FULL BENCH

Before Daya Krishan Mahajan, S. K. Kapur and R. S. Narula, JJ.

JAI KRISHAN DAS AND OTHERS,—*Petitioners*

versus

BABU RAM AND OTHERS,—*Respondents*

Civil Revision No. 439-D of 1962.

October 24, 1966

Court Fees Act (VII of 1870)—S. 7 (iv)(c) and Schedule II Art. 17(iii) and (vi)—Court-fee payable on plaint seeking a simple declaration to the effect that the plaintiffs are members of the Joint Hindu family owning joint family business and properties and are entitled to enforce the right to share in them as members of the Joint Hindu family—Whether ad valorem *under S. 7(iv(c) or fixed court-fee under Art. 17(iii) or (vi) of Schedule II—Court-fee payable on a plaint—How to be determined.*

Held, that on a proper construction of the relief claimed in the plaint as at present framed, it cannot be held that the plaintiffs are claiming any consequential relief. That being so, only fixed court-fee under Article 17(iii) of the Second Schedule of the Court-fees Act, 1870, is payable on the plaint of this suit.

Held, that it is settled law that for deciding the question relating to the amount of court-fees payable on a plaint, not only have the averments in the plaint alone to be taken into account but the said allegations are to be assumed to be correct. Decision on the question of court-fees payable on a plaint can neither depend on the pleas raised in defence nor on the maintainability of the suit as framed or even upon the assumption that Court must somehow spell out of the plaint such a claim which is ultimately capable of being decreed. These things are of no concern to the Court deciding a dispute as to the provision of Court Fees Act under which a plaint is taxable with fees. The Court has to take the plaint as it is without omitting anything material therefrom and without reading into it by implication what is not stated therein.

Petition under section 44 of Act VI of 1918 (Punjab Courts Act) for revision of the order of Shri R. L. Sehgal, Commercial Sub-Judge, Delhi, dated the 13th August, 1962, calling upon the petitioners (plaintiffs) to make up the deficiency in court fee by 31st August, 1962, failing which the plaint be rejected under order 7, Rule 11, C.P.C., with costs.

S. N. CHOPRA, ADVOCATE, for the Petitioners.

R. L. AGGARWAL AND R. M. LAL, ADVOCATES, for the Respondents.

JUDGMENT

NARULA, J.—The short question which calls for decision in this reference to the Full Bench is whether fixed Court-fees under Article 17(iii) or (vi) of Schedule II (as paid by the plaintiff-petitioners) or *ad valorem* Court-fees on the value of Rs. 1,00,00,000 (one crore) under section 7(iv)(c) of the Court Fees Act, VII of 1870, as amended by Punjab Act 31 of 1953 (as directed by the trial Court in its order under revision) is payable on the plaint of the suit filed by Jaikishan Dass and his two sons (plaintiff-petitioners) against Babu Ram and 34 others (defendant-respondents) for a simple declaration to the effect "that the plaintiffs are members of the Joint Hindu Family Panna Lal-Girdhar Lal as per pedigree table (Schedule 'A' attached to the plaint) owning joint family business as enumerated in Schedule B and the properties as given in Schedule C and are entitled to enforce the right of share in them as members of the Joint Hindu family". (The prayer in the plaint has been quoted by me verbatim in the last sentence for facility of reference). The heading of the plaint is—"Suit for declaration of plaintiffs' status and rights as members of the Joint Hindu family, Pannalal-Girdharilal".

It is settled law that for deciding the question relating to the amount of Court-fees payable on a plaint, not only have the averments in the plaint alone to be taken into account, but the said allegations are to be assumed to be correct. Decision on the question of Court-fees payable on a plaint can neither depend on the pleas raised in defence nor on the maintainability of the suit as framed or even upon the assumption that Court must somehow spell out of the plaint such a claim which is ultimately capable of being decreed. These things are of no concern to the Court deciding a dispute as to the provision of Court Fees Act under which a plaint is taxable with fees. The Court has to take the plaint as it is without omitting anything material therefrom and without reading into it by implication what is not stated therein. Let us, therefore, first see the relevant allegations made in the plaint of this case.

The parties to the suit are descendants of a common ancestor namely late Shri Girdhar Lal. The said common ancestor had five sons including (1) Babu Ram, (2) Balkishan Dass, (3) Murarilal and (4) Devicharan. The fifth son Bishan Chand had died issueless in 1923. Babu Ram had in turn eight sons. Balkishan Dass left behind him six sons, the eldest of which is Jaikrishan Dass, plaintiff No. 1.

Raj Krishan Dass, and Vinay Krishan Dass, plaintiffs 2 and 3 are sons of plaintiff No. 1. The sons of Girdhar Lal were carrying on joint family business under the style of "Panna Lal-Girdhar Lal". The joint family is also alleged to have owned immovable properties mentioned in Schedule B, attached to the plaint. List of the alleged joint family business is given in Schedule C attached to the plaint. A pedigree table of the family has been given in Schedule A filed with the plaint. After making above-mentioned allegations, the plaintiffs have stated in paragraphs 7 to 10 of the plaint as follows:—

"7. That uptill now there has been no accounts or the dissolution of the family business or any partition of the movable or immovables, but with some ulterior motive certain documents purporting to show change in the nature of business from joint Hindu family business to alleged contractual partnership and showing partition have been prepared and signed by some of the members, which documents are in fact sham, fictitious and fraudulent meant to show a state of affairs which in reality and fact does not exist.

(8) No accounts of the business of the joint assets was ever gone into, no dissolution of the joint family business has ever taken place. The same business of Tar Gitti, and in the same premises, and with the same capital, and the same members, continues under the same name and style, viz. Panna Lal, Girdhar Lal, the family has continued joint in business and properties. No actual or factual partition or any change in the nature and constitution of the business or family has taken place at all and certainly none *qua* the plaintiff.

(9) It has now come to light that defendants Nos. 1, 19, 29, 31 and 34 have written out a deed between themselves in 1914 with a view to manipulate and show the ancestral J.H.U.F. business to be a partnership business and then in 1957 have secured an award to show that the properties are no longer joint family properties. There has been no real change in fact. In any case the plaintiff is no party to either of the aforesaid documents which were secretly and fraudulently prepared. In fact defendants No. 1, 17, 29, 31 and 34 adopted the tacties of resorting to a private

award through their brother-in-law, Mr. Sheo Prashad, and then getting a declaratory decree in pursuance thereof on 23rd May, 1957, wherein it is given out that there has been an oral partition in 1956. As submitted this is all a show matter for purposes of income-tax and other taxes and other ulterior objects.

(10) In the Joint Hindu family business 'Panna Lal-Girdhar Lal' referred to above, most of the members were working members and were paid allowances. Plaintiff was also a working member at Rs. 300 per month to start with. He has for some time fallen out with Shri Devi Charan defendant No. 31, who holds a sway on the other members and is interfering in his participation in the business and the defendants have started challenging the plaintiff's co-parcenary rights of joint ownership in business and properties".

Court-fee of Rs. 19.50 was paid on the plaint as stated in paragraph 12 thereof under Schedule II, article 17(iii) or (vi) though it is specifically mentioned in that paragraph that the value of the suit for the purpose of jurisdiction is rupees one crore. The relief claimed in the suit contained in the prayer clause (paragraph 13) has already been quoted in the opening sentence of this judgment.

The contesting defendants raised various objections to the maintainability of the suit, some of which formed the subject-matter of the following three preliminary issues framed by the trial Court:—

"(1) Whether the plaint is correctly valued for the purposes of court-fee? If not, what is the correct valuation in that behalf ?

(2) Whether the suit as framed is not maintainable as alleged?

(3) Whether the judgment of Shri R. L. Lamba, Sub-Judge 1st Class, Delhi, operates as *res judicata*? If so, on what points?".

With the consent of the parties, the trial Court subsequently directed that the above-quoted issue No. 3 shall not be treated as preliminary. Though in its order under revision, the learned Sub-Judge proceeded to record findings on issues Nos. 1 and 2, he in fact decided issue

No. 1 only and did not give any finding on the issue relating to the maintainability of the suit as framed. On the first issue relating to court-fees (with which alone we are concerned in these proceedings) the trial Court held that the suit is in fact a suit for declaration with consequential relief for the following reasons:—

(1) On a reading of the allegations in the plaint, it is found that the real nature of the relief claimed by the plaintiffs is to avoid the deed of 1941 amongst certain defendants (whose particulars are given in the order), the award of 1957 amongst those parties and the declaratory decree in pursuance of the private award, dated 23rd May, 1957, wherein it was given out that there was an oral partition in 1956.

(2) Though the plaintiffs could treat the deed of 1941 as null and void and sue merely for a declaration, but there is a legal impediment in their way for seeking the declaration prayed for in so far as the decree passed on the basis of the award is concerned. "The plaintiffs cannot have the declaration prayed for until the said decree is set aside, and so the plaintiffs are obliged to ask for the declaration that the said decree is null and void".

(3) It is held "that the present suit is a suit for declaration that the decree, dated 23rd May, 1957, mentioned in paragraph 9 is null and void and further declaration (as prayed for) by way of consequential relief that the plaintiffs are members of the joint Hindu family of Panna Lal, Gidhar Lal. . . . .".

On the basis of the above-quoted findings, the learned Sub-Judge has held that the suit falls under section 7(iv)(c) of the Court-Fees Act and has directed that in view of the Punjab amendment to the said sub-section, as extended to the Union Territory of Delhi, the plaintiffs should make up the deficiency in court-fees on the basis of the value being rupees one crore failing which the plaint would be deemed to have been rejected under Order 7, rule 11 of the Code of Civil Procedure, with costs.

It is against the above mentioned order of the trial Court that the plaintiffs came to this Court under section 115 of the Code. In view

of the law already laid down by this Court in *Sheel Kumar* v. *Aditya Narain* (1), to the effect that an order accepting objection as to court-fee and valuation raised by the defendant, if erroneous, can be corrected in revision, it was not contested by the respondents that the order of the trial Court can be revised by this Court if it is found to be not in accordance with law. When the revision petition came up before a learned Single Judge of this Court (Grover J.), on January 28, 1966, it was pointed out on behalf of the petitioners that the order of the trial Court was contrary to the Division Bench judgment of this Court in *Sheel Kumar's case* (supra), wherein it has been held that a suit for mere declaration to the effect that a partition between the son, the father and the step-mother was merely a sham transaction and was entered into for ulterior purposes and, therefore, in fact there was no partition which affected the plaintiff's status as a member of the joint Hindu family was competent and that a prayer for the cancellation of the deed of partition was a mere surplusage and could be ignored for purposes of court-fee and jurisdiction. The learned Judges had held in that case that if it is found as a fact that there is no partition, there remain nothing to be cancelled. The order of the trial Court directing payment of *ad valorem* court-fee under section 7(iv)(c) of the Court Fees Act was set aside by this Court in *Sheel Kumar's case* and it was held that fixed court-fee under clause (iii) of article 17 (Schedule II) of the Court Fees Act was payable on the plaint. On the other hand, the respondents appear to have succeeded in creating an impression that the majority judgment in the subsequent Full Bench case of *Parbhu and others* v. *Girdhari, etc.* (2), had laid down different law. It was in these circumstances that the learned Single Judge observed that the view which prevailed with the Division Bench in *Sheel Kumar's case* could not be held to be good law in the face of the majority decision of the Full Bench in *Parbhu's case* and, therefore, considered it proper that this case should be placed before a larger Bench for disposal. It is in pursuance of the said Order of reference, dated January 28, 1966, that this revision petition has been placed before us in Full Bench.

Relevant part of section (7) (iv) (c) of the Court-fees Act of 1870, as amended by the Court Fees (Punjab Amendment) Act, 1953

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(1) 1964 P.L.R. 916.

(2) I.L.R. (1964)2 Punj 886 (F.B.)=A.I.R. 1965 Pb. 1.

(Punjab Act 31 of 1953), as extended to the Union Territory of Delhi, reads as follows:—

"7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

....

(iv) In suits—

....

(c) to obtain a declaratory decree or order, where consequential relief is prayed.

.....

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought :

Provided that the minimum court-fee in each shall be thirteen rupees :

Provided further that in suits coming under sub-clause (c) in cases where the relief sought is with reference to any property such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of this section".

On the other hand, article 17(iii) and (vi) of the Second Schedule of the said Court-fees Act is in the following terms:—

SCHEDULE II
FIXED FEES

Number		Proper fee
(17)	Plaint or memorandum of appeal in each of the following suit:	
	* * *	
	(iii) to obtain a declaratory decree where no consequential relief is prayed;	Rs. 19.50 P. (Punjab)
	* * *	
	(iv) every other suit where it is not possible to estimate at a money value the subject matter in dispute and which is not otherwise provided for by this Act."	Rs. 19.50 P. (Punjab)

A comparative study of the above-mentioned two provisions of the Court-fees Act shows that the decision of the point mooted before us would ultimately depend upon a finding on the question whether "consequential relief is prayed" for in the plaint of this suit or not? If the plaintiffs want only a daclaratory decree and have not prayed for any consequential relief, the case would squarely fall within item (iii) of article 17 of the Second Schedule. If, on the contrary, it can be held that consequential relief has in fact been prayed for by the plaintiffs, *ad valorem* court-fees would have to be paid by them under section 7(iv) (c) of the Act. After careful perusal of the plaint of this suit, I am of the opinion that the very basis of the finding of the trial Court to the effect that consequential relief has been prayed for by the plaintiffs is incorrect. The Court below appears to have mixed up the question of what the plaintiffs should ask for in order to succeed with what the plaintiffs have in fact asked for irrespective of the fact whether they can ultimately on merits obtain that relief or not. It is this fallacy which appears to have resulted in the ultimate confusion in the mind of the learned Sub-Judge which led to the passing of the order under revision. Mr. Radhe Mohan Lal, the learned counsel for the respondents, referred to the observations in the Full Bench judgment of the Lahore High Court in *Mst. Zeb-ul-Nisa* v. *Chaudhri Din Mohammad* (3), to the effect that the question of proper Court-fee payable in a suit is to be determined by the substance of the plaint taken as a whole and not merely by the language in which the relief asked for is expressed. Even in that case it was held that if the plaintiff has asked for a mere declaration without any consequential relief, *prima facie* he is entitled to sue on a fixed court-fee. All that the learned Judges added in that judgment was that the case may be different if it is found that although the plaintiff has asked for what is in form a declaratory relief, the relief claimed includes in reality some other relief of a consequential nature. It is, therefore, significant that the Full Bench in the case of *Mst. Zeb-ul-Nisa* did not hold that the Court should first frame the proper relief which the plaintiff should have asked for in a given case and then decide whether such relief, without claiming which the plaintiff cannot succeed, is taxable with fixed or *ad valorem* court-fees. It is the relief claimed which alone has to be seen and if despite the form which is given to

(3) 1941 P.L.R 106.

the relief claimed, the Court finds that in fact the prayer as made to the Court involves the granting of a relief of a consequential nature, it would not be led away by the mere language in which the prayer is couched. Counsel for the respondents also referred to the Full Bench judgment of the Oudh High Court in *Mt. Rup Rani and another* v. *Bithal Das* (4) wherein it was held that when a person who is a party to a decree asks for a declaration "about the decree being illegal and void, the grant of such a declaration in his favour necessarily has the effect of setting aside the decree and relieve him of the obligations under it. There is no quarrel with the proposition of law laid down by the Full Bench of the Oudh High Court in the above-mentioned case. If the plaintiffs here had claimed a declaration about the decree based on award being illegal and void, the case would have fallen within the ambit of the judgment of the Oudh Court, but no such claim has been made by the plaintiffs in the instant case. In ultimate analysis, it depends on the construction of the relief claimed by the plaintiffs to see whether the plaintiffs have in fact claimed a declaration simpliciter or also some consequential relief in addition to it. Each case must for this purpose depend on its own facts, but the body of the plaint has to be seen in order only to construe the prayer and not in order to spell out of the prayer something which is not contained in it even by implication or to enlarge its scope so as to make the suit maintainable or so as to entitle the plaintiff to ultimately succeed in the suit on proving the facts alleged by him.

Mr. Radhe Mohan Lal also referred to the judgment of the Supreme Court in *I. L. Janakirama Iyer* v. *P. M. Nilakanta Iyer* (5) in support of the proposition that in construing a plaint. the Court must have regard to all the relevant allegations made in it and must look at the substance of the matter and not merely on its form. The question which called for decision in *Jankirama Iyer's* case was whether on a fair and reasonable construction of the plaint the limitation for the filing of the suit was governed by article 120 or article 134 of the Limitation Act. In that context the Supreme Court repelled the contention of the Attorney-General to the effect that though one out of various clauses in the prayer contained in the plaint was consistent

(4) A.I.R. 1938 Oudh. 1.

(5) A.I.R. 1962 S.C. 633.

with the application of a particular article of the Limitation Act, but in construing the plaint for the aforesaid purpose the Court must have regard to all the relevant allegations made in the plaint and must look at the substance of the matter and not its form. The ratio of the judgment of the Supreme Court in that case does not help the respondents. The judgement of the Supreme Court which is nearest to the point we are considering was given in the case of *Nemi Chand and another* v. *The Edward Mills Co. Ltd. and another* (6). In the course of their Lordships' judgment it was held as follows:—

> "The question for determination in this appeal is whether the order of the Judicial Commissioner demanding additional court-fee can be sustained in law. A memorandum of appeal, as provided in article 1 of Schedule I of the Court-Fees Act, has to be stamped according to the value of the subject-matter in dispute in appeal; in other words, the relief claimed in the memorandum of appeal determines the value of the appeal for purposes of court-fee. The only relief claimed in the memorandum of appeal was the first one mentioned in the plaint. This relief being purely of a declaratory character, the memorandum of appeal was properly stamped under article 17 of Schedule II.
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> It is always open to the appellant in an appeal to give up a portion of his claim and to restrict it. It is further open to him, unless the relief is of such a nature that it cannot be split up, to relinquish a part of the claim and to bring it within the amount of court-fee already paid."

It is significant to note that the Supreme Court has authoritatively held in its above-mentioned judgment that "the relief claimed in the memorandum of appeal determines the value of the appeal for purposes of court-fee". What applies to appeals applies fully in this regard to suits and the question whether section 7(iv) (c) or article 17 of Schedule II of the Court Fees Act applies must be determined according to the relief actually claimed in the plaint in a particular case and not on what relief the plaintiff should ask for in order to succeed. The question whether the suit would fail on account of the

(6) 1953 S.C.R. 197.

omission to ask for consequential relief is a question relating to the merits of the controversy and not relating to the payment of court-fees on the plaint as filed in Court. It is not open to Courts to import into the plaint or to read into it any relief which has not been asked for by the plaintiff only in order to levy higher court-fees. There may be cases, and indeed this may ultimately be found to be one, where the plaintiff is entitled to consequential relief but asks for a declaration only and the suit may ultimately fall on that ground; but the Court is not entitled to insist upon the adding of a consequential relief by the plaintiff so as to compel him to succeed and on that basis ask for higher court-fee.

I think that this case is fully governed by the Division Bench judgment of this Court in *Sheel Kumar's case*. With the greatest respect to the learned Single Judge who directed this reference, we are of the opinion that in fact there is no conflict on any material point between the judgment of the Division Bench in *Sheel Kumar's* case on the one hand and the majority view in the judgment of the Full Bench in *Parbhu's case*. From the frame of question No. 2 referred to the Full Bench in *Parbhu's case* (quoted below) it is obvious that the plaintiffs had in fact sought a declaration in that suit to the effect that the previous decrees were null and void and had prayed for the said decrees being set aside and for fresh partition of the property:—

> "Whether a suit like the present, in which the plaintiffs seek a declaration that the previous decrees are null and void and be set aside and further pray for fresh partition of the property, is governed by section 7(iv)(c) of the Court-Fees Act?"

With the first question decided by the Full Bench we are not concerned in the instant case. That question related to the scope of the phrase "with reference to any property" as used in the second proviso added by the Punjab Act No. 31 of 1953 to clause (c) of section 7(iv) of the Court Fees Act. The instant case has been argued by both sides on the basis that if consequential relief is claimed for, the case would fall under section 7(iv)(c) and if no such relief has been claimed it would fall under article 17(iii) of the Court Fees Act. On the second question which was before the Full Bench in *Parbhu's* case (quoted above) it was held by Mehar Singh, J., in his dissenting note that if the plaintiffs were taken as having been represented in the previous partition suit, their relief for declaration to have the

decrees in that suit declared null and void and to have the same set aside was a claim for a declaration with consequential relief falling under section 7(iv)(c). On the same question, majority view (P. C. Pandit and P. D. Sharma, JJ.), was that the proviso to section 7 (iv (c) applied to the case and the plaintiffs were, therefore, liable to pay *ad valorem* court-fee on the market value of the property in dispute. The judgment of the Division Bench in *Sheel Kumar's* case does not appear to have been brought to the notice of the Full Bench but the learned Judges constituting the Full Bench do not appear to have laid down anything contrary to the *ratio* of the earlier Division Bench judgment.

Mr. Radhe Mohan Lal then contended that the father of the first plaintiff (who was the grand-father of plaintiffs 2 and 3) being the head of the branch of the joint Hindu family constituted by the plaintiffs, was admittedly a party to the decree referred to in paragraph 9 of the plaint and that, therefore, it is not open to the plaintiffs to avoid or ignore the said decree without having it set aside on the ground of collusion or fraud or otherwise. Counsel relied on para 333 (page 386) of Mulla's Hindu Law (13th edition) wherein it is stated that a plaintiff in a partition suit should implead only the heads of all branches of the defendants. He also relied in this connection on a Division Bench judgment of the Lahore High Court in *Bishambar Das* v. *Kanshi Parshad* (7), wherein it was held that to a suit for partition the really necessary parties were the heads of each branch of the family and it was not incumbent on the plaintiffs to implead all the members of the relevant branches. The argument was based on explanation 6 to section 11 of the Code of Civil Procedure and strength was sought to be drived for the contention of the respondents from the observations of the Judicial Committee of the Privy Council in *Linganagowda* v. *Basangoda* (8) to the effect that in the case of a Hindu family where all have rights, it is impossible to allow each member of the family to litigate the same point over and over again. At the same time, it was not disputed by the counsel for either side that if the plaintiffs were not parties to the previous decree for partition based on the award, they could not sue for having that decree set aside and they could simply ignore the same. Reference may in this connection be made to a Division Bench judgment

(7) I.L.R. 13 Lahore 483.
(8) A.I.R. 1927 P.C. 56.

of the Lahore High Court in *Harkishan Lal* v. *Barkat Ali* (9) and *Harwant Singh* v. *Jagan Nath* (10). But in the instant case, the plaintiffs have clearly stated in the body of the plaint that they were not parties to either of the documents, i.e., either to the deed of 1941 or to the reference which resulted in the award and the decree of the Court. It is not disputed that the plaintiffs had not signed any of those documents. The respondents, however, seek to hold them as parties to those documents and proceedings constructively. They may or may not be able to succeed in this contention but that is a matter which is yet to be decided by the trial Court. As stated above, the trial Court has not yet decided even the second preliminary issue relating to the maintainability of the suit for a declaration simpliciter without claiming consequential relief, the result of which issue may in turn depend on *inter alia* the finding on the question whether the plaintiffs were or were not constructively parties to the previous decree for partition. No observations made by me in this judgment may be construed by the Court below to indicate that the suit as framed is maintainable or that the plaintiffs were or were not parties to the previous decree. These matters will be decided by the trial Court if and when properly raised in accordance with law. All that I hold is that on a proper construction of the relief claimed in the plaint as at present framed, it cannot be held that the plaintiffs are claiming any consequential relief. That being so, only fixed court-fee under article 17 (iii) of the Second Schedule of the Court Fees Act, 1870, is payable on the plaint of this suit as at present framed and the judgment of the learned Sub-Judge to the contrary cannot be sustained.

I would accordingly allow this revision petition, set aside the judgment and orders of the trial Court on preliminary issue No. 1 and hold that proper court-fees have been paid on the plaint of the suit which may now proceed to trial on the other issues involved in this litigation in accordance with law. The costs of the revision petition shall abide the decision of the suit in the trial Court.

D. K. MAHAJAN, J.—I agree.

S. K. KAPUR, J.—I agree.

B. R. T.

(9) A.I.R. 1942 Lah. 209.
(10) A.I.R. 1943 Lah. 348.

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