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APHC010428522016



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3333]
(Special Original Jurisdiction)**

FRIDAY, THE SEVENTEENTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

**THE HONOURABLE SMT JUSTICE V.SUJATHA
CIVIL MISCELLANEOUS APPEAL NO: 1008/2016**

Between:

1. THE KRISHNA DISTRICT ADMINISTRATION & 4 OTHERS,
REP. BY ITS COLLECTOR, KRISHNA AT MACHILIPATNAM.
2. THE TAHSILDAR, VIJAYAWADA RURAL MANDAL,
KRISHNA DISTRICT.
3. THE SUB-REGISTRAR, REGISTRATION OFFICE,
GUNADALA S.R.O., VIJAYAWADA.
4. THE COMMISSIONER, ENDOWMENTS DEPARTMENT,
GOVERNMENT OF A.R, TILAK ROAD, HYDERABAD.
5. THE ASSISTANT COMMISSIONER, ENDOWMENTS
DEPARTMENT, VIJAYAWADA.

...APPELLANT(S)

AND

1. SRI ANJANEYA SWAMY VARI TELMPLE, (also called as Sri
Seetharamanjaneya) Temple/ Family Temple Trust, Poranki
Village, Penamaluru Mandal, Krishna District, Rep. by its
Managing Trustee Sri Tenneti Venkata Subbarao

...RESPONDENT

Appeal Under Section _____ against order to allow the
Revision Petition by setting aside the order dt.20.06.2016 made in
OP No.355/2015 on the file of the court of the District Judge,
Machilipatnam, Krishna District

IA NO: 1 OF 2016(CMAMP 1962 OF 2016

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the order dt.20.06.2016 made in OP No.355/2015 on the file of the court of the District Judge, Krishna District, Machilipatnam.

Counsel for the Appellant(S):

1.GP FOR ARBITRATION (AP)

Counsel for the Respondent:

1.VENKATASUBBAIAH V

ORDER:

This civil miscellaneous appeal is filed by the appellants/respondents under Order XLIII Rule 1-A of Code of Civil Procedure (for short "C.P.C."), challenging the order dated 20.06.2016 passed in Trust O.P.No.355 of 2015 by the Principal District Judge, Krishna, Machilipatnam, whereby, the Trial Court allowed the said O.P. filed by the respondent/petitioner declaring that the "Sri Anjaneya Swamyvari Temple" situated at Poranki village, Penamaluru Mandal as a private Trust temple and also declared the properties owned by the temple as private properties of the temple.

2) For the sake of convenience, the parties to the present C.M.A. will hereinafter be referred as petitioner and respondents, as arrayed before the Trial Court in Trust O.P.No.355 of 2015.

3) The respondent/petitioner has filed the said Trust O.P.No.355 of 2015 against the appellants/respondents under Sections 94, 6, 5, 36, 13, 20, 32 and 38 read with Sections 94 and 34 of the Indian Trust Act, 1882 for declaration and other reliefs, which are extracted hereunder:

- 1) for declaration/direction that the petitioner temple/Private Trust is not amenable to the provisions of the Indian Trust Act, 1882 and as such it is to be declared as a Private Trust, with reference to its

identity, nature, status and purpose etc., different and distinct from a Public Trust;

- 2) for the ancillary and incidental declaration/direction that the properties owned by the Petitioner cannot be identified or described as Endowment Properties and cannot be subjected to the provisions of the A.P. Endowments Act and to any restraint as to their possession, user or alienation etc.,
- 3) for a consequential relief in the nature of permanent injunction restraining the respondents in any manner interfering with the character, nature of the Petitioner Temple/ Private Trust;
- 4) for consequential relief in the nature of permanent injunction restraining the respondents in any manner interfering with the properties owned by the Petitioner Temple/Private Trust as to their Management, user, alienation etc., and for costs.

- 4) The brief facts of the case are as under:

The temple "Sri Anjaneya Swamyvari (also called as Sri Seetharamajaneya) Temple" is a family temple trust owned by the petitioner's family, which has private property and the said temple was originally constructed in the year 1905 in the mango garden situated at D.No.141 (now covered by R.S.No.433/2), Poranki Village, Penamaluru Mandal, Krishna District, to perform poojas by the family members of late Sri Rayapati Venkata Subbaiah.

5) It is contended by the petitioner that late Venkata Subbaiah purchased agricultural land to an extent of Ac.4.06 cents in D.No.28 of Dona Atkuru Village, Krishna District vide registered sale deed dated 01.07.1915 with his own money in the name of Sri Anjaneya Swamyvari Temple, representing himself as a trustee. In the re-survey which was conducted in the year 1927, the agricultural land was shown as Field No.54/1 and the ownership of the said land was shown as "Anjaneya Swamy" and the same was reflected in the Rough Settlement Register and was published by the Survey Department. Being founder of the said trust Rayapati Venkata Subbaiah has executed a registered "Will" dated. 28.08.1929 creating family temple trust for the said temple exclusively for worship, for the benefit of his family members and for their mutual spiritual happiness. Except the family members of Sri Rayapati Venkata Subbaiah, no one has got rights or duties with respect to the family temple trust and it was not established for the outsiders.

6) Earlier to the said Will, the said Subbaiah has executed another Will dated 16.05.1926, wherein at para 6, it is mentioned that the house in which he lived is named as "Sri Anjaneyaswamy Kuteer" which itself disclose his faith and reverence to the God. His temple and house were described as "Mathalayam" in the concerned documents/deeds. The said "Will" further discloses that even after his death the temple and "Mathalayam" should not be dedicated to the public. As the said Venkata Subbaiah had no male issues, appointed his two son-in-laws i.e., Ganugapati Kutumba Rao and Tanneti Venkata Subbarayudu as his successors and also

mentioned in the "Will" that after their death the male successors of both families to be continued as trustees of the said temple. After the death of Subbarayaudu, his only son Pattabi Ramaiah became the Managing Trustee and after his death, his son has become the Managing Trustee of the temple.

7) It is further contended that the recitals and contents of the "Will" dated 28.08.1929 constitutes the memorandum of trust and management of affairs of the temple which is absolutely under the control of the trustees and also excludes all the outsiders. The trust consists of one Managing Trustee and 7 other Trustees in order to manage the affairs of the temple and presently 6 male successors of "Tenneti" family and 2 male successors of "Ganugapati" family were acting as trust members. Thereafter, some more properties were also purchased and acquired in the name of "Sri Anjaneya Swamyvari temple" measuring about Ac.9.45 cents at Tadigadapa Village apart from the property i.e., Ac.4.06 cents situated at Dona Atkuru Village. The property which was acquired at Tadigadapa Village was sold in the year 1989 for the requirements of the temple with the consent of all the trust members for the benefit of the trust and the temple is having only Ac.4.06 cents of land at Dona Atkuru Village. Traditional Poojas, Dhupa Deepa Naivedyam, Athidiseva, other divine and charitable activities of the God including Utsavams are being performed in the temple. The temple is maintaining Archaka, other Paricharkas and other staff members for attending spiritual works and poojas in the temple. The expenses for the maintenance of the temple, staff have escalated and the petitioner

temple/family private trust is finding it difficult to provide necessary and sufficient expenses towards employees and therefore private trust intends to change the user and also to dispose of some property out of the schedule property and to invest the said amounts in any nationalized banks in order to maintain the expenses of the temple. Therefore, petitioner approached respondent No.3 in the year 2011 for the market value certificate and respondent No.3 refused to give the certificate stating that the land was classified as "Endowments Land" and it is under the "Prohibited List". Being aggrieved by the said information, petitioner preferred Writ Petition No.23487 of 2011 before this Court, seeking a direction to the Sub-Registrar, Gunadala i.e. respondent No.3 to give valuation certificate and this Court was pleased to pass interim order on 19.08.2011 and as per the orders of this Court, respondent No.3 issued valuation certificate stating that the land is classified as "Endowments Land" and hence it is placed under "prohibited list".

8) Thereafter, the petitioner preferred application before respondent No.5 seeking clarification whether the temple land in question was listed in their registers as "Endowments Land" for which respondent No.5 clarified stating that land belongs to the temple and the temple was exempted from the Endowments Act by the Madras Government in the year 1927. But he has not sent any proceedings to the Registrar to keep the lands out of the Prohibited List. The petitioner further contends that he was constrained to file another Writ Petition before this Court i.e., W.P.No.9564 of 2012 seeking a direction to remove the temple land from the Prohibited

List and for issuance of pattadar pass book and title deed in the name of the temple and the said writ petition is pending. Further, at the instance of the Endowments Department, Registration Department has been describing the nature of the property as that of the property of the Endowments Department, as such, he is constrained to file the present O.P. seeking to declare the temple as a private trust and the properties of the temple as private properties of the temple and also seeking the relief of consequential permanent injunction restraining the respondents in any manner interfering with the character, nature of the petitioner temple/private trust or the management of the assets by it.

9) Respondent No.2 i.e., Tahsildar, Vijayawada Rural Mandal filed a detailed counter contending Done Atkuru is a Government Village vide Village No.63 of erstwhile Bezwada Taluk of Krishna District and its Settlement was done during the year 1932 by the Special Settlement Officer. As per the Revenue Settlement Register, originally the land admeasuring Ac.4.06 cents in R.S.No.54/1 of Done Atkuru Village stands classified as "Inam Dry" and noted as 476 "Sri Anjaneya Swamyvaru" in Col.No.10 which shows Patta number or title deed and name of the registered holder or Inamdar. There is no mention in Revenue Settlement Register about G.O.Ms.No.3935 L&M, dated. 01.10.1928 purportedly issued by the Madras Government exempting Sri Anjaneyaswamy Temple at Poranki in erstwhile Bezawada Taluk of Krishna District from all provisions of Madras Hindu Religious Endowments Act, 1926.

10) It is admitted in the counter at para No.3 that Sri Rayapati Venkata Subbaiah has constructed "Sri Anjaneyaswami Temple" in his own mango garden situated in R.S.No.433/2 of Poranki Village of Penamaluru Mandal and also registered a "Will" in the year 1929 for an extent of Ac.4.06 cents in R.S.No.54/1 of Done Atkuru Village of Vijayawada Rural Mandal in connection with the maintenance of the temple and also to celebrate festivals such as Sriramanavami, Vijayadasami and other functions which shall be performed by the Trustee of private Devasthanam. It is also admitted by the second respondent in its counter that "Sri Anjaneya Swamyvari Devasthanam" is being noted as pattadar and enjoyer in Account No.3 of adangal for an extent of Ac.4.06 cents in R.S.No.54/1 of Done Atkuru Village for which pattadar pass book and title deed book were also issued in the name of Sri Anjaneya Swamyvaru Devasthanam.

11) It is further contended in the counter that in compliance of the orders of the Government and as per the instructions issued by the Collector, Krishna the list of all Government lands, Endowments lands, Wakf lands, Church lands have been furnished to all the Sub-Registrars, as such the Sub-Registrar, Gunadala has not issued valuation certificate to the petitioner as petitioner's land was included in the list of the prohibited lands in the revenue records.

12) Respondent Nos.1 and 3 filed adoption memo, adopting the counter of respondent No.2.

13) Respondent Nos.4 and 5 also filed separate counters with almost the same set of facts. They contended that the O.P is not maintainable either on law or on facts and it is liable to be dismissed. It is further contended that the petitioner without exhausting the remedies and without following procedure available under the provisions of the A.P. Charitable & Hindu Religious Institutions and Endowments Act, 1987 (for short "Act No.30 of 1987") got filed the present trust O.P and as such, it is liable to be dismissed. It is further stated that the Indian Trust Act, 1882 has no implication and the property covered under A.P. Charitable & Hindu Religious Institutions and Endowments Act and as such, the trial Court has no jurisdiction to try this O.P under Trust Act.

14) From the counter of respondent Nos.4 and 5, it appears that on the one hand, respondents 4 and 5 admits that petitioner who is the Managing Trustee viz., Sri Tenneti Venkata Subbarao is managing "Sri Anjaneya Swamyvari (also called as Sri Seethramanjaneya) temple" and on the other hand, they denied the properties owned by temple are not private properties. It is also admitted that the maternal great grandfather of the Managing Trustee late Sri Rayapati Venkata Subbaiah constructed the temple in the year 1905 and purchased property in the name of "Sri Anjaneya Swamyvari temple". According to the provisions of A.P. Charitable & Hindu Religious Institutions and Endowments Act, 1987 the land and property vested in the name of God and as such no one can claim ownership of the properties. Further, the petitioner is not entitled to seek declaration that the petitioner temple is a

private trust and is not amenable to the provisions of the Indian Trust Act or for any ancillary reliefs for declaration that property is a private trust property and the documents relied upon by the petitioner has no relevancy for adjudicating the trust O.P. It is further contended that Section 151 of A.P. Charitable & Hindu Religious Institutions and Endowments Act, envisages that "no suit or other legal proceedings in respect of administration or management of an institution or endowment or any other matters of dispute for determining or deciding for which provision is made in this Act shall be instituted in any Court of Law except under and in conformity with the provisions of this Act" and they prayed to dismiss the trust O.P with costs in the interests of justice.

15) During the course of enquiry, on behalf of the petitioner, Tenneti Venakta Subbarao, Managing Trustee of the petitioner was examined as PW.1 and Exs.A.1 to A.10 were marked. On behalf of the respondents, respondent No.5 viz., Ch. Durga Prasad, Assistant Commissioner, Endowments Department was examined as R.W.1 and no documents were marked.

16) Basing the said pleadings, the trial Court framed the following issues:

- 1) Whether Sri Anjaneya Swamyvari Temple is a private temple or not? or Whether Endowments Department has control over the management of Sri Anjaneya Swamyvari Temple?

- 2) Whether provisions under A.P. Charitable & Hindu Religious Institutions and Endowments Act, 1987 (Act No.30 of 1987) apply to Sri Anjaneya Swamyvari Temple which is being under the control of Managing Trustee i.e., the petitioner?
- 3) Whether properties owned by temple belonged to Endowments Department or whether the properties belonged to private temple Trust?
- 4) Whether petitioner is entitled for the reliefs as prayed for by him or not?
- 5) To what relief?

17) Considering the evidence of P.W.1 and Ex.A.1 to A.10 and the evidence of R.W.1, the trial Court allowed the petition without costs declaring that the petitioner temple i.e. "Sri Anjaneya Swamyvari Temple" situated at Poranki Village, Penamaluru Mandal is a private Trust temple, which is being worshipped for the family members of the petitioner and the properties owned by the temple are also declared as private properties of the temple. Further, respondent Nos.1 to 5 are restrained from interfering in any manner with the character and nature of the petitioner's temple i.e. private Trust (Sri Anjaneya Swamyvari Temple @ Seetharamanjaneya Swamyvari Temple) and also with the properties owned by the petitioner to an extent of Ac.4.06 cents which is situated at Done Atkuru Village, Vijayawada Mandal and further respondent Nos.1 to 5 are restrained to interfere with the nature of the

management, user in any manner, as they were declared to be owned by the petitioner/private Trust temple.

18) Aggrieved by the said order passed by the Court below, the respondents preferred the present appeal.

19) Learned counsel for the appellants-respondents contended that the learned District Judge erred in declaring that the suit schedule property shall not come under the purview of A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 and also failed to consider the matter in a proper perspective especially in not considering the distinction between a Public Trust and a Private Trust. The Court below should have seen that after separation of Andhra Pradesh from the erstwhile State of Madras the legislations passed by the then legislatures had no application. There is no personal gain to the petitioners herein i.e. Revenue, Endowments and Registration Departments and requested to allow the present appeal.

20) Learned counsel for the respondent-petitioner contended that the subject temple is a private temple and supported the order of the Court below in all respects and requested this Court to dismiss the present appeal.

21) Perused the entire material available on record. One Tenneti Venkata Subbarao, Managing Trustee was examined as P.W.1 and he has re-iterated the contentions made by him in the petition.

22) In the cross-examination, P.W.1 specifically deposed that Rayapati Venkata Subbaiah who is his great grandfather got constructed "Sri Anjaneya Swamyvari Temple" and he purchased Ac.4.06 cents of land in the year 1915 in Done Atkuru Village which is covered under Ex.A.1 for the purpose of private trust. It is also testified by P.W.1 that Rayapati Venkata Subbaiah executed a "Will" deed declaring as to how income from the said land has to be spent towards temple including for the festivals such as Sriramanavami, Vijayadasami and other functions. It is categorically admitted by P.W.1 that temple is being run by private trust and public has no access and there was no Hundi in the temple and schedule land is a dry land but due to availability of water wet crops were being raised. The temple was situated in Ac.0-50 cents of land and Ac.0-25 cents of land is being used as passage and it is situated in the middle of Ac.8-00 cents of land in Survey No.433. Ex.A.9 discloses that the land was in the name of Sri Anjaneya Swamyvari Temple and also admitted that there is no scope to record the name of Managing Trustee and the land has to be recorded in the name of temple alone. It is specifically stated by P.W.1 that notice board in the temple indicates there is no entry into temple by the public and Dwajastambam of the temple was constructed in the year 1980 by the father of the Trustee. P.W.1 denied that Regional Joint Commissioner and Assistant Commissioner, Endowments visited the temple and that they declared that they would take possession of the schedule land. He further deposed that Assistant Commissioner of Endowments Department did not issue any notice

to him asking him to handover charge and maintenance of the temple for the schedule lands, but he orally demanded him.

23) The then Assistant Commissioner of Endowments Department, Vijayawada was examined as R.W.1. During evidence, R.W.1 deposed that there is no evidence to show that donations are being collected from the public towards petitioner's temple trust and he does not know whether there is any Hundi in the temple i.e. "Sri Anjaneya Swamyvari temple" which is also known as "Sri Seetharamanjaneya temple". There is no representation from the public alleging that the trust or Anjaneya Swamyvari temple is collecting donations from the public and they did not issue any notice stating that provisions of Endowments Act are applicable to the petitioner temple trust. Petitioner trust and temple are not registered under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act No.30 of 1987) and they did not give any publication. R.W.1 admitted that in Ex.A.5 copy of the proceedings in R.C.No.A1/1598/2011 by the Assistant Commissioner of Endowments Department, Vijayawada addressed to Commissioner, Endowments Department, Andhra Pradesh, Hyderabad it is mentioned that provisions of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 shall not apply to the petitioner trust and temple and it is a private family temple. R.W.1 further admitted that the Endowments Department is not doing any service to the petitioner trust and temple and their department is not managing the petitioner trust and temple and that no employee of Endowments Department is

working in the temple as the subject temple was not taken by the Endowments Department.

24) Ex.A.1 – Registered sale deed No.1618/1915 dated 02.07.1915 executed by Lolla Narasimham and others in favour of petitioner temple represented by its trustee Rayapati Venkata Subbaiah and Ex.A.2 – Registered Will dated 16.05.1926 in respect of the properties and appointment of Hereditary Trustees of the petitioner temple would show that Rayapati Venkata Subbaiah is the founder of the “Sri Anjaneya Swamyvari temple @ Sri Seetharamanjaneya temple” situated at Done Atkuru Village and the said temple was constructed in the year 1905 and he has executed Ex.A.2 Will appointing trustees to the temple, mode of expenses, managing issues and affairs of the temple.

25) Ex.A.3 is the relevant document to show that the subject temple has been exempted from the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927). Ex.A.3 is the memorandum No.5663/B/28-1 issued by the Secretary, Board of Commissioner of Hindu Religious Endowments, Rayapet, Madras, which would disclose that the subject temple was exempted from all the provisions of Hindu Religious Endowments Act as per sub-section (a) of Section 3 of Madras Hindu Religious Endowments Act, 1926.

26) Ex.A.4 is the registered Will bearing No.8/1929 executed by Rayapati Venkata Subbaish dated 28.08.1929 declaring the

exclusive worship of his family members and also declaring that no other persons have right over the said temple.

27) Ex.A.5 – copy of proceedings dated 29.11.2011 in Rc.No.A1/1958/2011 of the Assistant Commissioner, Endowments Department, Vijayawada would disclose that he has visited “Sri Seetharamanjaneya Swamyvari temple”, Poranki Village, Penamaluru Mandal, Vijayawada and after visiting the temple he has clarified that the temple was constructed in the land situated at R.S.No.433/2 of Poranki Village in the year 1905 by Sri Rayapati Venkata Subbaiah and that the founder being the Managing Trustee for the maintenance of the temple has bequeathed and purchased the land as per document No.1618/1915 to an extent of Ac.4.06 cents in R.S.No.54/1 situated at Done Atkuru Village, Vijayawada Mandal in favour of the temple and later on the Government vide Memorandum No.5663 B/28-1, dated 04.12.1928 which was communicated in G.O.Ms.No.3935 L & M, dated 01.10.1928 wherein Government of Madras have issued an order exempting Sri Anjaneya Swamyvari temple at Poranki Village, Bezawada Taluk of Krishna District from all the provisions of Madras Religious and Endowments Act, 1926 and the lands which are vested with the temple belongs to the temple and the temple is being managed by the trustees.

28) Further, Ex.A.8 – copy of proceedings of the Assistant Commissioner, Endowments Department, Vijayawada would disclose that Madras Hindu Religious Endowments Department has

exempted “Sri Anjaneya Swamyvari Temple” from all the provisions of the Act, as such the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 are not applicable to the temple as it is a private family temple.

29) From the above documentary evidence produced by the petitioner, it is clear that the subject temple was constructed by his great grandfather in the year 1905 and it is being worshipped by the family members of the petitioner since 1905 i.e. for a period of 105 years without any disturbance from any quarter and there is no access for any public in the temple. As per Ex.A.3, the Hindu Religious and Endowments Department, Madras has exempted the petitioner temple from the provisions of Hindu Religious Endowments Act way back in the year 1928 and the said temple was declared as private temple.

30) From the evidence of R.W.1, it is clear that the Endowments Department has no control over the temple in any manner till date. R.W.1 also admitted in his cross-examination that Endowments Department is not doing any service to the petitioner temple and not managing the petitioner’s trust or the temple and no employees of the Department were working in the said temple and it has not been taken over by the Endowments Department till date. From the admissions made by R.W.1 and Ex.A.3 – Memorandum No.5663 B/28-1 dated 04.12.1928 issued by the Secretary, Board of Commissioner for Hindu Religious Endowments, Rayapet, Madras and Ex.A.5 – Copy of proceedings in R.C.No.A1/1598/2011 by the

Assistant Commissioner of Endowment Department, Vijayawada, it is established that the subject temple is a private temple being run exclusively for the family members of the petitioner and the Endowments Department has no control or role over the affairs of “Sri Anjaneya Swamyvari temple”. Hence, it can be said that “Sri Anjaneya Swamyvari temple @ Sri Seetharamanjaneya temple” is a private temple being run and managed by its Managing Trustee and do not come under the purview of Endowments Department and the properties owned by the petitioner cannot be said to be Endowments Department properties.

31) As admitted by respondent Nos.4 and 5 in their counter that the maternal great grandfather of the Managing Trustee late Sri Rayapati Venkata Subbaiah constructed the temple in the year 1905 by purchasing the property in the name of “Sri Anjaneya Swamyvari temple”, therefore, the property claimed by the petitioner is absolutely private property. In such case, as the private temple is no way concerned with the Endowments Department, there is no necessity for them to approach the Tribunal under the Act No.30 of 1987, as such the Trust O.P. filed by the petitioner is maintainable. Further, the appellant has not adduced any evidence before the Tribunal to establish that the subject property falls within the purview of Endowments Department.

32) In view of the aforesaid discussion, this Court is of the opinion that the subject temple i.e. “Sri Anjaneya Swamyvari Temple” is a private Trust temple which is being worshipped by the family

members of the petitioner and the properties owned by the temple are private temple properties of the temple. Therefore, this Court does not find any ground to interfere with the order passed by the Court below. Hence, the appeal is devoid of merits, consequently, the revision is liable to be dismissed.

33) Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

34) Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE V.SUJATHA

17.04.2026
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