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A.S.No.233 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 18.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.233 of 2022 &
CMP.Nos.8570 of 2022 & 6726 of 2025

Savarimuthu

... Appellant

Versus

1. D.Gandhimathi
2. Josephdurairaj

... Respondents

PRAYER : This Appeal Suit has been filed under section 96 of Code of Civil Procedure to set aside the judgment and decree of the lower I Additional District and Sessions Judge, Coimbatore dated 27.04.2018 in O.S.No.639 of 2012 by allowing this appeal.

For Appellant : Ms.P.Mahalakshmi

For Respondents : Dr.C.Ravichandran



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JUDGMENT

Challenging the decree and judgment of the trial Court dismissing the suit for declaration and recovery of possession, the present appeal has been filed by the unsuccessful plaintiff.

2. The parties are arrayed as per their own ranking before the trial Court

3. The suit property was originally owned by one Durairaj Pillai. The plaintiff is the son-in-law of the the said Durairaj Pillai. According to the plaintiff, the said Durairaj Pillai executed a Will on 19.09.1979 before a notary public at Padang, Indonesia bequeathing all his available properties in favour of his wife Mary Marnish. The said Durairaj Pillai died on 26.05.1985. Therefore, his wife Mary Marnish became entitled not only to the suit property, but also to properties in Indonesia. The daughters and sons of Durairaj Pillai have been given monetary support by their father. Therefore, the suit properties and other properties have been bequeathed in the name of Mary Marnish. On 25.01.1996, the plaintiff and his mother-in-law had entered



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into an agreement for sale of the suit property for a total sale consideration of Rs.16 lakhs and the plaintiff had paid entire sale consideration on the same day. Later, the said Mary Marnish executed a Special Power of Attorney in favour of her daughter Maria Vimala on 25.01.1996 besides she also executed necessary receipts dated 04.01.1996 and 25.01.1996 in favour of the plaintiff for the receipt of sale consideration from the plaintiff. At the instigation of the defendant, the said Mary Marnish delayed in getting necessary permission from the Reserve Bank of India and it delayed the execution of the sale deed. Hence, the plaintiff has filed a suit in O.S.No.1361 of 2000 for permanent injunction on the file of the Principal District Judge, Coimbatore against his mother-in-law and the defendant from alienating the property. Thereafter, the mother-in-law realized the truth and sent necessary letters to the plaintiff on 17.04.2002 and 26.06.2002 to go ahead with the sale as per the power of attorney. Therefore, the property has been registered in favour of the plaintiff through power of attorney, namely his wife. Hence, the plaintiff has withdrawn the earlier suit. The plaintiff is in possession of the southern side vacant area of the suit property. Mary Marnish executed a sale deed transferring the suit property in favour of the plaintiff through her power agent



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Mari Vimala on 02.02.2004. While so, the first defendant, who is one of the daughter of the plaintiff's vendor is in possession and enjoyment of the built up portion of the suit property as a tenant. In spite of several requests being made by the plaintiff to vacate the property, the defendants are illegally squatting in the property. Hence, the suit for declaration and permanent injunction.

4. The suit has been resisted by the first defendant inter alia contending that the suit is undervalued. Though the property belongs to her father, he has executed a Will on 19.09.1979 and it is her contention that the suit property has not been bequeathed in favour of her mother. The agreement dated 25.01.1996 for sale of the property for a sum of Rs.16 lakhs and the power deed is also denied. After the death of her father, her mother is entitled to 1/3rd share in the property. Her mother died on 07.02.2006 and hence, she is entitled to 5/12th share including her 1/12th share. Further, her mother had also executed a registered sale deed 13.05.2011 in her favour and she is entitled to 9/12th share in the suit property.

5. The second defendant also denied the case of the plaintiff.

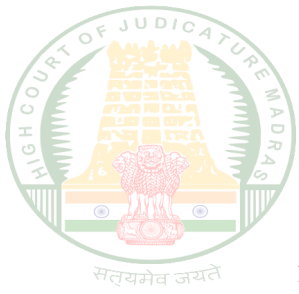


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According to him, Durairaj Pillai executed a Will dated 19.09.1979. His father died on 07.02.2006. It is his further contention that his parents alone are in possession and enjoyment of the property. Hence, opposed the suit.

6. Based on the above pleadings, the following issues have been framed for consideration in the suit :

1. Whether the Will dated 19.09.1979 is true and valid and whether it includes the suit schedule property?
2. Whether the sale agreement dated 25.01.1996 is true and valid?
3. Whether the Power of Attorney dated 25.01.1996 executed by Mrs.Mary Marnish in favour of Maria Vimala is true and valid?
4. Whether the plaintiff is entitled for declaration and delivery of possession of the suit property?
5. Whether the suit is properly valued?
6. Whether the plaintiff is entitled for damages and



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injunction against the defendants?

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7. On the side of the plaintiff, P.W.1 to P.W.5 have been examined and Ex.A.1 to Ex.A.43 have been marked. On the side of the defendants, no witness has been examined and Ex.B.1 has been marked.

8. The trial Court after appreciating the entire evidence, both oral and documentary, has dismissed the suit. Challenging the same, the present appeal came to be filed.

9. In the appeal, a petition has been taken out by the appellant under Order 41 Rule 27 and Section 107 of Code of Civil Procedure to receive the certificate of inheritance rights as additional document. In the petition it is stated by the appellant that he had produced Ex.P.28 Will dated 19.09.1979. But the trial Court has not accepted the Will executed by one Durairaj Pillai in favour of his wife. Now the document relied upon by the petitioner is the certificate of inheritance rights obtained from the Ministry of Law and Human Rights, Indonesia and that document is necessary to prove the

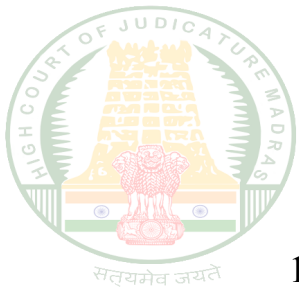


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case of the appellant. According to the appellant, they are not in a position to file the document at the time of filing of the suit. Hence, seeks to receive the document and also to summon the person with whom the certificate is available to prove the certificate of inheritance rights.

10. The said petition has been opposed by the respondents on the ground that the document now sought to be marked is not admissible and only a xerox copy has been filed. Further the execution of the Will is also denied.

11. The appeal has been filed challenging the finding of the trial Court on the ground that Ex.A.28 has been validly proved and execution has also not been disputed and the trial Court ought to have decreed the suit. Further Ex.A.5 filed by the Mary Marnish before the Reserve Bank of India clearly show that she had applied for transfer of property in her favour and that her children have no right over the property. The trial Court wrongly appreciated the evidence and non suited the agreement and the Power of attorney executed executed in this regard.



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12. The learned counsel appearing for the appellant would contend that Ex.A.5 has not been considered by the trial Court and Ex.P.16 Power of Attorney, is a notarized copy also filed. That apart, the Will Ex.A.28 makes it clear that the subject property was bequeathed in favour of Mary Marnish. This aspect has not been considered by the trial Court. Further, it is her contention that the document now sought to be filed, viz., the certificate of inheritance rights also clearly show that the Will has been probated. Therefore, as the Will has already been probated, there is no need to prove the Will further. The trial Court has not even considered all these facts. As per the sale agreement Ex.A.23, entire sale consideration has been received and 54 months time has been fixed to complete the sale. Therefore, mere delay may not be a ground to non suit the appellant. Further, pursuant to the Power of Attorney, the sale deed dated 02.04.2004 Ex.A.26 has also been executed. The trial court has not considered all these aspects.

13. On the other hand, the learned counsel appearing for the respondents would submit that the so called Will said to have been probated at Indonesia has not been proved and an authenticated copy has not been filed



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before the trial Court. Further as the Will has been probated outside the country, Letters of Administration ought to have been obtained with authenticated copy as per Section 228 of the Indian Succession Act. It is his further contention that the Will of the year 1979 relates to the property situated outside India. The said Will is no way connected with the suit property. Therefore, mere admission by the defendants as to the execution of the Will of the year 1979 by the father of the parties would not lead to the inference that the Will would also cover the suit property. Further, it is his contention that alleged sale agreement executed in favour of the plaintiff is a fabricated one. Further Ex.A.14 letter issued by the said Durairaj Pillai makes it clear that the Will does not cover the suit property in favour of his wife. Whereas, his own statement indicate that the property belong to his wife and children. Therefore, the alleged Will which is base for the so called agreement and Power of Attorney cannot be believed.

14. In the light of the above submissions, now the points that arise for consideration is

1. Whether Ex.A.28, the unregistered copy of the Will has



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been proved in the manner known to law?

2. Whether Ex.A.28, unregistered copy of the Will covers the suit property in favour of Mary Marnish.

3. Whether the agreement dated 25.01.1996 is true and valid?

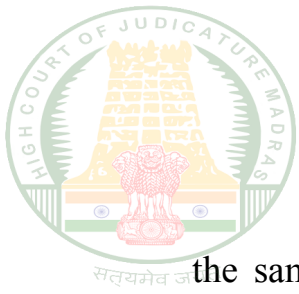
4. Whether the additional document now sought to be filed is required to enable this Court to dispose of the appeal?

5. To what other relief, the parties are entitled?

15. Point No.4 :

The petitioner had filed the petition in CMP.No.6726 of 2025 to receive the additional document, viz., xerox copy of certificate of inheritance rights said to have been issued by the Ministry of Law and Human Rights of Indonesia to show that certificate of inheritance rights of one Durairaj Pillai has been issued by the authorities.

16. According to the learned counsel appearing for the appellant, there is a reference with regard to the Will executed by the said Durairaj Pillai and

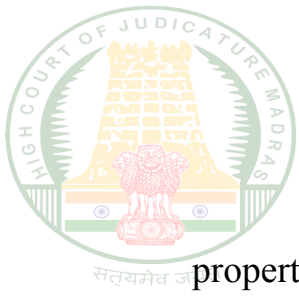


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the same has been registered in accordance with the decree of the Director General of General Administrative Law, Director of Civil Law, Head of Sub-directorate of Inheritance/Legacy. Though the document has been filed, it is relevant to note that it is only a xerox copy and not even an authenticated copy. According to the appellant, this document has been issued by the Ministry of Law and Human Rights, Indonesia. In such case, the petitioner ought to have obtained atleast an authenticated copy from one of the legal heirs of the Durairaj Pillai. Or else, he could have obtained certified copy from the concerned department through one of the legal heirs of Durairaj Pillai. Therefore, in the absence of any steps in this regard, merely on the basis of a xerox copy of the document, the same cannot be admitted in the evidence. Be that as it may.

17. Even assuming that the document is an authenticated document issued by the authorities, the document is no way relevant for deciding the issue for the simple reason that what has to be seen in the suit is whether the plaintiff has proper title to the suit property and whether the document relied upon by him is true and validly executed by the so called owner of the



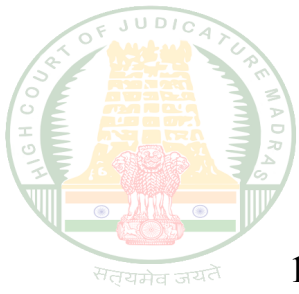
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property. Therefore, the documents now sought to be filed is no way relevant.

Further, it is only a xerox copy. Therefore, this Court is not inclined to allow the application filed under Order 41 Rule 27. The relief with regard to summoning one of the person to be examined with regard to the certificate of inheritance, as already stated such certificate is not at all relevant to decide the issue in the suit. Hence, the petition is liable to be rejected.

18. Points 1, 2 , 3 and 5 :

The plaint proceeded as if the mother-in-law of the plaintiff is the absolute owner of the property in pursuance to the Will executed by his father-in-law on 19.09.1979 at Indonesia. A xerox copy of the so called Will has been filed as Ex.A.28. It is relevant to note that authenticated copy of the Will has not been filed. According to the appellant, the said Will has been probated in Indonesia. Therefore, a copy of the Will has been filed. It is relevant to note that when the Will has been probated outside the country, with the authenticated copy of such probate, Letters of Administration is required as per Section 228 of Indian Succession Act, which has not been done.

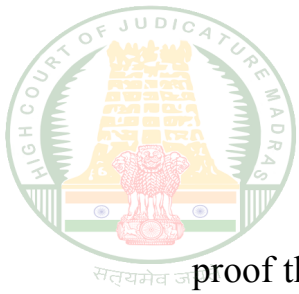


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19. Further, when Ex.A.28 is carefully seen, though there was a mention that certain properties are said to have been bequeathed absolutely, there is no details that the suit property has been bequeathed to the mother-in-law. This has been fortified by the very document filed by the plaintiff as Ex.A.14. Ex.A.14 is said to be a letter sent by the testator, viz., Durairaj Pillai. The letter, Ex.A.14, when carefully perused, shows that it is said to have been addressed to his friend, who is said to be residing in the suit property. The letter is of the year 1983 and reads that there was partition in the year 1980. In Ex.A.14, it is clearly stated that after partition, the property had gone to his wife and children. If really the subject property has been specifically bequeathed to his wife under the Will Ex.A.28, the testator would not have informed his friend that the property has been divided among his wife and children.

20. Further, it is the specific case of the defendants that the suit property was not the subject matter of the Will dated 19.09.1979. Though defendant admitted xerox copy of the Will dated 19.09.1979, the Will is primarily in respect of the properties situated at Indonesia. Therefore, in the absence of any



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proof that the mother-in-law has become the absolute owner of the property by virtue of the Will, the contention of the plaintiff that her mother-in-law became absolute owner of the property by virtue of Ex.A.28 cannot be countenanced.

21. It is further to be noted that Ex.B.1 is the registered Power of Attorney executed by the wife of the plaintiff in favour of the first defendant. The power of attorney was executed on 18.09.1997, wherein she has clearly averred that the property belongs to her father Durairaj Pillai and he died on 26.05.1985 leaving behind his wife and 8 children including her. Therefore, she is entitled to 1/12th share in the property. She has clearly stated that since she was residing in Indonesia, she was not in a position to attend the property situated at Coimbatore. Therefore, she has appointed the first defendant being her own sister as her power agent to deal with her properties.

22. It is relevant to note that if really the property absolutely belonged to her mother by virtue of the Will, there was no necessity for the plaintiff's wife to claim her independent right ignoring the so called Will in favour of her mother. These facts also cannot be ignored altogether for the simple reason



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that it is the specific case of the plaintiff that in the year 1996, under Ex.A.23, the sale agreement came to be executed by the mother-in-law. On the same day, a Special Power of Attorney has also been executed in favour of the wife of the plaintiff. Despite the fact that so called power of attorney was executed in favour of his wife, by his mother-in-law to execute the sale deed in favour of her husband, executing a power of attorney under Ex.B.1, asserting independent right and share makes it very clear that the document relied upon by the plaintiffs Ex.A.23 and Ex.A.27 sale agreement and Special Power of Attorney have been fabricated later. The fabrication of those documents are inherent in the documents itself for the following reasons.

23. A perusal of the recitals of the document, viz., Ex.A.28 makes it clear that the parents of the parties are citizens of Indonesia. Therefore, the plaintiff's mother-in-law came to India at the relevant point of time, particularly on 25.01.1996 and executed the document is highly doubtful. Her presence in India at the relevant point of time has not been established. The plaintiff has not produced any passport to prove her presence in India at the relevant point of time. It is also relevant to note that Ex.P.31 is a copy of the



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plaint filed in the suit in O.S.No.1361 of 2000 filed by the plaintiff. Even in the above suit, there is no mention about the the alleged agreement of sale executed in favour of the plaintiff and Power of attorney executed by the mother-in-law of the plaintiff in favour of his wife.

24. It is further relevant to note that the so called agreement of sale was said to have been executed on 25.01.1996 by the mother-in-law, has been executed in Rs.20/-stamp paper and the document has been prepared as a sale agreement. It is also relevant to note that the stamp paper value at Rs.20/- for the agreement has been amended only in the year 2001 by the Tamil Nadu Act 9 of 2001 with effect from 01.07.2011. Prior to that stamp paper value for an agreement was only Rs.10/-. Therefore, when Rs.10/- stamp paper was required for any agreement in the year 1997, drafting the agreement in Rs.20/- stamp paper which was amended in the year 2001, creates serious doubt on the very existence of the agreement on the date alleged. This doubt is further fortified by the fact that on the same day special Power of Attorney was also said to have been executed by the mother-in-law in favour of the wife of the plaintiff. It is relevant to note that the said power of attorney is also drafted on



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Rs.20/- stamp paper. It is further noted that any power of attorney to be executed, proper stamp paper value is Rs.100/- at the relevant point of time.

Stamp value of 100 rupees stamp paper has been amended on 01.07.1992 by Tamil Nadu Act 39 of 1992 with effect from 01.07.1992 itself. Both stamp papers, for the agreement for sale and power of attorney were purchased at the same time in continuous serial numbers. Therefore, preparing power of attorney on the 20 rupees stamp paper also creates serious doubt about its genuineness.

25. Further, it is also to be noted that in the agreement, it is stated by the plaintiff that he has paid the entire sale consideration of 16 lakhs on the same day. When the so called vendor also said to have been present in India at the relevant point of time, normal prudence of a person would demand to execute sale deed straight way. Therefore, fixing 54 months time to complete the sale and getting another special power of attorney in favour of his wife, is against the normal human conduct, the Court can very well presume that such conduct is certainly against normal human conduct and that conduct will lead to the inference that these documents have been created at a later point of time very



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conveniently by purchasing Rs.20 stamp papers. When the so called executant was a citizen of Indonesia, her presence in India ought to have been proved, which has not been proved by the plaintiff.

26. Further, it is also the stand of the plaintiff that since his mother-in-law sent letters dated 17.04.2002 on 26.04.2002 marked as Ex.A.32 and Ex.A.33, sale deed was executed by his wife, pursuant to the Power of Attorney. Ex.A.32 and Ex.A.33 are said to be letters addressed by the mother-in-law requesting the plaintiff to proceed further on the basis of the agreement. These letters are sent by way of Certificate of Posting. Therefore, merely sending letters by certificate of posting, it cannot be presumed that only the mother-in-law has sent such letters. There cannot be such presumption attached to such letters.

27. Further, it is the contention of the plaintiff that the sale consideration has also been paid to his mother-in-law. To substantiate the said fact, he relied on the documents Ex.A.24 and Ex.A.25 dated 25.01.1996 and 04.01.1996 respectively. Ex.A.24 and Ex.A.25 are nothing but promissory



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notes said to have been executed by the mother-in-law. If any person receives the sale consideration, it is highly improbable to contend that they will execute promissory notes towards the sale consideration. Further, the very signatures found in both the documents, one on the stamp and below the stamp also creates some doubt. When the signatures are compared, between both the signatures, there are lot of differences. The signature found on the stamp in Ex.A.25, the letter 'M' on the stamp is irregular. Similarly, in the letters 'r' and 'n' there are some difference when compared to the signature found below the stamp. At any event, it is highly improbable to contend that the person who received her own money become a debtor by executing the promissory notes. All these facts clearly lead to the fact that Ex.A.23 sale agreement and Ex.A.27 Power of Attorney have been fabricated at a later point of time.

28. Further, very conveniently, the plaintiff has not impleaded all the legal heirs of the said Durairaj Pillai. They are necessary parties for proper adjudication of the lis between the parties and without their presence there cannot be proper adjudication. The suit has been filed only against one of the legal heir of the Durairaj Pillai. Except one daughter, others have been



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conveniently omitted. Further, the so called beneficiary Mary Marnish has given an application to the Reserver Bank of India, on 07.07.1998, wherein she had sought to transfer the property in her favour and her children, after the death of her husband. Later, on 12.04.1999, she has averred that her children have no right in the property, same can be seen in the communication received from the Reserve Bank of India, which is marked as Ex.A.5. If really, the plaintiff's mother-in-law became owner of the suit property by virtue of Ex.A.28, there was no necessity for her to seek transfer by way of any inheritance not only in her favour but also in favour of her children. These facts also indicate that the so called bequeath in her favour has not been established.

29. Further Ex.A.1 notice emanated from the side of the plaintiff on 22.09.1998, wherein there is no whisper whatsoever with regard to the sale agreement, viz., Ex.A.24 and Ex.A.27 Special Power of Attorney. If those documents came into existence in the year 1996, prudence of a person demands that the same will be informed by way of legal notice or reply notice. But very conveniently the dates of Ex.A.24 and Ex.A.25 have been omitted.



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Further in Ex.A.2, legal notice, the dates of the sale agreement and power of attorney are very conveniently omitted. If really these documents existed prior to Ex.A.2, legal notice dated 20.03.2000, the particulars of those documents ought to have been mentioned in the legal notice. Further, the nature of sale consideration agreed and paid is also absent in the legal notice. When the existence of agreement of the year 1996 Ex.A.23 and Special Power of Attorney Ex.A.27 are not whispered in Ex.A.1 and Ex.A.2 issued in the year 1998 and 2000, lead to inference that those documents have been created or fabricated at later point of time. Such a presumption can be drawn by invoking the provision of Section 114 of the Indian Evidence Act.

30. P.W.2 was examined to prove the execution of the agreement as well as the receipt of the sale consideration. The evidence of P.W.2 indicate that all the documents have been signed in the advocate's office. His evidence also indicate that he is also aware of the sale transaction etc. That being the case, there was no necessity to obtain promissory note for the sale consideration. His evidence further indicate that he is a name lender and he is



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a close friend of the plaintiff. The evidence will not help the plaintiff in proving the documents. P.W.3 and P.W.4 have been examined to prove the signature of their father and they have no idea of the document. Hence, their evidence also will not help in proving the documents. Similarly evidence of P.W.5 also indicates that the document has been prepared by the lawyer and the document has been written in the lawyer's office. These document have been executed at one place. Therefore, the alleged sale agreement and power of attorney have not been established and none of the legal heirs of the Durairaj Pillai have been made as a party. Hence I find no merits in the appeal. The points are answered accordingly.

31. In the result, this Appeal Suit is dismissed and judgment and decree of the trial Court in O.S.No.639 of 2012 dated 27.04.2018 is confirmed No costs. Accordingly, the petition in CMP.No.6726 of 2025 is rejected. Consequently, CMP.No.8570 of 2022 is closed.

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To,

1. The I Additional District and Sessions Judge,
Coimbatore.
2. V.R. Section, High Court, Madras.



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N. SATHISH KUMAR, J.

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