



S.A.No.1368 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.05.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

S.A.No.1368 of 2011

1.Radhakrishnan
2.Neelambal ... Appellants/Respondents/Plaintiffs

Vs.

1.Govindarasu ... Respondents/Appellant
2/Defendant 2

2.Pavunambal

3.Jayalakshmi

4.Saraswathi

5.Rajeswari

6.Alamelu

7.Rajalakshmi

8.Vaikundarajan ... Respondents / Appellants
3-9/Defendants 3-9

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 25.11.2010 passed in A.S.No.13 of 2010 by the Principal Court, Vridhachalam, reversing the Judgment and Decree passed in O.S.No.299 of 2004 dated 21.12.2009 passed by the II Additional District Munsif Court, Vridhachalam.



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For Appellants : Mrs.V.Srimathi

For Respondents : Mr.V.Anand

JUDGMENT

This Second Appeal has been preferred by the appellants/plaintiffs against the judgment and decree dated 25.10.2020 passed in A.S.No.13 of 2010 by the Principal Sub-Court, Vridhachalam, reversing the judgment and decree dated 21.12.2009 passed in O.S.No.299 of 2004 by the II Additional District Munsif Court, Vridhachalam.

2.Parties are referred to as per their litigative status and ranking before the trial Court.

3.Heard the arguments advanced by the learned counsel for the appellants/plaintiffs and the learned counsel for the respondents/defendants.

4.According to the appellants/plaintiffs, 'A' schedule property originally belonged to one Chidambaram Pillai from



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whom the 1st plaintiff's father and the 2nd plaintiff's husband Sollaimuthu Padayachi purchased on 06.08.1964. Sollaimuthu Padayachi had been in continuous possession and enjoyment of the purchased property. He died intestate 27 years before leaving behind the appellants/plaintiffs and daughters namely Kalaimani, Dhanalakshmi and Senthamilselvi, as his legal heirs. The said Kalaimani got married 30 years before and residing with her husband. Thereafter, the said Dhanalakshmi and Senthamilselvi died without any legal heirs. Patta was granted in favour of 2nd plaintiff/Neelambal in respect of the 'A' schedule property in Patta No.647. The plaintiffs are in continuous possession and enjoyment of the 'A' schedule property for more than 10 years and they have prescribed title to the property by adverse possession.

5.The 1st and 2nd defendants purchased 0.38 cents situated on the South of 'A' schedule property through two sale deeds dated 20.08.1985 from Govindasamy each 0.19 cents respectively. The 1st and 2nd defendants have been in possession



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and enjoyment of the purchased property respectively from the date of sale. The defendants have admitted in their sale deed that the 'A' schedule property is situated on the North of their purchased property. Therefore, the defendants are estopped from denying the title of the plaintiffs to the 'A' schedule property. While so, the 1st defendant in the Tamil month of Chithirai 1999 encroached into a portion of the Northern side of 'A' schedule property which is shown as 'B' schedule property. The 1st defendant had filed a suit in O.S.No.454 of 2000 against the appellants/plaintiffs contending that he is entitled to 3.04 acres in Survey No.456/3C and he is also entitled to 2.77 cents in the said survey number, and the said property was purchased by way of sale deed. The 1st plaintiff has exchanged the 'B' schedule property in favour of the 1st defendant and therefore, the 1st defendant is entitled to the 'B' schedule property. The plaintiffs have not orally exchanged and sold the 'B' schedule property to the 1st defendant. The plaintiffs were never in possession of the 0.38 cents situated on the South of 'A' schedule property. As the 1st defendant upon the request of the plaintiffs refused to hand over the possession of 'B' schedule



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property, it necessitated the plaintiffs to file the suit. From 1999 onwards the 1st defendant has been cultivating sugarcane in the 'B' schedule property and sent the same to Pennadam Sugar Mill and earned profits. Therefore, the *mesne profits* for Rs.10,000/- is also prayed for.

6.Per Contra, it was contented by the respondents/defendants that the appellants/plaintiffs have relinquished their right over the 'B' schedule property 30 years before. Though the father of the 1st plaintiff, Sollaimuthu Padayachi purchased 1.38 cents in the year 1964, he was not in possession and enjoyment of the total extent purchased by him as he was in possession and enjoyment of 0.38 cents belonging to one Govindasamy on the South of 'A' schedule property. One Chidambaram Pillai executed sale deed on 06.08.1964 in favour of Sollaimuthu Padayachi, the defendants, Govindasamy and some other persons measuring total extent of 8.67 cents in Survey Number.456/3. In the year 1985, the defendants came to know that Sollaimuthu Padayachi enjoyed 0.38 cents belonging to Govindasamy and the defendants were enjoying on the



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northern portion of 0.38 cents belonging to Sollaimuthu Padayachi. A Panchayat was convened and accordingly oral exchange took place regarding the lands of an extent of 0.38 cents, whereby the 1st defendant enjoyed measuring to an extent of 0.38 cents on the north of 'A' schedule property and Sollaimuthu Padayachi enjoyed measuring to an extent of 0.38 cents on the south of 'A' schedule property. The plaintiffs did not raise any objection as to the possession of the defendants in the 'B' schedule property. The 1st defendant encroached into 'B' schedule property in the year 1999 which is false. The plaintiffs have filed the suit after four years of time after the defendants filed the suit in O.S.No.454 of 2000. The defendants are in long enjoyment and in possession of the 'B' schedule property and thus, entitled to possessory title over the 'B' schedule property.

7. Based on the rival pleadings, the trial Court framed the following issues:-

1. Whether it is true that the 'B' schedule property belongs to the plaintiffs or not?

2. Whether the plaintiffs are entitled to for the relief of



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recovery of possession?

3. Whether the plaintiffs are entitled to for *mesne profits* as prayed for?

4. Whether the plaintiffs are entitled to the relief of declaration of title over the 'B' schedule property?

5. To what other relief the plaintiffs are entitled to?

8. At trial, to substantiate the plaint details, on the side of the plaintiffs, two witnesses were examined and six documents were marked. Ex.A1 is the original sale deed dated 06.08.1964 executed by one Chidambaram Pillai in favour of plaintiffs's father Sollaimuthu Padayachi in respect of 'A' schedule property. On the defendants' side, two witnesses were examined and five documents were marked. The Advocate Commissioner's Report, plan, and surveyor plan were marked as Exs.C1 to C3 respectively.

9. Upon consideration of oral and documentary evidence and after hearing the arguments advanced on either side, the trial Court held that the plaintiffs have proved Sollaimuthu Padayachi's title over the 'B' schedule property and the plaintiffs

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who are the legal heirs of the said Sollaimuthu are granted the relief of declaration of title over the 'B' schedule property in favour of the plaintiffs. As the 1st defendant has encroached upon the 'B' schedule property, recovery of possession in favour of the plaintiffs was also granted with two months time to hand over the possession of 'B' schedule property. As regards the relief of *mesne profits* the suit was dismissed.

10. Aggrieved, the defendants preferred an appeal against the judgment and decree of the trial Court in A.S.No.13 of 2010 dated 25.11.2010 before the Principal Sub Court, Vridhachalam, and the First Appellate Court held that the 'B' schedule property is comprised in Survey No.456/3C and the suit property is in O.S.No.454 of 2000, which was filed by the defendants which are one and the same. As the defendants have got a decree for declaration of title and for permanent injunction against the plaintiffs in O.S.No.454 of 2000, the plaintiffs are hit by Doctrine of *res judicata* and chose to allow the appeal by setting aside the judgment and decree of the trial Court. Against the said finding of the First Appellate Court, the plaintiffs have



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preferred this appeal.

11.The learned counsel for the appellants/plaintiffs would vehemently argue that the plaintiffs have established their title over the 'B' schedule property and the same is admitted by the defendants. In such a situation, ignoring Ex.A1 by the First Appellate Court is perverse. The learned counsel for the appellants would further contend that the principle of *res judicata* could not apply in this case as the property in O.S.No.454 of 2000 is not one and the same. When the plaintiffs have established their title over the 'B' schedule property, then they are entitled to a decree for declaration of title.

12.Per Contra, the learned counsel for the respondents/defendants would strenuously argue that on 20.07.1975, evidencing the possession in respect of Survey No.456/3, patta was granted in favour of the defendants. In 1985, when the lands were measured the land of Govindasamy was in possession and enjoyment of Sollaimuthu Padayachi and

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on 20.08.1985, the 1st and 2nd defendants have purchased 0.19 cents each from Govindasamy and sought for dismissal of the appeal.

13.The following substantial questions of law arise for consideration:-

1.Whether the lower appellate Court is justified in dismissing the suit on the principles of res judicata when the earlier suit had not been adjudicated on the issues that arise for consideration in the present one?

2.Whether the judgment delivered ex-parte without trying and answering any issue can be considered and relief for dismissing another suit on the principles of res judicata?

3.Is not the judgment of the lower appellate Court on its findings regarding res judicata, lacks basic ingredients as contemplated under Section 11 of the Code of Civil Procedure, 1908?

4.When the title of the plaintiffs was



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established through title deeds, is the lower appellate Court justified in dismissing the suit placing reliance on oral evidence of defendant?

5.Whether the documentary evidence be superseded by oral evidence?

6.When the plaintiffs title to the property is admitted by the defendants, is the lower appellate Court justified in dismissing the declaration by placing reliance an oral exchange pleaded by the defendants?

7.Is not the exchange of immovable property without written document and proper registration is fatal?

8.Whether the subject matter of the earlier suit and the present one are the same and in the absence of any discussion on the subject, would the principles of res judicata has any relevance?

9.Is the lower appellate Court justified in ignoring the title deeds and placing reliance on patta to adjudicate the title of the parties over the subject matter?

14.It is contended that, in view of the decree passed in



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O.S.No.454 of 2000 which was filed by the defendants against Sollaimuthu Padayachi and his wife Neelambal, subsequently the decree was passed on 21.09.2005 in respect of Survey No.456/3C and hence the present suit is hit by the Doctrine of *res judicata*. Hence, this suit is hit by Section 11 of CPC, 1908. In fact, the suit in O.S.No.454 of 2000 was filed by the defendants herein. The judgment and decree passed in the said suit is marked as Ex.B5. The said suit was filed by the defendants against the 1st plaintiff's father Sollaimuthu Padayachi and his wife Neelambal for the relief of permanent injunction in respect of Survey No.456/3C 1.23.0 ares at Kavanur Village, Vridhachalam Taluk.

15. On a perusal of Ex.B5 judgment, it appears that since the 1st defendant did not appear before the Court and cross-examine the P.W.1, they were set *ex-parte*. Based on the evidence of P.W.1 the suit was decreed. Therefore, it is an *ex-parte* decree. More so, no suit was laid for 0.37 cents. It is relevant to refer to Section 11 of Civil Procedure Code. For a clear understanding Section 11 of Civil Procedure Code is



extracted here under:-

“11. Res judicata- *No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

Explanation I.-The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.-For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.-The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed



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to have been a matter directly and substantially in issue in such suit.

Explanation V.-Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused. Explanation VI.-Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

[8] [Explanation VII.-The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in as subsequent suit, notwithstanding that such Court of limited



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jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

16.In order to decide the question as to whether the subsequent proceedings are barred by *res judicata*, it is necessary to examine the question with reference to;

- (i) the form or the competence of the Court;
- (ii) the party and the representatives;
- (iii) the matters in issue;
- (iv) matters which ought to have been made ground for defence or attack in the former suit; and
- (v) the final decision;

17.The Doctrine of *res judicata* is a mixed question of fact and law. Though the decree in O.S.No.454 of 2000 was marked as Ex.B5, it was not specifically pleaded in the written statement at all. It is an *ex-parte* decree. Principle of *res judicata* enunciates once a matter is decided on merits, it shall not be adjudged again. When a matter, whether on a question of law or on a question of fact, has been decided between two

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parties in one suit and after the judgment attains finality neither party is allowed to canvas the matter again. This principle is applied by the Courts for the purpose of achieving finality in litigation. In O.S.No.454 of 2000, ex-parte decree was passed. The First Appellate Court has gone into the question of *res judicata* and gave a finding in favour of the defendants which is not correct.

19.To put it in a nutshell the case of the plaintiffs is that by virtue of sale deed dated 06.08.1964 executed in the name of the father of 1st plaintiff (Ex.B1) they are entitled for the relief of declaration of title in respect of 'B' schedule property. After the continuous possession and enjoyment of the 'B' schedule property by Sollaimuthu Padayachi, the 1st defendant encroached the 'B' schedule property in the year 1999 and thus, recovery of possession of 'B' schedule property is sought along with claim of *mesne profits* in respect of 'B' schedule property.

20. Sollaimuthu Padayachi and 1st defendant are “Pangallies”. The 1st plaintiff is the maternal uncle's son of



P.W.2 Govindasamy. Though, the defendants would contend that the suit 'A' schedule property was originally exchanged between Sollaimuthu Padayachi and Govindasamy with regard to the 'B' schedule property, no question was posed to P.W.2 during his cross-examination which would go to show that the defence taken by the defendants is totally not tenable in law and even P.W.2-Govindasamy does not claim that based on the oral exchange he is in possession and enjoyment of 'B' schedule property. When that be the case, it should not lie in the mouth of the defendants that the 'B' schedule property was orally exchanged between Sollaimuthu Padayachi and Govindasamy/P.W.2.

21.The sum and substance of the defence of the defendants is that though Sollaimuthu Padayachi purchased 'B' schedule property, he was never in possession and enjoyment of the same. An oral exchange had taken place between Sollaimuthu Padayachi and the 1st and 2nd defendants and Govindasamy (P.W.2) regarding the 'B' schedule property and therefore, the plaintiffs have no right or title over the 'B'



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schedule property. In continuation of the above said details, the defendants would further contend that as per the oral exchange, Sollaimuthu Padayachi enjoyed 0.38 cents on the South of 'A' schedule property and the 1st defendant enjoyed the 'B' schedule property on the North of 'A' schedule property measuring an extent of 0.38 cents for more than 30 years.

22.The fact that purchase of 'B' schedule property by Sollaimuthu Padayachi from Chidambaram Pillai is admitted by the defendants. However, the vendor of defendants 1 & 2 Tr.Govindasamy has been examined as P.W.2. Ex.A1 is the sale deed dated 06.08.1964 executed by Chidambaram in favour of Sollaimuthu, the father of the 1st plaintiff herein, in respect of 1.38 cents in Survey No.456/3C. 'B' schedule property is the part of 'A' schedule property measuring an extent of 0.38 cents situated on the North of 'A' schedule property and it is shown in the plaint rough plan as B1, B, C1 and C, which is not in dispute.

23.P.W.2 Govindasamy who is the vendor of the



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defendants had spoken about the execution of sale deed Ex.A2.

In this regard, an Advocate Commissioner was appointed and he visited the suit property and filed his report along with rough plan and Surveyor plan (Exs.C1 to C3). FMB Extract in respect of Survey No.456/3 is Ex.A5.

24.Ex.A1 is the sale deed executed by Chidambaram in favour of Sollaimuthu Padayachi in respect of Survey No.456/3 measuring to an extent of 1.38 cents out of 8.67 cents bounded on the north by Muthaiyan's land (defendants other land), on the south by vendor's property (Chidambaram Pillai), on the east by pattai road, on the west by Sollaimuthu's property.

Ex.A2 is the sale deed dated 20.08.1985 executed by Govindasamy (P.W.2) in favour of the 1st defendant in respect of 0.19 cents in Survey No.456/3, bounded on the west by Muthiyan's land, on the south by Murugesan's land, on the east by pattai road, on the north by Radhakrishnan's land (1st plaintiff). Ex.A3 is the certified copy of sale deed dated 20.08.1985 executed by Govindasamy in favour of Muthiyan in respect of 0.19 cents in Survey No.456/3 and the boundary



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details are east by Govindarasu's land, south by Govindasamy's land, north and West by Radhakrishnan's land (1st plaintiff). It is pellucid that Ex.A2 and Ex.A3 properties are situated to the South of suit 'A' schedule property. 'B' schedule property is situated to the North of 'A' schedule property. The defendants would contend that 'B' schedule property was exchanged between Sollaimuthu and Govindasamy. 'Exchange' is defined in Section 118 of the Transfer of Property Act, 1882. Section 118 of the Transfer of Property Act, 1882 is given hereunder"

"When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange".

A Transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale."

25.The definition prescribes that when there is an Exchange of ownership of one thing for the ownership of

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another the transfer should be made in the manner adopted for the transfer of properties by sale. Section 54 of the Transfer of Property Act, 1882, prescribes that transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, can be made only by a registered instrument.

25.It is also relevant to refer to Section 17(i) of the Registration Act, which prescribes the documents for which registration is compulsory. Section 17(1)(b) of the Registration Act 1908, is extracted hereunder for better understanding:-

Part III of Registrable Documents reads as follows:

"Section 17. Documents of which registration is compulsory. - (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No.XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877,



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*or this Act came or comes into force,
namely:-*

(b) Other non-testamentary instruments which purport or operate of create, declare, assign, limit of extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property."

26. As per Section 17(1)(b) of the Registration Act, the exchange of tangible immovable property of the value of Rs.100/- and upwards, if not made by a registered instrument, is invalid. If the properties exchanged are movable, Sections 118 and 120 of the Transfer of Property Act, 1908, including the Rules contained in the Sale of Goods Act, 1930 would also apply by following the maxim "permutation est visina emption". It is relevant to note that an oral exchange is not permissible, in view of the amendment of Section 49 of the Registration Act, brought about by Amending Act No.21 of 1929, by inserting Section 49 of the Registration Act. The words "by any provision of the Transfer of Property Act, 1882", occurring in Section 49 of the Registration Act have made it clear that the registration of document is necessary under the Transfer of Property Act, but not under the Registration Act. It

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falls within the scope of Section 49 of the Registration Act, and if the document is not registered, it is not admissible as evidence in respect of any transaction affecting any immovable property comprised therein and do not affect any such immovable property. The transaction by “exchange” is required to be effected through registered instrument, if it is to affect any immovable property worth Rs.100/- or more.

27. Based on the aforesaid details, it is pellucid that oral exchange is not permissible in law. Therefore, it should not lie in the mouth of the defendants that the 'B' schedule property was exchanged between Sollaimuthu and Govindasamy. Therefore, the stand of the defendants is that 'B' schedule property was exchanged between P.W.2-Govindasamy and 1st plaintiff's father Sollaimuthu which is untenable in law and falls on the ground.

28. As already mentioned supra, the 1st plaintiff's father Sollaimuthu Padayachi has purchased 1.38 cents in Survey No.456/3 with given boundaries from Chidambaram Pillai through Ex.A1 dated 06.08.1964. The sale deed, namely, Ex.A1



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is not at all in dispute as already mentioned supra, and 'B' schedule property is the lesser extent of 'A' schedule property. To state it precisely 'B' schedule property consisting of 0.38 cents situated to the North of 'A' schedule property (1 acre), which is also not in dispute. Oral exchange put forth by the defendants also is held as not tenable in law. In such view of the matter as the title for 'B' schedule property stands in the name of the 1st plaintiff's father Sollaimuthu Padayachi then the plaintiffs are entitled to the relief declaration of title in respect of the 'B' schedule property. The defendants having admitted the possession of 'B' schedule property have pleaded oral exchange. As per Section 118 of Transfer of Properties Act, 1908, oral exchange is not permissible in law and therefore, in such circumstances, the plaintiffs are also entitled to for the recovery of possession of the 'B' schedule property. This Court does not find any perversity or infirmity in the findings of the trial Court. This Court does not also find any good reason to upset the findings of the trial Court.

29.In the light of the above discussion, all the Substantial



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Questions of Law are answered in favour of the appellants/plaintiffs.

30. Based on the aforesaid discussions and observations, this Second Appeal stands allowed. Sequel to this, the judgment and decree passed in A.S.No.13 of 2010, dated 25.11.2010 on the file of the Principal Subordinate Court, Vridhachalam stands set aside by confirming the judgment and decree passed in O.S.No.299 of 2004 dated 21.12.2009 on the file of the II Additional District Munsif Court, Vridhachalam. There shall be no order as to costs.

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Index : Yes/No
Speaking / Non-speaking order
gbi

To

1. The Principal Subordinate Judge,
Vridhachalam.
2. The II Additional District Munsif Court,
Vridhachalam.
3. The Section Officer,
V.R. Section,
High Court of Madras, Chennai.

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R.KALAIMATHI, J.,
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