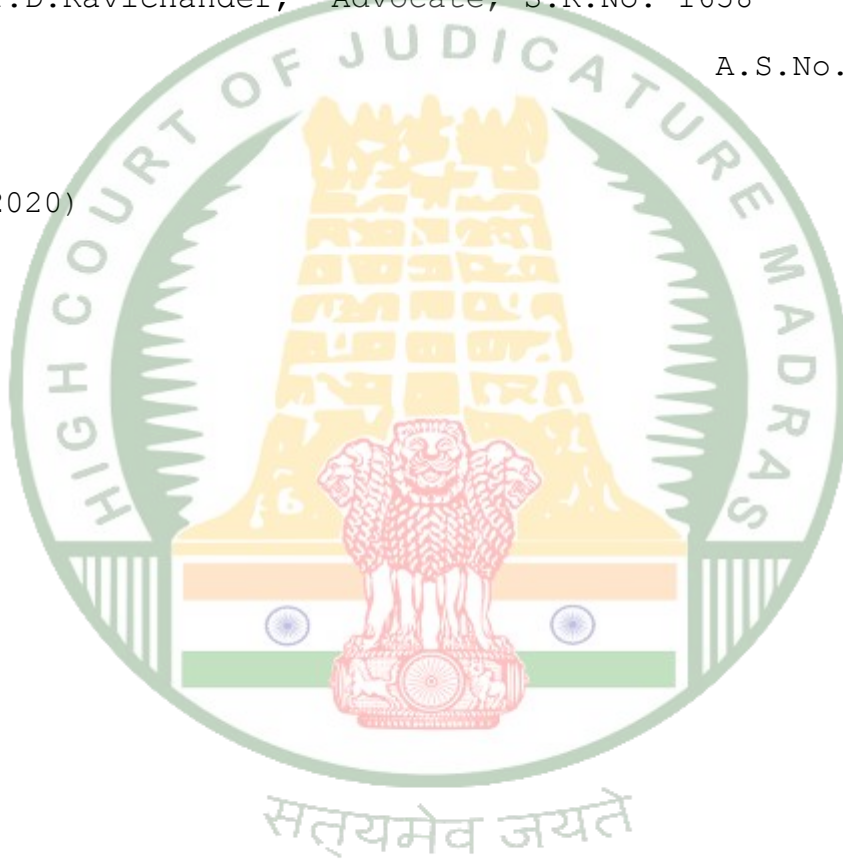
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V.R. Section, High Court,
Madras.

+1cc to Mr.V.Balamurugane, Advocate, S.R.No. 1461

+1cc to Mr.D.Ravichander, Advocate, S.R.No. 1658

A.S.No.567 of 2013

MP (CO)
GN (05/10/2020)



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