

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY, THE EIGHTH DAY OF JUNE
TWO THOUSAND AND TWENTY**

**PRESENT
THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER**

C.C.C.A. NO: 52 OF 2014

Appeal under Section 96 R/w. Order 41 rule 1 of CPC against the judgment and decree dated 31/12/2013 in OS No.283/2010 on the file of the Court of the III Senior Civil Judge, City Civil Court, Secunderabad.

Between:

1. Susay Raj, S/o A.Joseph, R/o House no 2-7-10, Bearers line Secunderabad.
2. Smt Hemalata Malhotra, W/o Late M.Om Prakash, R/o House No.69 Old Mudfort Secunderabad.

...APPELLANTS (DEFENDANTS 1 & 2)

AND

Mohd Nayeem, S/o Late Shri Mohd Ismail, R/o House No.1-8-520/2 Pattigadda, Secunderabad.

...RESPONDENT (PLAINTIFF)

For the Appellants : SRI M.N.NARASIMHA REDDY, Advocate

For the Respondent : SRI G.GURU MURTHY, SRI V.HARI HARAN, Advocates

The Court delivered the following: JUDGMENT

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CITY CIVIL COURT APPEAL No.52 of 2014

JUDGMENT:

This appeal, under section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908, is filed by the appellants/defendant Nos.1 and 2, challenging the judgment and decree, dated 31.12.2013, passed in O.S.No.283 of 2010 by the III Senior Civil Judge, City Civil Court, Secunderabad, whereby, the subject suit in O.S.No.283 of 2010 filed by the respondent/plaintiff seeking declaration that he is the sole, absolute and exclusive owner of the suit schedule property and recovery of vacant possession of the suit schedule property and for damages, was decreed.

2. Heard the learned counsel for both the sides and perused the record.

3. The appellants herein are the defendants and the respondent herein is the plaintiff before the Court below. The parties are hereinafter referred to, as per their array before the Court below.

4. The plaintiff filed the subject suit in O.S.No.283 of 2010 seeking declaration that he is the sole, absolute and exclusive owner of the suit schedule property, i.e., House No.71 (old) (New No.2-7-104) admeasuring 64.44 square yards or 53.87 metres situated at Bearers Lines, Secunderabad, bounded by NORTH: House No.70, SOUTH: House No.72, EAST: Lane, and WEST: House of Abdul Khader, and recovery of vacant possession of the same and for damages, contending as follows:

"The plaintiff purchased House No.71 (old) (New No.2-7-104) admeasuring 64.44 square yards, situated at Bearers lines, Secunderabad Cantonment, from one Anitha Dhull and Siva Kumar Dhull, through a sale deed, dated 08.10.2008, registered as document No.1459/2008 before the Sub-Registrar, Bowenpally, Secunderabad. The said property has been under occupation of defendant No.1 as tenant of the previous owners. Subsequent to the purchase of property, the plaintiff approached defendant No.1 stating that he purchased the property and that he is entitled to receive the rents. However, defendant No.2 raised a dispute contending that she alone is entitled to receive the rents from defendant No.1. Under those circumstances, defendant No.1 filed a case in R.C.No.202 of 2008 before the Additional Rent Controller, Secunderabad, seeking a direction for deposit of rents into the Court under Section 9(3) of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960. In the said Rent Control case, the plaintiff gave evidence as R.W.1 and the defendant No.2 gave evidence as R.W.2. The Additional Rent Controller, Secunderabad, by order, dated 24.02.2010, allowed the Rent Control Case and directed the tenant/defendant No.1 to deposit the rent into the Court till the dispute between the respondent Nos.1 and 2 therein is settled. The suit schedule property originally belonged to Sri S.N.Mukundlal, who is the father-in-law of the defendant No.2. The said Mukundlal purchased property from Sri Hasnuddin, by virtue of a sale deed, dated 24.12.1953, duly registered before the Registrar, Secunderabad. Mukundlal died on 17.10.1967 leaving behind his wife Shanta Kumari and son Om Prakash. • Shanta

Kumari and Om Prakash jointly sold the property to Gulshan Kumar, through a sale deed, dated 05.11.1969. Gulshan Kumar and defendant No.2 are related to each other as brother and sister. The plaintiff came to know that Gulshan Kumar allowed his sister, i.e., defendant No.2 to receive rents from defendant No.1 after the death of her husband, as a good gesture. However, the ownership of the suit schedule property remained with Gulshan Kumar. The widow of Gulshan Kumar, i.e., Anitha Dhull and his son Shiv Kumar Dhull, being in need of money, sold the suit schedule property to the plaintiff through a registered sale deed, dated 08.10.2008. After purchase of the suit schedule property by the plaintiff, he was handed over link documents. It was mentioned in the sale deed, dated 08.10.2008, that the vendors delivered possession of the property along with the tenant, i.e., by way of attornment of tenancy. The defendant No.2, who gave evidence as R.W.2 in R.C.No.202 of 2008 on the file of Additional Rent Controller, Secunderabad, had clearly admitted that her mother-in-law and husband executed a sale deed in favour of Gulshan Kumar and that she is aware of the title of Gulshan Kumar in respect of suit schedule property. After disposal of R.C.No.202 of 2008, the plaintiff called upon the defendant No.1 to hand over vacant and peaceful possession of suit schedule property to him. The defendant No.1 got issued a reply notice stating that he has complied with the directions in the order, dated 24.02.2010, passed by the Additional Rent Controller, Secunderabad, and that he is not liable to vacate the suit schedule premises. It is the defendant No.2 who has put forth all rival claims, though reply

notice is purported to have been issued by defendant No.1. As a cloud of doubt is cast upon the title of the plaintiff over the suit schedule property, the plaintiff is constrained to file the present suit seeking declaration that he is the sole, absolute and exclusive owner of the suit schedule property and for recovery of possession and damages. As the jural relationship of landlord and tenant is disputed by the defendant No.1, the provisions of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960, are not applicable."

5. The defendant No.1 filed written statement contending as follows:

"As there was a title dispute with regard to the suit schedule property, he filed a Rent Control case in R.C.No.202 of 2008 before the Additional Rent Controller, Secunderabad, seeking a direction to deposit of rents before the Court and the same was allowed directing the defendant No.1 to deposit rents into the Court. It was clearly stated in the order in R.C.No.202 of 2008 that rents must be continued to be deposited into the Court till the dispute of ownership of the suit schedule property is resolved. Accordingly, the defendant No.1 deposited the rents into the Court. The subject suit is filed by one Mohd. Nayeem without mentioning that it was filed as a General Power of Attorney holder of Anitha Dhull. The plaintiff was not a party to R.C.No.202 of 2008 and Anitha Dhull is not a party to the subject suit in O.S.No.283 of 2010. The title dispute is not between Anitha Dhull and Hemalatha Malhotra as in R.C.No.202 of 2008, but the plaintiff raised a dispute with Hemalatha Malhotra/defendant No.2. The plaintiff has not impleaded Anitha Dhull (respondent No.1 in R.C.No.202/2008) as a

party to the subject suit. The defendant No.1 is not concerned with the dispute between the plaintiff and defendant No.2 and is only interested in the dispute, if any, between Anitha Dhull and the defendant No.2 and he continues to deposit the rents into the Court. The suit, as framed, is not maintainable against the defendant No.1."

6. The defendant No.2 filed written statement contending as follows:

"The suit is barred under section 9(3) of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960. The suit is also bad for mis-joinder of cause of action and suffers from omissions with regard to *bona fide* dispute between Anitha Dhull and defendant No.2, while said Anitha Dhull is not made a party to the subject suit. The plaintiff does not call himself as a General Power of Attorney of Anitha Dhull, but as a vendee of Anitha Dhull and Siva Kumar Dhull, who are not parties to the subject suit. The defendant No.1 occupied the suit schedule property as a tenant of Shantha Kumari for 25 years. In R.C.No.202 of 2008, the Additional Rent Controller directed the defendant No.1 to deposit rents into the Court, till the dispute between the respondents therein is decided. Attornment of tenancy is an act of tenant admitting the new owner. The defendant No.1/tenant had never admitted the plaintiff as the owner of the suit schedule property. In fact, the attornment was done by Anitha Dhull (one of the vendor of the plaintiff), who stated on oath that she was collecting rents from the tenant. In fact, she never collected rents of the suit schedule property prior to the registered sale deed, dated

08.10.2008, as Anitha Dhull was never the owner. The defendant No.2 is aware of the fact that Gulshan Kumar never became an owner of the suit schedule property and he relinquished it orally in favour of Shantha Kumari on 05.11.1969. Encumbrance certificate, dated 01.04.2004, establishes that Shantha Kumari orally settled the new House No.2-7-104 in favour of his son Om Prakash (husband of defendant No.2), after demolishing the old building. The defendant No.2 had received notice, dated 30.03.2010, and she gave her reply on 10.04.2010. The plaintiff never became owner of the new premises. It is for the first time that the sale deed, dated 24.12.1953, executed by Hasnuddin, S/o.Nizamuddin in favour of Mukundlal for a sum of Rs.500/- has been filed with the plaint in the subject suit. The said sale deed had not been referred in R.C.No.202 of 2008. Late Girish Kumar tried to forcibly evict the defendant No.1 and a complaint was registered in the Police Station, Karkhana, on 09.05.2008. The suit is barred by the order, dated 24.02.2010, of Additional Rent Controller, Secunderabad, to deposit the admitted rents, till the dispute between respondent Nos.1 and 2 is settled. The plaintiff was never a party to the said R.C.No.202 of 2008 on the file of Additional Rent Controller, Secunderabad. The suit is liable to be dismissed."

7. Basing on the above pleadings, the trial Court framed the following issues:

1) Whether this Court has no jurisdiction to entertain the suit as alleged by the defendants?

2) Whether the suit is bad for non-joinder of proper and necessary party?

3) Whether the plaintiff is entitled to declaration of title to the plaint schedule property as prayed for?

4) Whether the plaintiff is entitled for possession of plaint schedule property from the first defendant?

5) Whether the plaintiff is entitled to damages from first defendant?

6) To what relief?

8. During the course of trial, the plaintiff himself got examined as P.W.1 and Exs.A.1 to A.8 were marked on his behalf. On behalf of the defendants, the first and second defendants got themselves examined as D.W.1 and D.W.2 respectively and no documents were marked on their behalf.

9. On merits, the Court below decreed the suit as follows:

In the result, suit is decreed with costs declaring the plaintiff as sole, absolute and exclusive owner of the plaint schedule property bearing H.No.2-7-104 at Bearers Line, Secunderabad, and also directing the first defendant to deliver vacant possession of suit schedule property to the plaintiff within two months from the date of this judgment failing which, plaintiff can recover the same through Court of law. The plaintiff is also entitled to recover damages in the form of mesne profits in respect of the suit schedule property from the date of this suit till the date of delivery of possession of property. Determination of mesne profits is postponed on an application filed under Order XX Rule 12 CPC. However, while determining mesne profits, credit shall be given to the rents deposited by first defendant in RC.No.202/2008 on the file of Additional Rent Controller, Secunderabad.

10. Aggrieved by the said Judgment and Decree of the trial Court, the defendant Nos.1 and 2 preferred this appeal.

11. The learned counsel for the appellants/defendant Nos.1 and 2 would contend that the subject suit, as framed, is not

maintainable under law. The defendant No.1 is the tenant of the original owners. He even filed R.C.No.202 of 2008 on the file of the Additional Rent Controller, Secunderabad, seeking a direction to deposit of rents into the Court and the same was allowed, vide order, dated 24.02.2010. The relief sought in the subject suit, i.e., for delivery of vacant possession of the suit schedule property and damages is required to be sought before the Additional Rent Controller, Secunderabad, and not before the civil Court. The suit is not maintainable against the defendant No.1. The plaintiff, having purchased the disputed property from the respondent No.1 in R.C.No.202 of 2008 and her son, filed the subject suit for declaration of title, without impleading his vendors, whose title is in dispute. Therefore, the suit is bad for non-joinder of proper and necessary parties. The defendant No.2 has perfected her right and title over the suit schedule property by adverse possession. The Court below had not framed proper issues, which resulted in miscarriage of justice. The Court below committed error on rejecting the evidence of D.Ws.1 and 2 holding that no documentary evidence has been adduced on their behalf and ultimately prayed to set aside the judgment and decree under challenge and allow the appeal as prayed for.

12. On the other hand, the learned counsel for the respondent/plaintiff supported the impugned judgment and decree and contended that the Court below has jurisdiction to entertain the suit. The suit is not bad for non-joinder of proper and necessary parties. The Court below, having framed necessary issues for determination and after elaborately discussing the merits

and demerits of the subject matter of the suit, rightly decreed the suit. There is nothing to interfere with the impugned judgment and decree and ultimately prayed to sustain the impugned judgment and decree and dismiss the appeal.

13. In view of the above submissions of the learned counsel for both the sides, the points that arise for determination in this appeal are as follows:

1. Whether the Court below has jurisdiction to entertain the subject suit?

2. Whether the suit is bad for non-joinder or proper and necessary parties?

3. Whether the respondent/plaintiff has right, title and interest over the suit schedule property?

4. Whether the respondent/plaintiff is entitled for recovery of possession of the suit schedule property and damages?

5. To what relief?

14. The factual matrix of the case is that originally, the suit schedule property belonged to one Mukundlal (father-in-law of the defendant No.2), who purchased the same from one Hasnuddin, by virtue of Ex.A.3 - Registered sale deed, dated 24.12.1953. Mukundlal died on 17.10.1967, leaving behind his wife Shantha Kumari and son Om Prakash (husband of defendant No.2). Subsequently, Shantha Kumari and Om Prakash jointly sold the suit schedule property to one Gulshan Kumar, under Ex.A.2 - Registered sale deed, dated 05.11.1969. Gulshan Kumar and defendant No.2 are related to each other as brother and sister.

Gulshan Kumar had allowed the defendant No.2 to receive the rents of the suit schedule property from the tenant/defendant No.1, after demise of her husband, as a good gesture. However, the ownership of the suit schedule property remained with Gulshan Kumar only. After the demise of Gulshan Kumar, his wife Anitha Dhull and son Shiv Kumar Dhull, being in need of money, jointly sold the suit schedule property to the plaintiff under Ex.A.1 - Registered sale deed, dated 08.10.2008, and handed over the link documents to him. In Ex.A.1 sale deed, it is clearly mentioned that the vendors delivered possession of the suit schedule property to the plaintiff along with the tenant, i.e., by way of attornment of tenancy. When the plaintiff approached the defendant No.1/tenant to deliver the vacant possession of the suit schedule property basing on Ex.A.1 - Registered sale deed, dated 08.10.2008, the defendant No.2 had set up title to the suit schedule property contending that Gulshan Kumar had allowed her to receive the rents from the defendant No.1/tenant after demise of her husband, as a good gesture and that since the last 25 years, the defendant No.1/tenant has been paying rent to her. Under those circumstances, the defendant No.1/tenant filed R.C.No.202 of 2008 on the file of the Additional Rent Controller, Secunderabad, under Section 9(3) of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960, seeking a direction to deposit the rent to the credit of the said R.C. till the ownership dispute between the defendant No.2 and Anitha Dhull (one of the vendor of the plaintiff), is settled.

15. In view of the above factual matrix of the case, I now venture to answer the points.

POINT Nos.1 & 2:-

16. Admittedly, the plaintiff is claiming title to the suit schedule property on the basis of Ex.A.1 - Registered sale deed, dated 08.10.2008. Admittedly, defendant No.2 is not a tenant of the suit schedule property and she had set up title to the suit schedule property. In view of the nature of the dispute, i.e., declaration of title and recovery of possession of the suit schedule property and damages and in view of the pleadings and the material placed on record, the Court below had certainly got jurisdiction to entertain the subject suit and competent to adjudicate the subject matter of the suit.

17. It is also contended that the subject suit is bad for non-joinder of proper and necessary parties. Admittedly, the plaintiff is seeking declaration of title and recovery of possession of the suit schedule property basing on Ex.A.1 - Registered Sale Deed, dated 08.10.2008. Once Ex.A.1 - registered sale deed, dated 08.10.2008, is executed in favour of the plaintiff, his vendors stand parted with the suit schedule property and their rights gets vested in favour of plaintiff. Hence, it is not necessary to implead the vendors of the plaintiff as parties to the suit. The defendant No.2 only is disputing the title of the plaintiff over the suit schedule property and the defendant No.1/tenant refused to deliver vacant possession of the suit schedule property to the plaintiff under the guise of directions in the order, dated 24.02.2010, passed in R.C.No.202 of 2008 by the Additional Rent Controller, Secunderabad. Both of them are proper and necessary parties to

the suit and admittedly, the plaintiff had made both of them as parties to the suit. Under these circumstances, the suit is not bad for non-joinder of proper and necessary parties, as contended by the defendant No.2. These points are accordingly answered in favour of the plaintiff and against the defendants.

POINT Nos.3 to 5:-

18. The plaintiff is seeking declaration that he is the absolute owner of the suit schedule property and recovery of possession from the defendant No.2. In support of his contentions, he filed Ex.A.1-Registered sale deed, dated 08.10.2008, Ex.A.2-Registered sale deed, dated 05.11.1969, Ex.A.3-Registered Sale Deed, dated 24.12.1953, Ex.A.4-Certified copy of order in R.C.No.202 of 2008 on the file of the Additional Rent Controller, Secunderabad, Ex.A.5-Office copy of notice, dated 30.03.2020, Ex.A.6-Reply notice (original), dated 10.04.2010, Ex.A.7-Market value assistance certificate, dated 24.04.2010, and Ex.A.8-Certified copy of cross-examination of R.W.2 by the first respondent in R.C.No.202 of 2008. It is an undisputed fact that Anitha Dhull is the wife and Shiva Kumar Dhull is the son of Late Gulshan Kumar. It is the case of the plaintiff that said Gulshan Kumar purchased the property from the legal heirs of one Mukundlal, i.e., Shanta Kumari and Om Prakash. The said fact was established by P.W.1 by marking Ex.A.2. Admittedly, the defendant No.1 is the tenant of the suit schedule property. She was inducted into the suit schedule property by Shanta Kumari, who was one of the vendors of Gulshan Kumar. The defendant No.2 is disputing the title of the

plaintiff by claiming adverse possession over the suit schedule property. It is evident from Exs.A.1 to A.8 and the evidence of P.W.1 that the title of the suit schedule property had flown in favour of the plaintiff and the tenancy was attorned in favour of the plaintiff under Ex.A.1. Further, as per Exs.A.1 and A.8 and the evidence of D.W.1 and D.W.2, the defendant No.2 was permitted to receive rents only from the defendant No.1/tenant during the life time of Gulshan Kumar, her brother. However, after the demise of Gulshan Kumar, the vendors of the plaintiff, i.e., wife and son of Gulshan Kumar, permitted the defendant No.2 to receive the rents from the defendant No.1/tenant. The claim of adverse possession by the defendant No.1 is a fiction as well as story created to defeat the subject suit of the plaintiff. D.W.1/tenant supported the plea raised by defendant No.1. The witnesses examined on behalf of the defendants are untrustworthy. As per the evidence on record, no case of adverse possession has been made out in favour of defendant No.2. The Court below elaborately dealt with these aspects and answered against the defendant No.2. There is no single document to establish denial of title of the true vendors of the plaintiff from time to time and claiming adverse possession over the suit schedule property by defendant No.2.

19. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse

possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well settled principle that a party claiming adverse possession must prove that his possession is '*nec vi*', '*nec clam*', '*nec precario*', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. In the instant case, the defendant No.2 was/is not in possession of the suit schedule property at any point of time. Even he has no permissive possession over the suit schedule property. Therefore, his contention that he has perfected the prescribed period of adverse possession over the suit schedule property is unsustainable. The evidence of defendant No.1 is feeble and weak as far as the plea of adverse possession is concerned. As there is

valid title in favour of the plaintiff as indicated above, the plaintiff, after purchase of the suit schedule property under Ex.A.1 from the original owners and as the tenancy was attorned in his favour, the plaintiff is entitled for declaration of title as well as recovery of possession and also damages from defendant No.1/tenant for occupation of the suit schedule property, after the tenancy was lawfully terminated. All the contentions raised on behalf of the defendants do not merit consideration. These points are accordingly answered against the defendants and in favour of the plaintiff.

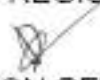
20. In view of the foregoing discussion, the Court below is justified in decreeing the suit as indicated above. There is no perversity or material irregularity in the judgment and decree under challenge. There is nothing to take a different view. The appeal is devoid of merit and is liable to be dismissed.

21. In the result, the appeal is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

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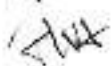
Sd/-K.SREENIVASA RAO
DEPUTY REGISTRAR


SECTION OFFICER

To

1. The III Senior Civil Judge, City Civil Court, at Secunderabad. (with records)
2. One cc to Sri M.N.Narasimha Reddy, Advocate (OPUC)
3. One cc to Sri V.Hari Haran, Advocate (OPUC)
4. Two CD Copies

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HIGH COURT

DATED:08/06/2020

JUDGMENT

CCCA.No.52 of 2014



DISMISSING THE APPEAL WITHOUT COSTS.

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8/7/20
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**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY, THE EIGHTH DAY OF JUNE
TWO THOUSAND AND TWENTY**

**PRESENT
THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER**

C.C.C.A. NO: 52 OF 2014

Between:

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**...APPELLANTS (DEFENDANTS 1 & 2)
AND**

Mohd Nayeem, S/o Late Shri Mohd Ismail, R/o House No.1-8-520/2 Pattigadda,
Secunderabad.

...RESPONDENT (PLAINTIFF)

Appeal under Section 96 R/w. Order 41 rule 1 of CPC against the judgment and decree dated 31/12/2013 in OS No.283/2010 on the file of the Court of the III Senior Civil Judge, City Civil Court, Secunderabad.

DECREE: This Court doth Order and decree that the decree of the Lower Court be and hereby is confirmed and this CCA is dismissed and this Court doth further Order and decree that there be no Order as to costs in this appeal.

Sd/-K.SREENIVASA RAO
DEPUTY REGISTRAR

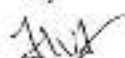
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SECTION OFFICER

To

1. The III Senior Civil Judge, City Civil Court at Secunderabad.
2. Two CD Copies

Kj.



HIGH COURT

DATED:08/06/2020

DECREE

CCCA.No.52 of 2014

DISMISSNIG THE APPEAL WITHOUT COSTS.

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