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Rev.Appl.No.201 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :11.07.2024

Pronounced on :24.07.2024

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

Rev.Appl.No.201 of 2022 and
Crl.M.P.Nos.12480,12482 of 2024
and 7531 of 2019 in S.A.No.458 of 2009

1.Mrs.Radha Gajapathi Raju

2.Mrs.Vidhya Singh

3.Mrs.Urmila Prakash

.. Applicants

/versus/

1.Mrs.P.Maduri Gajapathi Raju

2.Mr.P.Alak Narayan Gajapathi Raju

3.Mr.P.Monish Gajapathi Raju

4.Mrs.P.Sidani Gajapathi Raju

5.The Executor,
Maharani Vidhyavathi Devi Trust,
Vizianagaram,
Trustee General I.S.Gill Sikh,
No.31, South Bank Road,
Mandaveli, Chennai 600 028.



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Mr.P.Anand Gajapathi Raju(Deceased)

6.Mr.Ashok Gajapathi Raju

7.Mrs.R.V.Sumeetha Prasad

8.Sudha Gajapathi Raju

9.P.Urmila Gajapathi Raju

10.Kumari P.Sanchaita Gajapathi Raju

.. Respondents

Review Application has been filed under Section 114 and Order XLVII of Cr.P.C., praying to consider all the facts and circumstances of the case and review the order dated 23.02.2017 made in S.A.No.458 of 2009 and pass any such orders in view of natural justice.

For Applicants :Mr.M.S.Krishnan, Senior Counsel for
Mr.P.Subba Reddy

For Respondents :Mr.N.L.Rajah, Senior Counsel for
Mr.E.Jaya sankar for R1 to R4

ORDER

This application is to review the judgment, dated 23.02.2017 passed in the Second Appeal No.458 of 2009 by this Court. The plaintiffs in O.S.No.2664 of 1997 on the file of VIII Assistant Judge, City Civil Court, Chennai, are the review applicants.



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2. O.S.No.2664 of 1997 is a the suit for partition in respect of the property, which forms part of the estate of late Mr.Ananda Gajapathi Raju of Vijayanagaram Empire. Prior to institution of this suit, the dispute between the descendants of Mr.Ananda Gajapathi Raju was the subject matter of a suit in O.S.No.120 of 1948 on the file of the Sub Court, Visakhapatnam. It was suit for partition in respect of the entire movable and immovable property both divisible and indivisible forming part of Vijyanagaram Estate. The said suit was transferred to Madras High Court and renumbered as C.S.No.495 of 1949. The said partition suit was instituted by Vijayarama Gajapathi Raju, elder son of Maharaja Alakh Narayana Gajapathi Raju. The Madras High Court passed a preliminary decree for partition on 11.12.1950. The preliminary decree was not satisfactory to the parties, particularly in respect of identifying partiable estate and impartiable estate. Hence, the parties went to the Hon'ble Supreme Court and challenged the preliminary decree in Civil Appeal No.177 of 1961. The Hon'ble Supreme Court, after identifying the divisible and indivisible property, gave liberty to the parties to approach



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the trial Court in respect of the left over properties. By the time, the States were reorganised based on language. The Subordinate Court, Visakhapattinam seized the matter and renumbered the suit as O.S.No.21 of 1963. Pending disposal of the suit, the parties arrived at terms of compromise and executed a compromise memorandum on 27.09.1963. Nearly 25 years after the compromise decree, the review applicants herein filed C.S.No.335/1988 on the file of Madras High Court and it was renumbered as O.S.No.2664 of 1997 on the file of the VIII Assistant City Civil Court, Chennai on transfer from High Court Original Jurisdiction to City Civil Court due to enhancement of pecuniary jurisdiction.

3. By the time, there was another suit filed by Maharani Vidyavathi Devi, Wife of Maharaja Alakh Narayana Gajapathi Raju. This suit was filed on behalf of the Trust in the High Court Original Side (C.S.No.121 of 1984 on the file the High Court, Madras) and for the same reason , this suit also was transferred to City Civil Court, Chennai and renumbered as O.S.No.824 of 1999 .



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4. In their plaint, the review applicants contended that the plaint schedule property in the subsequent suit do not form part of the compromise entered between the parties on 27.09.1963 and therefore, they are entitled for 1/3rd share in the property.

5. The suit in O.S.No.2664 of 1997 by the review applicants and the suit in O.S.No.824 of 1999 filed by Maharani Vidyavathi Devi on behalf of the Trust were tried together and a common judgment was passed.

6. The trial Court allowed the suit by these applicants and passed a preliminary decree to divide the suit property into three equal shares and allotted one share to the plaintiffs. The other suit filed by Maharani Vidyavathi Devi on behalf of the Trust was partly allowed. Against the common judgment, A.S.Nos.305 and 306 of 2004 were filed and the first Appellate Court dismissed both the appeals confirming the judgment passed by the trial Court in O.S.No.2664 of 1997 and O.S.No.824 of 1999. Against the judgment of the lower appellate Court



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confirming the judgment of the trial Court, S.A.Nos.458 and 459 of 2009 were filed by the defendants in the suit.

7. This Court admitted both the Second Appeals and framed common Substantial Questions of Law as under for consideration:-

“(i)In the facts and circumstances of the case whether the lower Courts in a subsequent proceeding could review a judgment and decree passed in an earlier proceeding when such judgment and decree has attained finality?

(ii)In the facts and circumstances of the case whether the lower courts could hold that the compromise decree passed in an earlier proceeding required registration when such compromise decree was between two brothers and did not result in creating of any new interest but only in rearrangement of existing rights?

(iii)In the facts and circumstances of the case whether a second suit is maintainable when an earlier suit was a comprehensive one relating to division of all assets to which the brothers could stake any claim and when such suit has ended in a compromise decree being passed?”

8. During the course of arguments in the Second Appeals, the



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learned counsel appearing for the appellants submitted that as far as the suit filed by Maharani Vidyavathi Devi on behalf of the Trust, the final decree was passed and 1/3rd share has already been handed over to the Trust and therefore, nothing survives in the appeal and so, the second appeal in S.A.No.459 of 2009 is not pressed.

9. This Court, after considering the evidence and arguments reversed the concurrent finding of the Courts below and allowed S.A.No.458 of 2009. Since the appellants not pressed their S.A.No.459 of 2009, the same was dismissed.

10. Challenging the judgment and decree passed in S.A.No.458 of 2009, the applicants herein preferred Special Leave Petition before the Hon'ble Supreme Court. When the Leave Petition came up for consideration in SLP(C)No.5326 of 2019, the Hon'ble Supreme Court found no reason to interfere with the matter and dismissed the Special Leave Petition on 05.03.2019. Thereafter, the Review application was filed with delay before this Court seeking review of the judgment with



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delay. This Court dismissed the condone delay petition. That was challenged by the petitioners before the Hon'ble Supreme Court. The Hon'ble Supreme Court condoned the delay and directed this Court to take up the review application and consider it on merits. Thereafter, Review Application No.201 of 2022 was taken up for consideration.

11. After condonation of the delay in filing the review application, the review applicants have taken up two applications, viz.,

(i)C.M.P.No.12482 of 2024 is filed under Order 41, Rule 27 r/w Section 151 of C.P.C., by the applicants to permit them to produce and mark 38 additional documents morefully described in the petition.

(ii)C.M.P.No.12480 of 2024 is filed under Order 41, Rule 2 r/w Section 151 of C.P.C., to permit the review applicants to raise the additional grounds set out in the petition.

12. The review application is filed on the ground that the



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applicants are infact entitled for 2/3rd share in the suit schedule property, however, in the Original Suit on a mistaken fact they have claimed only 1/3rd share instead of 2/3rd . Further, in paragraph 21 of the judgment impugned, the Court has stated that the respondents(applicants herein) have not challenged the compromise of the year 1963, but it failed to note that ever since 1963 the respondents (applicants herein) were only in possession and enjoyment of the property and they alone have taken care of the property.

13. To substantiate these points, the applicants have filed two miscellaneous petitions one to introduce 38 additional documents and another to raise additional grounds in the second appeal.

14. For consideration of the above contention of the review applicants, it is necessary to refer what is said in Paragarph No.21 of the judgment impugned. Hence, the same is reproduced below:-

Para 21: ." According to the learned Senior counsel, the intend of the parties to the compromise decree and the contend of the compromise decree, if read together,



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it is very clear that Visweswara Gajapathi Raju, late husband of the first plaintiff has given up all claims in the properties which are not included by oversight or otherwise. Till date, he has not questioned the validity of the compromise or made any claim over the property. His whereabouts are not known and he is only presumed to be dead, since not heard for more than seven years. Till date, the compromise is not challenged by the party to the compromise, but by the wife of the party belatedly after 22 years.

15. Thus, it is clear that what is said in paragraph No.21 is not the statement of the Court but the statement of the counsel, who represented the appellants. The suit relief sought in the partition seeking 1/3rd share in the subject property was held contrary to the compromise decree passed earlier. At paragraphs 36, 37 and 38 of the judgment, this Court has assigned the reasons why the suit in O.S.No.2446/1999 is liable to be dismissed.

16. For sake of convenience, those portion of the judgment is



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reproduced below:-

“36. Therefore, it is too late for the day for the wife of Visweswara Gajapathi Raju to question the compromise decree, and to try to give her own interpretation for the terms of compromise ignoring the letter and spirit of Ex.B2. If really there was something left to be tested or interpreted the parties to the compromise decree would have approached the Court which has passed the decree. A new suit with new set of facts contrary to the terms of the compromise decree after lapse of 25 years is beyond any legal comprehension.

37. It is not the case of the plaintiff that she was asked to protect the property or spend on the property by the defendants. If she had incurred any expenses in protecting or maintaining the property, it is an voluntary act without any request or authority or necessity. Therefore, payment of kist and urban tax through Exhibits A12, A13, A14 and A15 are not a relevant fact to test the title of the plaintiff.

38. This Court finds that both the Courts below have legally erred in reviewing and undoing the compromise decree passed three decades ago. Ex.P6 was acted upon by letter and spirit by the signatories to the compromise and not questioned by the party to the compromise decree before the competent Court. While so, a third party in a separate suit, claiming right through one of the party to the compromise is not maintainable. The suit squarely falls within the scope of Section 11 of CPC and Order II Rule 2 of CPC. The compromise being an arrangement between the parties who had existing right in the properties and compromise only records the rearrangement of the existing right,



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such an instrument needs no registration. For want of registration a valid compromise cannot be thrown out nullifying all the subsequent actions followed as a consequence of the compromise decree.”

17. While so, again under the guise of review, it is an attempt by the applicants to alter the prayer and introduce documents and give a different dimension to their plea 23 years after its institution. If this review application is entertained, it will be at the cost of the damaging the principle of *res judicata* as well as ignorance of Order II Rule (2) of CPC.

18. The learned Senior Counsel for the review applicants in the course of his argument submitted that, from the judgment, which is sought to be reviewed, he reliably learn that the High Court has not framed Substantial Questions of Law, which is mandatory under Section 100 of CPC before admitting the Second Appeal.

19. Referring paragraph 18 of the judgment, the Learned Senior



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Counsel for the review applicants submitted that what is stated as the Substantial Question of Law is raised by the appellants and not the Substantial Question of Law framed by the Court at the time of admitting the second appeal.

20. This Court on perusal of the records finds that, both S.A.Nos.458 and 459 of 2009 arising from the common judgment, dated 30/06/2008 rendered by the II Additional District and Sessions Court (FTC-1), Chennai, which was admitted on 10/06/2009 by Hon'ble Justice K.Mohan Ram (since retired). The following substantial questions of law been framed after hearing the counsel:-

“(i)In the facts and circumstances of the case whether the lower Courts in a subsequent proceeding could review a judgment and decree passed in an earlier proceeding when such judgment and decree has attained finality?

(ii)In the facts and circumstances of the case whether the lower courts could hold that the compromise decree passed in an earlier proceeding required registration when such compromise decree was between two brothers and did not result in creating of any new



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interest but only in rearrangement of existing rights?

(iii) In the facts and circumstances of the case whether a second suit is maintainable when an earlier suit was a comprehensive one relating to division of all assets to which the brothers could stake any claim and when such suit has ended in a compromise decree being passed?”

21. At paragraph 18 of the judgment, the above 3 substantial questions of law find place and been taken up for consideration by this Court. In the judgement, from paragraphs No.34 to 38 these substantial questions of law have been answered and at paragraph No.39, this Court has concluded that the O.S.No.2664/1997 filed by the petitioners herein deserve to be dismissed.

22. Since the Court has framed substantial questions of law at the time of admission and the same has been considered and answered in the judgement, the dictum laid in *BCCI -vs- Nethaji Cricket Club* (2005(4)SCC 741 or *Kapra Mazdoor Ekta Union -vs- Birla Cotton Spinning & Weaving Mills* [(2005) 13 SCC 777], which is in respect of allowing second appeal without framing Substantial Questions of Law or



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allowing the second appeal on the questions of law which does not forms part of the Substantial Questions of Law framed, has no application to the facts of the case in hand. This Court finds no error apparent on the face of the record or any mistake which could be classified as procedural illegality which goes to the root of the matter to invalidate the proceedings to consider the review application.

23. The learned Senior Counsel for the applicants also raised the plea that having conceded to the decree passed in O.S.No.824/1999, the respondents herein cannot resist the decree passed in O.S.No.2664/1997, since the subject properties are same and both the decrees arise from common judgment.

24. The learned counsel rely upon the following judgements to buttress his above submission:

(i)Sheodan Singh -vs- Daryao Kunwar [(1966) (3) SCR 300]

“19.The next case to which reference has been made is *Ghansham Singh v. Bhola Singh* [ILR (1923) 45 All 506] . In that case there was a suit for sale



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on a mortgage and the trial court gave a decree in favour of the plaintiff but awarded no costs. The plaintiff appealed against the decree insofar as it disallowed costs. The defendant also appealed as to the amount of interest allowed to the plaintiff. Both the appeals were heard together and decided by one judgment, and both the appeals were allowed. The plaintiff appealed to the High Court against the decree in the defendant's appeal below but did not appeal against the decree which was in his favour with respect to costs. It was held that the fact that the plaintiff had not appealed against the decision in his appeal was no bar to the hearing of the appeal against the decree passed in the defendant's appeal below. We do not see how this case can help the appellant. The matters in the two appeals were different, one relating to costs and the other relating to interest; the rest of the judgment of the trial court was not disputed and had become final. In such a case there was no question of the plaintiff appealing from a decision in his own favour as to costs and there could be no question of the decision as to costs being *res judicata* in the matter of interest. The facts of that case were therefore entirely different and do not help the appellant. It may also be added that that was a case of one suit from which two appeals had arisen and not of two suits.

20. The next case to which reference has been



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made is *Manohar Vinayak v. Laxman Anandrao* [AIR 1947 Nag 248] . In that case two suits were consolidated by consent of the parties and there were certain common issues. Appeal was taken from the decision in one suit and not from the decision in the other, and it was urged in the High Court that the decision in the other suit had become final. The High Court applied the principle that *res judicata* could not apply in the same proceeding in which the decision was given and added that by a parity of reasoning it could not apply to suits which were consolidated. We may indicate that a contrary view has been taken in *Mrs Gertrude Oates v. Mrs Millicent D'silva* [AIR 1933 Pat 78] and *Zaharia v. Debia* [ILR (1911) 33 All 51] . We need not consider the correctness of these rival views as they raise the question as to whether one decision or the other can be said to be former where the two suits were decided by the same judgment on the same date. This question does not fall to be decided before us and we do not propose to express any opinion thereon. But the Nagpur decision is of no help to the appellant, for in the present case *res judicata* arises because of earlier decision of the High Court in appeals arising from Suits Nos. 77 and 91. *Panchanada Velan v. Vaithinatha Sastrial* [ILR (1906) 29 Mad 333] and *Mst Lachhmi v. Bhulli* [ILR (1927) Lah 384] are similar to the Nagpur case and we need express no



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opinion as to their correctness.

21. The next case to which reference has been made is *Khetramohan Baral v. Rasananda Misra* [AIR 1962 Orissa 141] . In that case six suits were heard together mainly because an important common issue was involved even though the parties were not the same and the properties in dispute were also different. The decision in one of the suits was not challenged in appeal while appeals were taken from other suits. The High Court held that in such circumstances the decision in one suit from which no appeal was taken would not be *res judicata* in other suits from which appeals were taken. In these cases the parties and properties were different and we do not think it necessary to express any opinion about the correctness of this decision. The facts in the present case are clearly different for the parties are the same and the title to the properties in dispute also depended upon one common question relating to jointness or separation.

(ii)Lonankutty -vs-Thomman [(1976) 3 SCC 528]:

21.In its remanding judgment dated July 8, 1964 by which the plea of *res judicata* was repelled, the High Court relied principally on the decision of this Court in *Narhari v. Shankar* [1950 SCC 668 : AIR 1953 SC 419 : 1950 SCR 754;] . That decision is in our opinion



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distinguishable because in that case only one suit was filed giving rise to 2 appeals. A filed a suit against B and C which was decreed. B and C preferred separate appeals which were allowed by a common judgment, but the appellate court drew 2 separate decrees. A preferred an appeal against one of the decrees only and after the period of limitation was over, he preferred an appeal against the other decree on insufficient court fee. The High Court held that A should have filed 2 separate appeals and since one of the appeals was time barred, the appeal filed within time was barred by res judicata. This Court held that “there is no question of the application of the principle of res judicata”, because “when there is only one suit, the question of res judicata does not arise at all”. This was put on the ground that “where there has been one trial, one finding, and one decision, there need not be two appeals even though two decrees may have been drawn up”. In our case, there were 2 suits and since the appellate decree in one of the suits had become final, the issues decided therein could not be reopened in the second appeal filed against the decree passed in an appeal arising out of another suit. This precisely is the ground on which Narhari case was distinguished by this Court in Sheodan Singh v. Smt Daryao Kunwar [AIR 1966 SC 1332 : (1966) 3 SCR 300] . It was held therein that where the trial court has decided 2 suits having common



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issues on the merits and there are two appeals therefrom the decision in one appeal will operate as *res judicata* in the other appeal.

(iii) Narayana Prabu Venkateswara Prabu -vs- Narayana

Prabu Krishna Prabu [(1972(2) SCC 181]

20. We think that the submission made by the learned Counsel for the respondents is sound. In a partition suit each party claiming that the property is joint, asserts a right and litigates under a title which is common to others who make identical claims. If that very issue is litigated in another suit and decided we do not see why the others making the same claim cannot be held to be claiming a right “in common for themselves and others”. Each of them can be deemed, by reason of Explanation VI, to represent all those the nature of whose claims and interests are common or identical. If we were to hold otherwise, it would necessarily mean that there would be two inconsistent decrees. One of the tests in deciding whether the doctrine of *res judicata* applies to a particular case or not is to determine whether two inconsistent decrees will come into existence if it is not applied. We think this will be the case here.

25. In the judgements cited above, the Hon'ble Supreme Court had made it clear that the question of *res judicata* has to be decided,



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based on the facts of each case. Decision differs based on facts. Even, if appeals arise from common judgment, 2 separate decrees may be drawn.

26. In the case in hand, though the prayer in the suit is couched as partition suit, it is not exactly a partition suit in view of the earlier partition suit and the compromise decree. The relief sought by the plaintiffs in O.S.No.2664/1997 and the relief sought by the plaintiffs in O.S.No.824/1999 had been tested through the prism of the compromise decree passed in the earlier comprehensive partition suit which contains specific clauses like

(a) the 2nd party shall not make any further claim that any of the properties not claimed as partiable in O.S.No.120/1948 is divisible, or that he has any interest in any such property.

(b) the 2nd party do hereby relinquish all rights in the lands for which pattas have been granted or are to be granted to him under Section 47 of Madras Act 26 of 1948 to and in favour of the 1st party or the 3rd party as the case may be.

(c) the 2nd party give up, relinquishes and releases completely



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and absolutely his claim to any joint family items of property left out in the aforesaid claims by oversight or otherwise.

27. In the said factual scenario, the appellants decision to withdraw the appeal arising from O.S.No.824/1999 cannot act as *res judicata* for the other appeal, which is pegged on a different footing. The plea of the plaintiffs in O.S.No.2664/1997 is that in the compromise decree the expression 'left out properties by over sight or otherwise' is a vague statement and it cannot be accepted legally. The plaintiff in O.S.No.824/1999 pegged her case entirely on a different footing.

28. It is trite principle of law that under Order 47, Rule (1) of C.P.C., review application can be entertained only if

(a)discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the applicants or could not be produced by them, or

(b)Order made, or on account of some mistake or error apparent on the face of the records, or



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(c)for any other sufficient reason.

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29. If the expression “for any other sufficient reason” is given a liberal interpretation then, there will no end to a lis.

30. In my considered view, the subject lis between the parties had attained the requisite finality. Entertaining the review application will convert the full stop into coma and the litigation will go on endlessly.

31. To put it in nutshell, after accepting the compromise decree in the first round of partition suit, the second round of litigation regarding one property was filed claiming the said property still remains as joint family property. In view of conscious relinquishment of left out properties, that plea been overturned in the second appeal. The SLP filed against the judgment passed in S.A.No.458/1999 also got dismissed. Thereafter, the present review petition and Miscellaneous Petitions to receive additional documents and addition grounds of appeal filed.



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32. In the opinion of this Court, this review application is filed with oblique intention to start the third round of litigation by raising grounds which are not factually correct or legally tenable.

33. In view of the facts and circumstances of the case, this Court holds that the review application has to be dismissed. Accordingly, the Review Application is dismissed. Consequentially, connected Miscellaneous Petitions are dismissed.

24.07.2024

Index:yes
Speaking order/non speaking order
Neutral citation:yes/no
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To:

- 1.The VIII Assistant Judge, City Civil Court, Chennai.
- 2.The Additional District and Sessions Court, Fast Track Court No.1, Chennai.



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Dr.G.JAYACHANDRAN,J

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delivery Order made in
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