

SA(MD). No.264 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 10.04.2026

Delivered on : .06.2026

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

S.A. (MD). No.264 of 2017
and CMP (MD) No.5922 of 2017

1. S.Sebasthi Nadar (Died)

2.Baripooranam

3.Arockiya Mari

4.Palthasar

(Appellants 2 to 4 are brought on
record as LR's of the deceased sole appellant
vide Court order dated 21.03.2023)

... Appellants

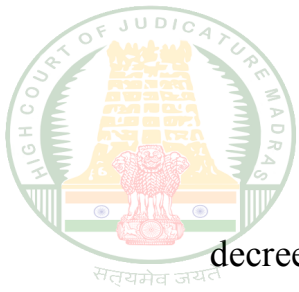
Vs.

1.A.Savariyappan

2.State of Tamil Nadu,
Through its District Collector,
Collector Campus,
Sivangagai Town,
Sivagangai District.

... Respondents

Prayer:- This Second Appeal filed under Section 100 of CPC, to set aside the judgement and decree in A.S. No.73 of 2014 on the file of the Sub Court, Sivagangai dated 15.12.2016, reversing the judgment and



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decree in O.S. No.123 of 2012 on the file of the District Munsif Court, Sivagangai, dated 21.07.2014.

For Appellant(s) : Mrs.Vijayakumari Natarajan

For Respondents : Mr.M.Mohammed Ibrahim Saibu
for M/s.Ajmal Association

JUDGEMENT

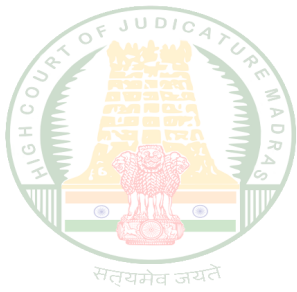
The plaintiff, aggrieved by reversal findings rendered by the First Appellate Court, is the appellant herein.

2. The Second Appeal was admitted by this Court on 30.06.2017 on the following four substantial questions of law:-

"(a) Having admitted the grant of UDR Patta in his favour in survey No.352/9A is not the right to the respondent to estop the plaintiff from claiming right to the entire Survey field?

(b) Even assuming the defendant had any right, whether his right is extinguished by virtue of Section 27 of Limitation Act, as he has not taken any steps against the plaintiff within the period of Limitation?

(c) Whether the Lower Appellate Court has



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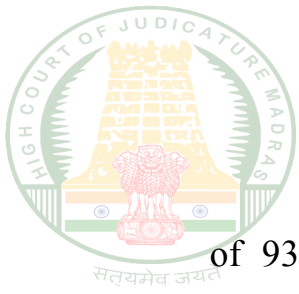
properly appreciated the principle of admission under Section 18 and 58 of Limitation Act?

(d) Whether the defendant who has not proved that the Patta to plaintiff given in 1985 has been cancelled, can deny the patta and plead contrary to the same?"

3. Heard Mrs.Vijayakumari Natarajan, learned counsel for the appellants and Mr.M.Mohammed Ibrahim Saibu, for M/s.Ajmal Association, learned counsel for the respondents.

4. Brief facts that are necessary for adjudicating the substantial questions of law are as follows:-

4.1. The plaintiff claiming that he is the owner of 64 cents of Nanja lands comprised in Survey No.349/9B, Pahanjan Village filed a suit seeking a relief of declaration and injunction. The case of the plaintiff is that the first defendant own lands on the north of the plaintiff's lands in S.No.352/9A measuring about 93 cents and the entitlements of both the plaintiff and the first defendant were recognised at the time of UDR survey and patta was issued to both the plaintiff and the first defendant. After sub division of Survey No.352/9, the first defendant sold his extent



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of 93 cents to one Selvaraj under registered sale deed dated dated 28.10.1996, wherein also, he has recognised the right of the plaintiff. On 16.07.2012 according to the plaintiff, the first defendant attempted to interfere with the plaintiff's cultivation of his lands, without any iota of right. Hence the suit.

4.2. The first defendant filed a written statement stating that before sub division Survey No.352/9 was comprised of an extent of 1 acre and 56 cents and the sub division under which the plaintiff's claim is contrary to fact. Patta was incorrectly issued to the plaintiff under the UDR scheme. Entire extent of S.No.352/9 belonged to the first defendant family, the same being ancestral property and under a partition in the family, the suit property was allotted to the first defendant.

4.3. Based on the pleadings and evidence adduced by the parties, the Trial Court, decreed the suit, finding that the plaintiff was entitled to the suit reliefs. The judgment and decree of the trial was challenged by the first defendant in A.S. No.73 of 2014 on the file of the Sub Court, Sivagangai. The First Appellate Court allowed the appeal and reversed

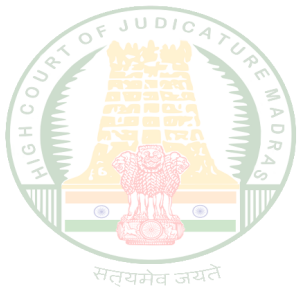


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the findings of the Trial Court, finding that the plaintiff has not proved his entitlement and that the plaintiff cannot rely on the weakness of the defendant to be entitled to the suit claim.

5. Mrs.Vijayakumari Natarajan, learned counsel for the appellants would primordially contend that in Ex.A7, sale deed under which the first defendant sold his entitlement to one Selvaraj has unequivocally admitted to the plaintiff's ownership on the southern side of the first defendant's property. Inviting my attention to the Section 58 of the Indian Evidence Act, 1872, Mrs.Vijayakumari Natarajan, learned counsel would contend that the recitals in the boundary to the schedule of the property in a registered documents admittedly conveyed by the first defendant himself was the best piece of evidence and the Trial Court had rightly factored the same as required under law. She would however state that the First Appellate Court without proper appreciation of the evidence on record, especially, the admission of the first defendant has invoked the settled principle of *'plaintiff cannot rely on the weakness in the defence set up by the defendants'* and has wrongly applied the same to the facts of the present case and the same is wholly misconceived.

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6. She would further state that the first defendant had set up title for the entire extent in S.No.352/9 and claimed that the suit property over which the plaintiff was seeking declaratory relief was in fact allotted to the first defendant in a family partition, has miserably failed to establish such a plea. She would further state that the report and plan of the Advocate Commissioner appointed by the Trial Court also clearly established that the plaintiff was entitled to the suit property. She would further contend that both the plaintiff as well as the first defendant admittedly do not have any title documents to establish their right and they were solely rest their respective cases only on the patta issued by the Government at the time of UDR Survey and in such circumstances, the Appellate Court's reasoning is totally unsustainable and the First Appellate Court ought to have seen that the plaintiff had clearly established his case and the admission of the first defendant only fortified the entitlement of the plaintiff to the suit property.

7. The learned counsel has also relied on the following decisions:-

(i) *Ahmedsaheb (Dead) by LRs and others Vs. Sayed Ismail,*



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reported in, (2012) 8 SCC 516;

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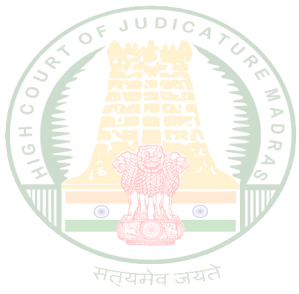
(ii) *Avtar Singh and others Vs. Gurdial Singh and others*, reported in (2006) 12 SCC 552;

(iii) *Nagindas Ramdas Vs. Dalpatram Iccharam alias Brijram and others*, reported in AIR 1974 SC 471;

(iv) *Manicka Gounder and another Vs. Lakshmi Ammal rep. by her Power Agent Mr.Kanagasundaram*, reported in 2002-3-L.W.281; and

(v) *Sherwood Educational Society, No.3, XIII Avenue, Harrington Road, Chetpet, Madras-31 Vs. Abid Namzie and two tohers*, reported in 1997 1 MLJ 445.

8. Mrs.Vijayakumari Natarajan, would also state that when the first defendant himself was issued patta under the UDR Scheme, Ex.B4 for sub divided Survey No.352/9A and when the first defendant did not choose to challenge the same as envisaged under the Tamil Nadu Survey and Boundaries Act, 1923, it is not open to the first defendant to contend that the patta was incorrectly issued to the plaintiff.

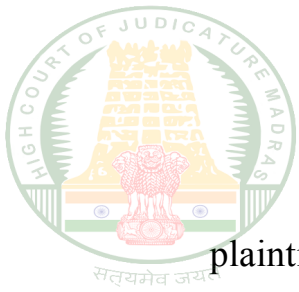


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9. Per contra, Mr.Mohammed Ibrahim Saibu, learned counsel appearing for the first respondent/first defendant would contend that the admission which is heavily relied upon by the plaintiff was not with respect to the title or entitlement of the plaintiff but only to the northern boundary of the first defendant's property. He would invite my attention to the Schedule to contend that no Survey Number is mentioned and in such circumstances, it is not open to the plaintiff to state that the first defendant has admitted to the entitlement of the plaintiff.

10. Relying on Ex.B1 and Ex.B2, Mr.Mohammed Ibrahim Saibu, learned counsel for the first respondent would contend that patta prior to the UDR survey was admittedly in the name of the father of the defendants and there is absolutely no justification shown by the plaintiff as to how Ex.A2, patta was issued in the name of the plaintiff at the time of UDR survey. He would therefore state that when the plaintiff has not been able to demonstrate the same, then the defence raised by the first defendant that the patta was issued by mistake has to be necessarily accepted. He would further state that the First Appellate Court has rightly found that the plaintiff has not proved his case and when the



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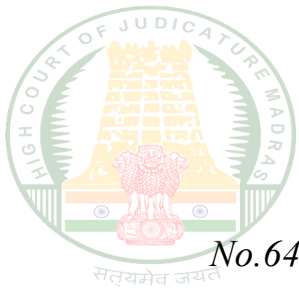
plaintiff approached the Court seeking the relief of declaration, it is for the plaintiff to independently prove his entitlement and cannot rely upon the weakness in the defendant's case.

11. He would further state that it is not the case of the first defendant that he has admitted the plaintiff's entitlement to Survey No. 349/9B and therefore, the plaintiff does not gain any advantage, even relying upon the fact that in Ex.A7, one of the boundaries shown for the properties sold to one Selvaraj, belongs to the plaintiff. The learned counsel would therefore state that the First Appellate Court has rightly reversed the findings of the Trial Court and the same does not warrant interference.

12. The learned counsel for the respondents has relied on the following decisions:

(i) *T.Rajagopal (died) and others Vs. Sundareshwari*, in S.A. (MD). No.249 of 2025, dated 01.07.2025;

(ii) *Sivalingam and others Vs. Gunasekaran and others*, in S.A.



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No.648 of 2011; and

WEB COPY (iii) *K.Sithan Vs. District Revenue Officer and others*, reported in
(2025) SCC Online Mad 9657.

13. I have carefully considered the submissions advanced by the learned counsel on either side.

14. It is admitted on both sides that the original survey No.352/9 was an extent of 1 acre 56 cents. Ex.A2 is the patta issued to the plaintiff for 64 cents and parent Survey No.352/9 has been sub divided and Survey No.352/9B has been assigned/allotted to the plaintiff. The adjoining lands measuring about 93 cents situate on the north of the plaintiff's property have been assigned Survey No.352/9A and Ex.B4, patta has been issued to the first defendant. These proceedings were way back in the year 1985. Therefore, at that point of time, there was no dispute with regard to either title or possession of their respective lands by the plaintiff and the first defendant. In fact, on the plaintiff's side, Ex.P3 to Ex.P6, receipts have been filed to show that the plaintiff has been enjoying the subject suit lands in his own rights paying taxes as

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well. Ex.A1 is the survey notice issued to the plaintiff at the time of UDR Survey. It is therefore clear that in 1996 when the first defendant sold his entitlement of 93 cents to one Selvaraj under Ex.A7, the plaintiff and the first defendant were not at issue with regard to the enjoyment of their respective lands. Admittedly, in Ex.A7, the southern boundary in the Schedule and the said sale deed, is reflected as the plaintiff's land.

15. No doubt, as contended by the learned counsel for the first respondent, Mr.Mohammed Ibrahim Saibu, the southern boundary does not indicate the Survey No.352/9B. Even though no survey number is mentioned, as rightly contended by the learned counsel for the first defendant, it is the case of the first defendant that the entire survey number belonged only to the family of the first defendant and that there was a partition in the family, in which, the suit property being the southern side of the first defendant's property covered by Ex.A7 was allotted to him, then the boundary should not have mentioned the name of the plaintiff, but ought to have only mentioned the remaining lands of the first defendant. Therefore, I do not see how Ex.A7, cannot be taken advantage of by the plaintiff. This is moreso, in the light of the fact that

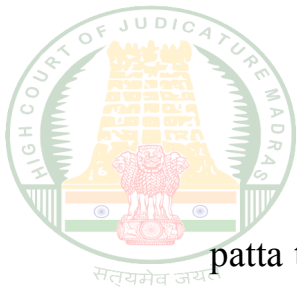


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the first defendant sets up a case that entire 352/9 belonged to the first defendant, in respect of which, there is absolutely no evidence forthcoming on the side of the first defendant. The first defendant has not been able to establish payment of taxes to show physical possession of the suit property as well, leave alone, having miserably failed to prove the partition, under which, he became entitled to the suit property.

16. On the other hand, the plaintiff has been able to demonstrate that right from 1985, when UDR survey was conducted, the plaintiff's possession and right have been recognised by the State Authorities. There is also merit in the contention of the learned counsel for the petitioner, Mrs.Vijayakumari Natarajan that admittedly, Ex.B4, patta has been issued in respect of sub divided survey No.352/9A to the first defendant and Ex.A2, Sub divided in Survey No.352/9B was allotted to the plaintiff. If really, the first defendant was aggrieved by the same, the first defendant ought to have taken appropriate steps under the Tamil Nadu Survey and Boundaries Act, 1923. Section 14, permits such challenge within a period of three years. Admittedly, the first defendant has not chosen to question the UDR Survey and consequent issuance of

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patta to the plaintiff under Ex.A2 and on the contrary, the first defendant himself has taken advantage of the said UDR proceedings and claimed under Ex.B4, UDR patta. In fact, even in Ex.B4, Patta which has been filed on behalf of the first defendant, leave alone the patta in Ex.A2, issued in favour of the plaintiff, the southern boundary of the first defendant's property has been clearly demarcated as Survey No.352/9B. In fact, in Ex.A2, while showing the northern boundary of Survey No. 352/9B, it is not only mentioned as Survey No.352/9A, but also mentions the name of the first defendant, A.Savriyappan, as well. The first defendant has therefore accepted the UDR survey and the parties have also acted upon the same. It is therefore not open to the first defendant to merely claim that Ex.A2 patta was incorrectly issued, especially when he had all opportunity to question the said issuance of patta within a period of three years.

17. The argument of the first defendant that the first defendant was not put on notice before issuance of patta to the plaintiff, though attractive at first blush, cannot be countenanced for the simple fact that atleast when Ex.B4 patta was issued to the first defendant, he was aware



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of the sub division. If really, the first defendant was the owner of the entire extent of Survey No.352/9, there would have been no necessity for any sub division in the first place in the year 1985 and the first defendant was atleast put on notice at the time UDR Survey about the entitlement of the plaintiff to the extent of 64 cents on the south of his property. The first defendant having not taken any steps to challenge Ex.A2, patta cannot belatedly turn around and contend that there has been no sub division at all and that Ex.A2, patta was issued by mistake. The Trial Court has rightly considered the effect of Ex.A7 as well as revenue records filed on both sides and found that the plaintiff had established his entitlement to the declaratory relief and consequential relief of injunction. The First Appellate Court has reversed the said findings of the Trial Court only on the ground that the plaintiff cannot rely on the weakness in the defendant's case. I am unable to see how Ex.A7, which is a registered Conveyance Deed can amount to a weakness in the case of the defendant. It is a registered sale deed on which, the first defendant has placed reliance upon to satisfy the Court that the first defendant is the owner of the 93 cents in Survey No.352/9A. When the first defendant has voluntarily produced the said document with a view to establish his



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defence, the same cannot be viewed as a weakness in the case projected by the defendant.

18. In such circumstances, when the sale deed clearly acknowledged the right of the plaintiff on the southern side of the first defendant's property, in my considered opinion, it would certainly amount to an admission of the plaintiff's right and cannot be viewed as weakness in the defence. I have already dealt with the effect of the non mentioning of the sub divided survey number in the boundary and therefore, the mere fact that the boundary has mentioned only the plaintiff's name and not the survey number is not in any manner affecting the plaintiff's case.

19. Even though Ex.B1 and Ex.B2 have been relied on by the first defendant for establishing that the first defendant's father and mother, Arulandu and Mariyayee were possessing the entire 1 acre and 56 cents in Survey No.352/9, these documents are admittedly before the UDR Survey and sub division effected subsequently in the year 1985. Therefore, re-survey only an extent of 93 cents has been reflected as the



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entitlement of the first defendant. Therefore, if aggrieved, he should have been objected under Section 14. Admittedly the first defendant has not taken any steps to question the same Ex.B1 and Ex.B2 get superseded by Ex.B4 and Ex.A2 patta, subsequent to the UDR survey. Therefore he should have questioned the same.

20. In fact, the Courts have consistently held that admissions which can be culled out prior to the judicial proceedings stand on a much higher footing, than evidentiary admission and such admissions can be made the foundation of the rights of the parties also. On facts, Ex.A7 for all the above discussion, would clinchingly amount to an admission of the plaintiff's entitlement and the only manner in which, the first defendant could have explained the same was by producing patta in his favour or the partition deed under which she claimed right to establish that the suit property also belonged to him.

21. Coming to the decisions on which, Mrs.Vijayakumari Natarajan, learned counsel for the petitioner placed reliance upon, all the five decisions have been relied on only for the proposition that an



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admission is a fresh piece of evidence. There is no quarrel with regard to this legal position and having already held that when an admission is made by the opposite party, then it would be the best evidence without any further corroboration required.

22. In *T.Rajagopal's* case (referred herein supra), this Court held that when the defendant's had proved title to the suit property and also exclusive possession, then the plaintiffs had miserably failed to establish title and consequently, were disentitled to the relief of declaration, applying Section 101 of the Evidence Act. In the instant case, I have already held that both parties do not claim under any registered documents, but only under respective pattas issued by the Authorities and it is not the case where the first defendant has established his title like in case before this Court in *Rajagopal's* case.

23. In *Sivalingam's* case, (referred herein supra), this Court again falling back on Section 101 of the Evidence Act, held that the burden of proof lies on the plaintiff to prove his case, in terms of Sections 101 and 102 of the Evidence Act and that patta is not a document of title. There

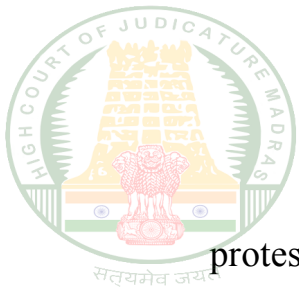


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is no quarrel with regard to the proposition laid down in this case as well.

However, in view of the discussion regarding the admission of plaintiff's right and entitlement, by the first defendant, I do not see why the plaintiff should be disentitled to the relief of declaration, when admittedly both parties do not have any registered conveyance documents in their respective favour to establish title and their right, but only rely on UDR proceedings conducted in the year 1985.

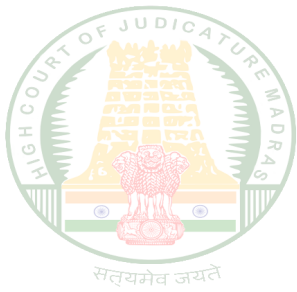
24. In *K.Sithan's* case (referred herein supra), this Court held that in terms of Circular dated 13.03.2016, the officials under the Tamil Nadu Patta Passbook Act, 1983, are required to examine UDR records and compare the same with the UDR records and find out if there is a legitimate link between the same and that such an exercise would not amount to adjudication of title. Again, I do not have any quarrel with regard to the proposition laid down in this case. I have already dealt with the effect of silence on the part of the first defendant and also accepting Ex.B4 issued to him, sub dividing Survey No.352/9 and allotting Survey No.352/9A alone to the first defendant. The said UDR survey and proceedings have been accepted by the first defendant without any



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protest or demur. In such circumstances, even assuming there is any error in exercise of power, when the first defendant has not questioned the sub division or Ex.A2 patta issued by the plaintiff for several decades together, it is too late in the day for the first defendant to state that the UDR Survey was incorrect and Ex.A2 patta, was issued by error/mistake in favour of the plaintiff.

25. For all the above reasons and discussion, I am of the considered opinion that the First Appellate Court has misapplied the principle that the plaintiff in a suit for declaration has to prove his own case and not rely on the weakness in the case of the defendant, to the facts of the present case, ignoring the admission of the first defendant even prior to the filing of the suit that the southern boundary adjoining the first defendant's land in Survey No.352/9A of an extent of 92 cents belonged to the plaintiff. The Trial Court has rightly appreciated the effect of the said admission in Ex.A7, sale deed and granted relief to the plaintiff, which has been overturned on a wholly misconceived and misapplication of legal position.



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26. For all the above reasons, the appellant is entitled to succeed and the Second Appeal is allowed. The substantial questions of law answered in favour of the appellant and the judgment in A.S. No.73 of 2014 on the file of the Sub Court, Sivagangai is set aside and judgment of the O.S. No.123 of 2012 on the file of the District Munsif Court is restored. Consequently, connected Miscellaneous Petition is also closed. No costs.

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Index: Yes/No

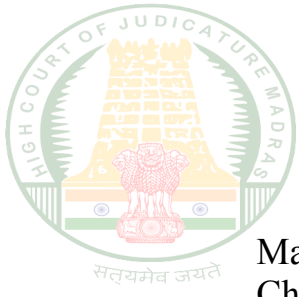
Neutral Citation: Yes/No

rkp

To

1. The Sub Judge, Sivagangai.
2. The District Munsif, Sivagangai.
3. The District Collector,
Collector Campus,
Sivangagai Town,
Sivagangai District.
4. The Section Officer,
VR Section,

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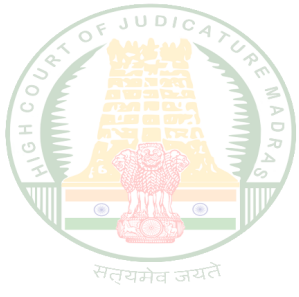


Madras High Court,
Chennai.

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Pre-delivery order in
S.A. (MD). No.264 of 2017
and CMP (MD) No.5922 of 2017

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