

Delhi District Court

Sh. Braham Prakash Yadav vs . Amrik Singh Arora on 30 January, 2015

Author: Sh. Devender Garg

Sh. Braham Prakash

IN THE COURT OF SH. DEVENDER KUMAR GARG
ACJ-CCJ-ARC(EAST), KARKARDOOMA COURTS, DELHI

Petition No.: E- 81/2012

Case ID No.: 02402C0196242012

Sh. Braham Prakash Yadav
S/o Late Shri Sohan Lal Yadav
R/o Property No. 5-B (Private Number),
Krishan Kunj Colony,
Laxmi Nagar, Main Bazar, Delhi-110092

VERSUS

Shri Amrik Singh Arora
S/o Late S. Kripal Singh Arora
R/o House No. 427, Guru Ram Dass Nagar,
Laxmi Nagar, Delhi-110032

Also at:
Shop in property no. 5-8 (Private Number),
(Part portion of property No.5),
Krishan Kunj Colony,
Laxmi Nagar, Main Bazar, Delhi-110092

UNDER SECTION	:	14(1)(e) DRC
DATE OF INSTITUTION	:	16.07.2012
DATE OF RESERVING THE ORDER :	:	20.10.2014
DATE OF ORDER	:	30.01.2015

APPLICATION FOR LEAVE TO DEFEND
MOVED BY THE RESPONDENT

E No. 81/12

Sh. Braham Prakash

O R D E R

1. Vide this order, I shall decide the application filed by the respondent seeking leave to defend the eviction petition in hand.

2. Briefly stated, the case of the petitioner is as follows:

Sh. Sohan Lal Yadav, the father of petitioner had purchased property bearing no. 5, Krishan Kunj Colony, Laxmi Nagar, Main market, measuring 200 sq. yards in the year 1965 from his self earned income and said property was partly constructed on ground floor by him and rest of portion by his son's up to third floor for residential purposes as well as shops and later on said property measuring 200 sq. yard was orally partitioned by the legal heirs of Sh. Sohan Lal Yadav and one third share I.e private number 5□B, came in to the share of petitioner in which one shop in question was let out by his father prior to the partition. Father of petitioner had inducted respondent as tenant in shop in question on 28.07.1987 and after death of Sh. Sohan Lal Yadav, said property bearing no. 5□ Krishan Kunj Colony was partitioned and shop in question came to the share of petitioner and respondent paid rent to the petitioner.

3. The petitioner is having two son's namely Ankit Yadav, aged 23 years and Sh. Subhas Yadav, aged 22 years who are unemployed and to accommodate them to do some business or open small shop of daily use/consumable items, the need of petitioner is bonafide and genuine.

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4. It is prayed that a decree of eviction of the tenant be passed in favour of petitioner and against the respondent for the tenanted shop on ground floor towards road in property bearing no. 5□B (Private Number), Krishan Kunj Colony, Laxmi Nagar, Main market, Delhi□92 as shown in red colour in site plan.

5. In application and affidavit, respondent (hereafter referred to as the respondent) has taken following main pleas:

(a) The petitioner is not owner of suit property and relationship of landlord and tenant was between the father of petitioner and respondent, who was only landlord and was not owner of suit property.

(b) Sh. Sohan Lal Yadav had five son's and one daughter who was his legal heirs and petitioner falsely alleged that there was oral partition of property during life time of father. Respondent sent rent to Smt. Samey Kaur after death of Sh. Sohan Lal Yadav which was refused.

(c) Eviction petition can be filed by a Co□owner only when there is consent by other Co□owners which has not been obtained by the petitioner, neither the Co□owners are made parties to the present petition.

(d) Present petition has been filed upon forged and fabricated documents and counter rent receipts are forged and fabricated which is not signed by the respondent.

(e) Son of petitioner is doing business from 6, West Guru Angad

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(f) The petitioner has other properties bearing no. 6, West Guru Angad Nagar, Gali no.1, Laxmi Nagar, Delhi and US-325, Madawali, Delhi which the petitioner purchased on the basis of POA and has not been disclosed herein.

6. Reply alongwith affidavit filed on behalf of petitioner discloses the following material grounds:□

(a) It is denied that petitioner is not the owner of suit property. Respondent was inducted as tenant by father of petitioner who during his life time orally partitioned said property bearing no. 5, Krishan Kunj colony, between his three sons, portion 5B came into share of petitioner and respondent had knowledge of said oral partition and paid monthly rent of tenanted shop to petitioner after death of his mother Smt. Samay Kaur and last rent was paid on 20.02.1997 for the period 01.07.1996 to 30.06.1997 to the petitioner.

(b) It is further mentioned that no other legal heirs of Sh. Sohan Lal Yadav has concern with said property. The father of petitioner had orally partitioned his entire estate i.e property at Seelam Pur between his two sons named Mehar Chand and Om Prakash during the year 1965-66 and property bearing no. 5 between his three sons as stated above, the daughter of Sh. Sohan Lal Yadav also got her share from her father and nothing has left with him except said property which he E No. 81/12 Page No. 4/19 Sh. Braham Prakash Yadav vs. Amrik Singh Arora had orally partitioned.

(c) It is denied that eviction petition can be filed by co-owner only when there is consent by the co-owners. It is submitted that property bearing no. 5 has been orally partitioned by father of petitioner between his three sons during his life time and then they constructed own uncompleted portion and each legal heir got own independent right and interest, the question of co-owner to file present eviction petition does not arise nor consent is required to file present petition.

(d) It is denied that counter receipt are forged and fabricated, which is not signed by the respondent. The respondent has not mentioned how he determined that these documents are forged and fabricated without counter to his own statement.

(e) It is denied that sons of petitioner are doing business from 6, West Guru Angad Nagar, Gali no. 1, Laxmi Nagar under the name of Yadav Telecom Center. It is submitted that said property belongs to

some other person. The said shop was on rent, the petitioner opened telecom service center in the year 2005 (approx) and closed in the year 2008 (approx), for his two unemployed sons who had no job but due to heavy monthly rent and expenses, said tenanted shop which was inside the gali and did not attract customers, said business was closed and said tenanted shop was surrendered to the owner of said property after sometime in the year 2008 (approx).

(f) Contents of this para has been denied by respondent. It is submitted that property no. 6, West Guru Angad Nagar does not E No. 81/12 Page No. 5/19 Sh. Braham Prakash Yadav vs. Amrik Singh Arora belong to the petitioner which is owned by Sh. Pawan Kumar and property bearing no. US-325, Mandavali, Delhi measuring 50 Sq.yds. was purchased by petitioner in the year 1998, is a residential property, the part portion of which is occupied by tenants and rest of the portion is under construction and no commercial activity can be possible in the said property due to its location. It is further submitted that shop in question is only commercial accommodation with the petitioner in Delhi, can only be used by the petitioner for his sons.

7. The Ld. counsel for the petitioner argued that none of the grounds raised by the respondent constituted a triable issue. Also, that the landlord was the best judge of his requirement for space and retained the prerogative to utilize his own property in a manner of his choice.

8. The Ld. counsel for the respondent argued that the present petition was only a ploy to evict tenant without any bona fide requirement of the petitioner who was in possession of alternative accommodation. The Counsel agitated that trial was required on the aspect of dispute of ownership of tenanted premises.

9. Petitioner has relied upon the case laws viz Smt. Shanti Sharma & Ors. vs. Smt. Ved Prabha & Ors. (1987) 4 SSC 193, Sri Ram Pasricha vs. Jagannath & Ors. AIR 1976 SC 2335, Kale & ors. vs. Dy. Dir. Of Consolidation & Ors. AIR 1976 SC 807, T.C. Rekhi vs. Smt. Usha Gujral 1971 RCR 322 (Delhi High Court), Tahira Behum vs. Sumita Kaur & Anr. 166 (2010) DLT 443, Suresh Srivastava vs. E No. 81/12 Page No. 6/19 Sh. Braham Prakash Yadav vs. Amrik Singh Arora Subodh Srivastava & Ors. 196 (2013) DLT 45, Ram Kumar vs. S.K. Gulati 203 (2013) DLT 588, FGP Limited vs. Saleh Hooseini Doctor & Anr. (2009) 10 SSC 223, Rakesh Sud vs. Arun Kumar Gupta 189 (2012) DLT 161, Inderjeet Singh vs. Harish Chandra Bhutani 192 (2012) DLT 124, Suresh Kumar vs. Youdhveer prasad & Ors. 189 (2012) DLT 691, Subhash Chand Gupta vs. Yginder Kumar Raj Kumar 188 (2012) DLT 263, S. Harbant Singh Sahni & Anr. vs. Smt. Vinod Sikari 189 (2012) DLT 215, Rajiv Sindhwani vs. Kishan Chand Saini 190 (2012) DLT 756, Bata India Ltd. vs. Anil Kumar Bahl 189 (2012) DLT 680, Ramesh Chand Gulati & Anr. Rajinder Kumar Gulati & Anr. vs Lalit Kumar & Ors. 190 (2012) DLT 222, Sukhbir Singh vs. Dr. I.P. Singh 193 (2012) DLT 129, Raj Kumar Khanna vs. Parduman Singh 204 (2013) DLT 312, Anil Kumar Verma vs. Shiv Rani & Ors. 190 (2012) DLT 130, Uday Shankar Upadhyay & Ors. vs. Naveen Maheaswari (2010) 1 SSC 503 & Ram Babu Aggarwal vs. Jay Kishan Das (2010) 1 SSC 164.

10. On the other hand, Ld. Counsel for respondent has relied upon judgment titled as Fakir Chand @ Fakira vs. Padma Devi, 2014 (2) RLR111, Laxmi Chand vs. Iqbal Singh 1975 RLR67, Jai Dev Singh vs. Virender Jain 1993 RLR462, Precision Steel and Engineering Works Vs. Prema Deva Niranjana

Deva Tayal (1982) 3 SSC 270, Om Parkash vs. Naraini Devi (Note) 41, Mohinder Narayan Chopra vs. R.N. Kapoor 26 (1984) DLT (SN) 12, Chaman Lal vs. Batuk Prasad Jatily RC Rev. No. 171/2011 decided on 02.01.2014., India Umbrella E No. 81/12 Page No. 7/19 Sh. Braham Prakash Yadav vs. Amrik Singh Arora Manufacturing Co. & Others vs. Savitri Aggarwalla & Others.

11. The court has considered the respective affidavits of the parties and the submissions of Shri S.K. Sharma , Ld. Counsel for petitioner and Sh. H.S Sahani, Ld. Counsel for respondent and perused the material available on record carefully . I have also gone through the written submissions filed on behalf of both the parties.

12. As per Section 14(1)(e) of Delhi Rent Control Act, the petitioner seeking eviction of a tenant, has to satisfy the following ingredients:□

i) Petitioner has to be landlord/ owner of the tenanted property.

ii) The premise should be required bona fide by the landlord for his occupation or for occupation of any member of his family dependent upon him.

iii) Landlord or such person dependent upon landlord should not have other reasonable or suitable accommodation in Delhi.

13. Now it is to be seen whether the respondent has made out triable issues for the purpose of granting leave to defend in the present matter.

Ground (a)

14. In this ground, the respondent has challenged the ownership of petitioner with regard to tenanted premises.

15. Ld. counsel for respondent had contended that Sh.

E No. 81/12 Page No. 8/19 Sh. Braham Prakash Yadav vs. Amrik Singh Arora Sohan Lal Yadav was not the owner but merely a landlord. He further contended that petitioner is not even the landlord of the respondent .

16. The respondent has admitted that Sh. Sohan Lal Yadav was his landlord and in that case, in view section 116 of Indian Evidence Act, he cannot challenge the title of his landlord. There is no substance in the argument of Ld. Counsel for respondent.

17. The petitioner has stated that property bearing no. 5, Krishan Kunj Colony, Laxmi Nagar was divided in three parts and portion no. 5□B came into the share of petitioner in which the shop in question is situated. It is also admitted on behalf of respondent that after the death of Sh. Sohan Lal Yadav i.e. father of petitioner, rent of the shop was sent to his wife Smt. Samey Kaur. The petitioner has stated in his reply to defend application that the petitioner paid last rent to him on 20.02.1997

for the period from 01.07.1996 to 30.06.1997, however this fact has been denied by the respondent in his rejoinder. From the above facts it is clear that the respondent has admitted father of petitioner as his landlord and thereafter sent rent to Smt. Samey Kaur, but same was refused. Nowhere respondent has stated who was his landlord after the death of father of petitioner. The respondent has also not placed on record any proof for showing that he tried to know about his landlord or file any petition U/s 27 of DRC Act for depositing rent in case rent was not accepted or he had any confusion about his landlord .

18. Ld. counsel for respondent contended that in another E No. 81/12 Page No. 9/19 Sh. Braham Prakash Yadav vs. Amrik Singh Arora petition titled as Smt. Santosh Yadav Vs. Sukhdev Singh which was pending in the court of Sh. M P Singh (the then Ld. Rent Controller), there is mention of Will in favour of Sh. Ram Prakash Yadav and he has averred in said petition that Sh. Ram Prakash yadav became owner landlord and started realizing rent from respondent therein and Smt. Samay Kaur executed Will dated 22.09.1995 , however in the present petition it is stated that property was partitioned before the death of Sh. Sohan Lal Yadav.

19. From the pleading of the respondent, it is clear that there is no mention of the above said ground. Further the alleged Will was made in respect of portion of 66.73 sq.yds and the said portion was given to Sh. Ram Prakash Yadav. That fact has no bearing in this case and it is not the case of respondent that Sh. Ram Prakash Yadav is his landlord.

20. It is settled law that in a petition for bona fide requirement, petitioner has to show that he is only more than a tenant and not required to prove absolute ownership of the premises.

21. The Court would cite here the observations in Rajender Kumar Sharma & others Vs. Leela Wati and Others 155 (2008) DLT 383 interalia that:

" It is settled law that for the purpose of section 14 (1) (e) of Delhi Rent Control Act, a landlord is not supposed to prove absolute ownership as required under Transfer of Property Act. He is required E No. 81/12 Page No. 10/19 Sh. Braham Prakash Yadav vs. Amrik Singh Arora to show only that he is more than a tenant."

22. Hence, there is no dispute on this aspect between the parties and no triable issue arises on this aspect. Ground (b) & (c):□

23. It was contended on behalf of respondent that there are other legal heirs of Late Sohan Lal Yadav and the petitioner has alleged false partition between them. He further contended that if the petitioner took place during life time of father of petitioner then same can be by registered document and not otherwise. On the other hand it was contended on behalf of petitioner that property was already orally partitioned between the sons of Sh. Sohan Lal Yadav and they are in occupation of the same.

24. This court does not agree with the contention of Ld. counsel for respondent because the petitioner has taken the plea that it was orally partitioned. It is not that every partition is required to

be registered. It is not the case of petitioner that he has prepared any document by which right has been created or extinguished. He is talking about some oral partition which had already taken place i.e. even before the death of his father. Further, in petition under section 14 (1) (e), the landlord is not required to prove absolute ownership but he should be more than a tenant. Tenant has no right to challenge such partition if other LR's are not challenging the said partition and further more when no other LR have claimed ownership or rent for E No. 81/12 Page No. 11/19 Sh. Braham Prakash Yadav vs. Amrik Singh Arora said tenanted premises.

25. The respondent has not placed any document on record as per which the property has not been partitioned as stated above. The respondent has no right to interfere in the internal matter of family concerning the division of ownership of the property of their landlord. More so when he is not taking a plea that some other person than the petitioner is his landlord.

26. Perusal of the reply filed by petitioner would show in which he has mentioned that no other legal heirs of Sh. Sohan Lal Yadav has concern with said property and father of petitioner had orally partitioned his entire estate i.e. property at Seelam Pur between his two sons named Mehar Chand and Om Prakesh during the year 1965-66 and property bearing 5, Krishan Kunj colony between his three sons and daughter of Sh. Sohan Lal got her share from her father and nothing has left with him except said property which he had orally partitioned . In his reply the petitioner has mentioned , how the shop in question came to the share of petitioner. It is not the case of respondent that he has received any notice or correspondence from other legal heirs objecting for the payment of rent to the petitioner or in any other way claiming the ownership of the shop in question. The respondent has no right to challenge the partition of property between the legal heirs of his landlord as respondent is merely a tenant. It is also not the case of respondent that he was ever in confusion regarding ownership of shop in question and approached the court for E No. 81/12 Page No. 12/19 Sh. Braham Prakash Yadav vs. Amrik Singh Arora deposit of rent U/s 27 of DRC Act. The respondent has admitted that he paid rent to Smt. Samay Kaur after death of Sh. Sohan Lal which was refused but he did not explain why the rent was not paid as per provisions of DRC Act thereafter.

27. So far as consent from other co-owners in filing present petition is concerned, the respondent has not shown any objection from any other legal heir. If there is any dispute then same can be decided between the LR's but the tenant has no right to challenge the same.

Ground (d)

28. The respondent has taken the plea that petition has been filed upon forged and fabricated documents and counter receipts are forged and fabricated which is not signed by the respondent.

29. Perusal of the file would show that the respondent has not explained how the alleged documents are forged and fabricated. The respondent has taken the plea that counter receipts are not signed by him but he has not placed on record his admitted signature and neither has pleaded any such admitted signature. Mere assertions are not sufficient for permission to leave to contest.

30. The court would rely upon the following judgment : □Rajender Kumar Sharma & others Vs. Leela Wati and Others 155 (2008) DLT 383, the Court held that:

"Mere assertions made by a tenant in respect of landlord's ownership of E No. 81/12 Page No. 13/19 Sh. Braham Prakash Yadav vs. Amrik Singh Arora other buildings and in respect of alternate accommodation are not to be considered sufficient for grant of leave to defend. If this is allowed, the whole purpose of Section 25B shall stands defeated and any tenant can file a false affidavit and drag a case for years together in evidence, defeating the very purpose of the statute."

Ground (e)

31. Ld. counsel for respondent contended that son of petitioner is doing business from 6, West Guru Angad Nagar, Gali no. 1, Laxmi Nagar , Delhi under the name of Yadav Telecom Center and petitioner has falsely alleged that son of petitioner are unemployed. On the other hand Ld. Counsel for petitioner contended that same shop was on rent which was opened by petitioner for his two sons in the year 2005 and was closed in the year 2008. He further contended the said tenanted shop was inside the Gali and did not attract the customers and due to heavy monthly rent and expenses, said business was closed and said shop was surrendered in the year 2008.

32. Perusal of the file would show that the respondent has filed one photocopy of website in which there is mention of Yadav Telecom Center, but there is no mention of name of the proprietor of the said center. Further there is no mention who took the print of the said site and there is no certificate as required under the provisions of in IT Act / IE Act for proving the authenticity of documents. No other E No. 81/12 Page No. 14/19 Sh. Braham Prakash Yadav vs. Amrik Singh Arora document has been filed for substantiating his averment.

33. Further, it is not the prerogative of tenant to advice the landlord how the space is to be utilised by the landlord. It is settled law that tenant cannot dictate terms to the landlord in selection of manner of use of space of which he or she is landlord.

34. The Court refers to the observations of the Apex Court in Baldev Singh Bajwa Vs. Monish Saini (2005) 12 SCC 778, wherein it was observed that:

"The need of the landlord is to be presumed as genuine and bona fide and it is not for the tenant to prove that the need is not bona fide. Heavy burden lies on the tenant to prove that the need is not genuine."

35. The respondent is not entitled to leave to contest the petition on this ground.

36. A tenant cannot dictate terms to a landlord in the matter of using his property in a particular manner.

37. The Court would cite here the decision of the Apex Court in Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal & Ors. (2005) 8 SCC 252 wherein it was held that:

"It is always the privilege of the landlord to choose the nature of the business and the place of the business."

38. The principles of law governing the bona fide requirement of the landlord found lucid expression in the decision reported as Krishan Lal v. R.N. Bakshi 2010(169) DLT 769. It was E No. 81/12 Page No. 15/19 Sh. Braham Prakash Yadav vs. Amrik Singh Arora held that:

"It is settled law that it is not for a tenant to dictate the terms of the landlord as to how and in what manner he should adjust himself, without calling upon the tenant to vacate a tenanted premises. While deciding the question of bona fides of requirement of landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted. When the landlord shows a prima facie case, a presumption that the requirement of the landlord is bonafide, is available to be drawn. It is also settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter and it is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The tenant cannot compel a landlord to live in a particular fashion and method until and unless the requirement shown is totally mala fide or no genuine."

Ground (f)

39. Ld. Counsel for respondent contended that petitioner has other properties bearing no. 6, West Guru Angad Nagar, Gali no. 1 and US-325, Mandawali Delhi which he purchased on the basis of POA and has not been disclosed herein and thus the petitioner is having alternate accommodation where he could settle his sons.

40. Perusal of the counter affidavit filed by petitioner would show in which it is stated that property bearing no. 6, West Guru Angad Nagar, does not belong to the petitioner and same is owned by E No. 81/12 Page No. 16/19 Sh. Braham Prakash Yadav vs. Amrik Singh Arora Sh. Pawan Kumar. He has also filed on record documents like GPA, Agreement to sell , Will , receipt, water and electricity bill showing that Sh. Pawan Kumar is owner of the above said premises. On the other hand no document has been filed by respondent showing that petitioner is owner of above said premises.

41. Ld. Counsel for respondent contended that in the said documents, same address as that of petitioner has been mentioned who is brother in law of petitioner. On the other hand Ld. Counsel for petitioner contended that petitioner is not owner of said premises .

42. From his own averment , Sh. Pawan Kuma is stated to be brother in law of petitioner. It is not the case of respondent that Sh. Pawan Kumar and petitioner is the same person. How a property in the name of brother in law of petitioner can be considered property of petitioner is beyond the understanding of this court.

43. So far as property bearing no. US□325, Mandavali is concerned, the petitioner has stated that same is 50 sq. yds and was purchased by petitioner in the year 1998, is a residential property, the part portion of which is occupied by tenants and rest of the portion is under construction and no commercial activity can be possible in the said property due to its location . It is further mentioned in his reply that shop in question is only commercial accommodation with the petitioner in Delhi. The petitioner has also filed title documents in respect of above said property. Perusal of the same would show that there is no mention of any shop and only it is stated as built up E No. 81/12 Page No. 17/19 Sh. Braham Prakash Yadav vs. Amrik Singh Arora property. The respondent has not filed any site plan of the above said property or any other proof showing how said property can be utilized by the petitioner or how the same is suitable accommodation for petitioner for his sons.

44. The Court may refer here to the decision in Mukesh Kumar v. Rishi Prakash 174(2010) Delhi Law Times 64, cited by the Counsel for the petitioner, wherein it was held by the Hon'ble High Court of Delhi that:

"A bald plea, without anything more, particularly when the nature of the plea in defence is such that, if true, it would leave a trail of evidence to establish its existence, and which would be easily available for everyone to see and pick up, cannot be accepted as prima facie disclosing a triable issue....."

45. Further, in Raghavendra Kumar Vs. Firm Prem Machinery & company(2001) 1 SCC 679, it was observed that:

"Landlord is the best judge of his requirement. It is not open to the Court to dictate him in what manner he should use his premises. He has got complete freedom in the matter."

46. None of the grounds asserted in the affidavit of the respondent seeking leave to contest disclose such facts as would disentitle the petitioner from obtaining an order with regard to the possession of the tenanted shop on the ground specified in clause (e) of the proviso of sub□Section (1) of Section 14 of the Delhi Rent Control Act.

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47. The judgments relied upon by Ld. counsel for respondent are not applicable to the facts of this petition.

48. The application for grant of leave to defend, filed on behalf of the respondent, is dismissed.

49. An eviction order is passed against the respondent in respect of one tenanted shop situated at ground floor of property bearing no 5□B, (Private Number) Krishan Kunj Colony, Laxmi Nagar Main Market, Delhi□10092 as shown in the red colour in the site plan filed with the present petition.

50. The petitioner would not be entitled to obtain possession of the above shop before the expiration of a period of six months from the date of this order in terms of section 14(7) of the Delhi Rent Control Act, 1958.

51. File be consigned to Record Room.

Announced in open Court.

Delhi Dated the 30.01.2015

(DEVENDER KUMAR GARG)
ACJ-cum-CCJ-cum-ARC(E)
KKD Courts, Delhi

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