

A.S.No.185 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 09.07.2025

Pronounced on:18.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.185 of 2022
& C.M.P.No.6967 of 2022

1. Sellamuthu (Died)
S/o.Palanimuthu,
No.5/183, North East Street,
Pasumbalur Village and Post,
Veppanthattai Taluk,
Perambalur District.

Angamuthu (died)

2. Ramachandran
S/o.Angamuthu,
No.5/185, North West Street,
Veppanthattai,
Pasumbalur (South),
Perambalur.

3. Poongavanam,
W/o.Chellathurai,
No.57/2, A.K.Nagar,
Venbavoor, Venbavur Veppanthattai,
Vembavur, Perambalur District.

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4. Selvi (Died)

W/o.Boopathi,
No.4/224, Kila Street,
Palaiya Maravanatham,
V.Kalathur, Perambalur.

5. Kalaiyarasi

W/o.Manikandan,
No.5/99, North East,
Pasumbalur,
Veppamthattai Taluk,
Pasumbalur (North), Perambalur.

6. Navamani,

W/o.late Sellamuthu

7. Palanivel

S/o.late Sellamuthu,
No.5/183, North East St,
Pasumbalur,
Veppamthattai Taluk,
Pasumbalur (North),
Perambalur District.

8. Mahendran,

S/o.late Sellamuthu,
No.5/183, North East Street,
Pasumbalur,
Veppamthattai Taluk,
Pasumbalur (North),
Perambalur District.



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9. Vijayakandipan,
S/o.late Sellamuthu,
No.5/183, North East St,
Pasumbalur,
Veppanthattai Tk,
Pasumbalur (North) Perambalur Dist.

(A1 Died. A6 to A9 are brought on record as LR'S of the deceased A1 vide Court order dated 11.06.2025 made in C.M.P.Nos.11939,11943,11949/2025 in A.S.No.185/2022 (GJJ))

10. S.Ananthi
W/o. Siva,
No.5/168, North Street,
Pasumbalur (North),
Perambalur. ... Appellant

(A4 Died. A10 is brought on record as LRS of the deceased A4 vide court order dated 1.7.2025 made in C.M.P.No.14833/2025 in A.S.No.185/2022 (GJJ))

/versus/

1. State of Tamil Nadu
Rep. by its District Collector,
Perambalur District.

2. Tahsildar
Taluk Office,
Veppanthattai.

3. The Village Administrative Officer
Pasumbalur Village and Post,
Veppanthattai Taluk,
Perambalur District.

... Respondents



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Prayer:- Appeal Suit has been filed under Order 41 Rule 1 read with Section 96 of the Code of Civil Procedure, against the judgment and decree of the Principal District Court at Perambalur, dated 15.07.2021 in O.S.No.13 of 2020.

For Appellant : Mr.P.Valliappan, Senior Counsel,
for M/s.PV Law Associates.

For Respondents : Mr.R.Siddharth,
Additional Government Pleader, for R1 & R2

: No appearance, for R3

J U D G M E N T

The appeal is directed against the dismissal of the Suit for declaration of title and permanent injunction.

2. The appellants herein are sons of Palanimuthu. They claim title over the suit property on the basis of long possession of the suit property, which is classified as Government Porambokku.

3. Their claim is primarily based on the penal tax receipts (B Memo) paid by their father and by the plaintiffs 1 and 2 for the continuous occupation of the land



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by encroachment and also the earlier litigations between them and one

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Veeramuthu, S/o Muthusamy in O.S.No.673 of 1996 before the District Munsif Court, Perambalur. The said suit for declaration of title and permanent injunction though has been allowed by the Trial Court against the first plaintiff, on appeal in A.S.No.7 of 2005 on the file of Sub-Court, Ariyalur, the Trial Court decree was set aside. The appellate Court has held that only the plaintiffs' family is in long possession and peaceful enjoyment of the property ever since 1976. The second Appeal filed by the legal heirs of Veeramuthu before the High Court in S.A.No.857 of 2018 dismissed on 24.01.2019 confirming the judgment of the first Appellate Court.

4. While the fact being so, Veeramuthu suppressing the fact that the Trial Court decree dated 17.04.2004, later reversed, on appeal, had obtained patta for the suit property in his name vide proceedings of RDO dated 27.08.2013. As against the said proceedings, the first plaintiff preferred appeal and after enquiry, the patta wrongly issued to Veeramuthu, S/o Muthusamy, was cancelled on 30.09.2015. Thereafter, without right or title, the said Veeramuthu had created two sale deeds dated 18.04.2017 through his power agent Abdul Rahim as if he has



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title over the suit properties. The sale deeds dated 18.04.2017 in favour of Jubaita

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Begum and Hakkim Basha were created with bad intention and malicious mind, knowing fully well that the decree in O.S.No.673 of 1996, dated 17.04.2004 was set aside and the patta issued in favour of Veeramuthu on 27.08.2013 also cancelled.

5. Not stopping with that, the purchasers had created bogus patta in their name and leased out the property to one Srinivasan and foisted a police complaint against the sons of the first plaintiff. Hence, the first plaintiff narrating the events filed W.P.No.13409 of 2018 for cancellation of the fraudulent sale deeds executed by the power agent of Veeramuthu and the patta issued in the name of Jubaita Begum and Hakkim Basha, based on the fraudulent sale deeds. In the writ petition as directed by the High Court, enquiry was conducted and the patta in the name of Jubitha Begum and Hakkim Basha was cancelled and the suit land re-classified as 'Government Proambokku' in all the Revenue Records.

6. Alleging that, the revenue officials namely, the second and third defendants ever since 15.05.2020 onwards trying to disturb their peaceful long



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possession and making all attempts to dispossess them, the suit is filed.

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7. The cause of action for the suit is described as below: -

“20.Cause of action: Cause of action for the suit has arisen on and from 15.05.2020 when onwards, 2 and 3 defendants at the instruction of 1st defendant are frequently giving disturbances to the settled and long possession and enjoyment of the plaintiffs in the suit properties by attempting to dispossess the plaintiffs from the suit properties abruptly and on all subsequent days, when threat for dispossession continues from the end of defendants to the plaintiffs possession of the suit properties at Pasumbalur (North) Village, Veppanthattai Taluk, Perambalur District where the suit properties are lie within the jurisdiction of this Hon'ble Court.”

8. The defendants, all Government officials and representatives of the State though put to notice, did not participate the trial. They remained absent and set exparte.

9. The first plaintiff Sellamuthu mounted the witness box and examined as

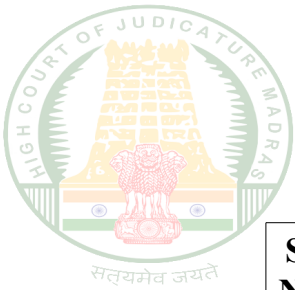


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PW-1. The following 15 documents as Ex.A-1 to Ex.A-15 marked.

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Sl. No.	Exhibits	Particulars
1.	Ex.A1 series	Penal Tax Receipt.
2.	Ex.A2 Series	Penal Tax Receipts(8 Nos.)
3.	Ex.A3Series	Penal Tax Receipts (6 Nos.)
4.	Ex.A4	Certified copy of judgment in A.S.No.94/2008 dated 30.03.2015 passed by the learned Subordinate Judge, Perambalur.
5.	Ex.A5	Order issued by Revenue Divisional Officer, Perambalur dated 27.08.2013.
6.	Ex.A6	Order issued by District Revenue Officer, Perambalur dated 30.09.2015.
7.	Ex.A7	Order passed by the Hon'ble High Court, Madras in W.P.No.13409/2018 and W.M.P.No.15808/2018, dated 06.06.2018.
8.	Ex.A8	Certified copy of Sale deed dated 18.04.2017 executed by one Abdul Rahim to one Jubaitha Begum.
9.	Ex.P9	Certified copy of Sale deed dated 18.04.2017 executed by one Abdul Rahim to one Hakkim Basha.
10.	Ex.A10	Online copy of FMB sketch in S.F.No.398/1A
11.	Ex.A11 series	Online copies of computer 'A' Register Extract(5 Nos.)
12.	Ex.A12	Certified copy of decree in A.S.No.94/2008, dated 30.03.2015 passed by the learned Subordinate Judge, Perambalur.
13.	Ex.A13series	True copies of Adangal Register Extracts(2 Nos.) in Fasli Nos.1394 and 1393.
14.	Ex.A14 series	Online copy of computer pattas(2 Nos.)



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Sl. No.	Exhibits	Particulars
15.	Ex.A15	Online copy of Encumbrance Certificate.

10. The trial Court on appreciating the evidence held that, the plaintiffs claiming declaration of title, based on long possession is supported by the penal tax receipts issued by the revenue department. However, they were always considered as encroachers of the Government porambocku land. Hence, however, long their possession, it will not confer title on them.

11. In the appeal, the learned Senior Counsel appearing for the appellants contended that, the three Members Bench of the Hon'ble Supreme Court in ***Rame Gowda (dead) by LRS –vs- M.Varadappa Naidu (dead) by LRS and another reported in [(2004 (1) SCC 769)*** had held that occupant in “settled possession” cannot be dispossessed without recourse to law. Therefore, even if the plea of declaration of title not found in favour of the appellants, the consequential relief of permanent injunction ought not to have denied to the plaintiffs, who had established their long possession through exhibits, such as, penal tax receipts and Adangal. Beside, the clear finding of the Court in the previous round of litigation,



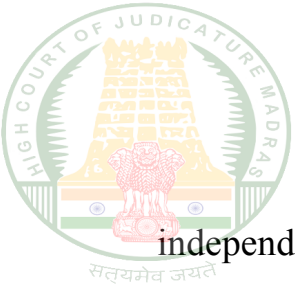
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wherein it is observed that, the father of the plaintiffs and after his demise, the

plaintiffs are in continuous and peaceful possession of the property since 1974 .

12. Per contra, the learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that, the possession of the plaintiffs were not peaceful. The very fact of collecting penal tax is a proof that they are encroachers and for the encroachment, penalty has been levied. Ex.A-4 and Ex.A-12 which are judgment and decree copy of A.S.No.94 of 2008, is not a proof of title. In the said judgement, the title of the plaintiffs is not declared. In fact, the finding in the appeal suit in A.S.No.94 of 2008 is against the plaintiffs claim of title over the government property, they encroached.

13. The dictum laid in ***Rame Gowda (cited supra)*** revisited by the Bench of equal strength by the Hon'ble Supreme Court in ***Maria Margadria Sequeira Fernandes and others –vs- Erasmo Jack De Sequeira reported in [(2012 (5) SCCC 370]*** and had distinguished long possession of a permissive occupant or licensentary and the long possession of a trespasser. Therefore, the plaintiffs/appellants cannot claim protection of injunction, which is not an



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independent right, but incidental to the claim of title.

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14. The point for consideration is Ex.A-1 to Ex.A-15 give any right of title by long possession or protection of possession ?

15. It is an admitted fact and also it is amply proved through documentary evidence that the property is a government proambokku land. The grant of patta had been cancelled, after intervention of the Court. The long possession of the property with Palanimuthu and thereafter, with his sons Chellamuthu and Veeramuthu is not disputed. The same is also proved through the penal tax receipts marked as Ex.A-1 to Ex.A-3. However, this will neither confer title nor protection from eviction.

16. The plaintiffs seeks the following relief's in the present suit:-

(i) To declare that plaintiffs are the absolute owners of the suit properties and for consequential relief of permanent injunction in favour of the plaintiffs and against defendants, restraining them their men, agents and servants from in anyway interfering with the peaceful possession and exclusive enjoyment of the



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plaintiffs in suit properties either by claiming superior right so as to affect the possessory right of the plaintiffs in suit properties or by giving any kind of interferences to the peaceful possession and exclusive enjoyment of the plaintiffs in suit properties for all time to come.

(b) To award cost of the suit.

17. In case of an unauthorised occupation of Government Land, Board Standing Order, 26 contemplates different course of action to deal with such unauthorised occupants. One such action is to impose a penalty in addition to the assessment or the Collector may adopt, in addition to the imposition of assessment and penalty or in additional to the imposition of assessment but without penalty summarily evict the person in occupation.

18. For easy reference Board Standing Order 26(2) is extracted below:-

“26(2): Courses to be adopted in dealing with unauthorised occupation of Government land:- In dealing with unauthorised occupation of Government land, the Collector may adopt one of the following courses, but a Tahsildar or Deputy Tahsildar may adopt only the first or



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second of them:-

(1)he may simply levy assessment according to the provisions of sub-sections (i) and(ii) of Section 3 of the Act;

(2)he may impose a penalty in additional to the assessment;

(3)He may in addition to the imposition of assessment and penalty or in addition to the imposition of assessment but without penalty summarily evict the person in occupation;

(4)he may, in cases where eviction is ordered, also direct the forfeiture of any crop or other product raised on the land and of any building or other construction erected or anything deposited thereon if such building or construction or thing is not removed within the time specified in the notice issued under Section 6(1) of the Act.

The Act being of a penal nature, its provisions must be strictly followed; and Collectors (including divisional officers, tahsildars and deputy tahsildars in whom the power of enforce these provisions is vested, should therefore be careful to note the limitations prescribed by the Act; more particularly those in Section 3(i) as to the amount of assessment to be imposed on the assessed waste; those in Section 5(i) as to the exemption of such occupation ordinarily from penalty it does not extend beyond a period of one year; and in Sections 6 and 7 as to notice.”



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WEB COPY 19. It is an admitted case that the Government land has been occupied by the plaintiffs and some time, penal tax has also been collected from them. Such long possession whether will entitle them to claim title came for consideration in ***Rame Gowda (cited supra)***, before the Hon'ble Supreme Court where two adjoining landowners fought for a piece of land adjoining to their property each claiming title over it. Under the said circumstances, the Hon'ble Supreme Court, considering the settled possession of one of the party, held that person in settled possession gains right to possession and even the rightful owner can recover from him only by taking recourse to law. In the said judgment, at para 8 it is stated as:-

“8.It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands,



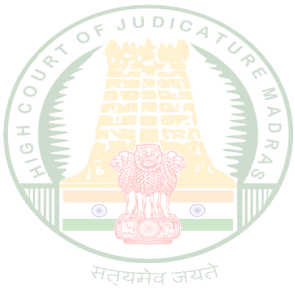
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and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.”

20. In this case, the relief sought is a declaration of title. The ancillary relief of injunction is only a consequential prayer. The main prayer of declaration of title has rightly been declined by the trial Court, because mere possession of a Government land, on paying penal tax, for long period, will not confer title to the occupant. Likewise, the unauthorised occupant of the Government Land can be evicted as per the procedure contemplated under the Board Standing Order 26. Therefore, consequential relief of injunction, which goes along with the main relief of declaration of title, has to fail, since the main relief itself is not sustainable.



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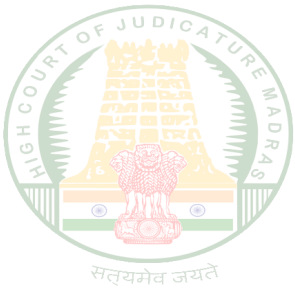
WEB COPY 21. In this case, the declaration of title is the main relief and injunction is the consequential relief. The relief of injunction is not independent but, it is dependent on the main relief.

22. In *Maria Margarida Sequeira Fernandes and others v. Erasmo Jack De Sequeira (dead) through LRS* reported in [(2012)5 SCC 370], the Hon'ble Supreme Court after considering catena of judgments including *Rame Gowda v. M.Varadappa Naidu* reported in [(2004)1 SCC 769], laid down the following principles of law which emerges or crystallised for granting or refusal of injunction as under:-

“97.Principles of law which emerge in this case are crystallised as under:

(1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

(2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.



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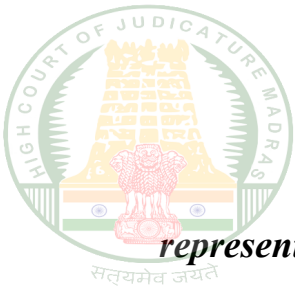
(3) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

(4) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour.

(5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.”

23. Again, in *Behram Tejani and others v. Azeem Jagani reported in [(2017)2 SCC 759]*, the Hon'ble Supreme Court, reiterating its view, after following the *Rame Gowda case* (cited supra), held that a person holding the premises gratuitously or in the capacity as a caretaker or a servant would not acquire any right or interest in the property or even long possession in that capacity would be of no legal consequence.

24. In *Padhiyar Prahladji Chenaji (deceased) through legal representatives v. Maniben Jagmalbhai (deceased) through legal*



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representatives and others reported in [(2022) 12 SCC 128], the Hon'ble Supreme

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Court had an occasion to distinguish the relief of permanent injunction sought as an independent substantive relief in its own right, or as a consequential relief depending on the other substantive relief and also explained the difference between dispossession in accordance with due process of law and due course of law. Para 25 of the above said judgment says:-

“25.An injunction is a consequential relief and in a suit for declaration with a consequential relief of injunction, it is not a suit for declaration simpliciter, it is a suit for declaration with a further relief. Whether the further relief claimed has, in a particular case as consequential upon a declaration is adequate must always depend upon the facts and circumstances of each case. Where once a suit is held not maintainable, no relief of injunction can be granted. Injunction may be granted even against the true owner of the property, only when the person seeking the relief is in lawful possession and enjoyment of the property and also legally entitled to be in possession, not to disposes him, except in due process of law. “

25. In the above said case, the plea is that even if the relief of title is declined, the long possession cannot be disturbed except due process of law. The



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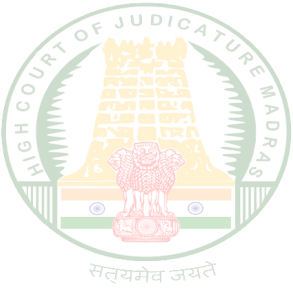
Hon'ble Supreme Court held that the requirement of due process of law or due

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course of law stands satisfied, once recourse to law been taken. It does not the matter, who brought the action to Court, it could be either the owner in the action for enforcement of his right to eject the person in unlawful possession, or, it could be a person, who sought to be ejected, in an action to prevent the owner from ejecting him.

26. Referring the judgment of the Hon'ble Supreme Court in *Thomas Cook (India) Ltd., v. Hotel Imperial* reported in *[(2006) SCC Online Del 36]*, the Hon'ble Supreme Court held that once the rights of the parties are adjudicated and the true owner is declared, it is to be constituted that due process of law been followed. Thereafter, no injunction can be granted against the true owner. The true owner need not resort to a substantive suit for recovery of possession.

27. It is thus well settled by the Hon'ble Supreme Court in the above said judgments that in a suit for declaration of title and for consequential relief of injunction, if the declaration of title is not granted for want of proof, the consequential relief of injunction cannot be granted.



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WEB COPY 28. In the instant case, the land is owned by the Government and the appellants are the unauthorised occupation. Hence, they are neither entitled for declaration of title nor for injunction. Therefore, the judgment and decree of the Principal District Court at Perambalur, dated 15.07.2021 in O.S.No.13 of 2020 are hereby confirmed. Accordingly, **the Appeal Suit is dismissed**. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

18.07.2025

Index :Yes

Speaking order/non speaking order

Neutral citation :Yes/No.

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To,

1. The Principal District Court, Perambalur.

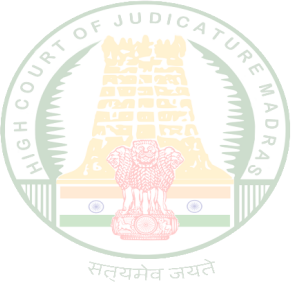
2. The District Collector, Perambalur District.

3. The Tahsildar, Taluk Office, Veppanthattai.

4. The Village Administrative Officer, Pasumbalur Village and Post, Veppanthattai Taluk, Perambalur District.

5. The Section Officer, V.R.Section, High Court, Madras.

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Dr.G.JAYACHANDRAN,J.

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delivery judgment made in
Appeal Suit No.185 of 2022
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