

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUIT NO.295 OF 2012  
WITH  
NOTICE OF MOTION NO.1537 OF 2014  
WITH  
NOTICE OF MOTION NO.1209 OF 2015  
WITH  
NOTICE OF MOTION NO.1373 OF 2015  
IN  
SUIT NO.295 OF 2012**

Kaizer Taher Mithaiwala ....Plaintiff

Vs.

Shamima Taher Mithaiwala and Ors. ....Defendants

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Mr. Ankit Lohia a/w. Mr. Rohan Kadam, Mr. Sanjeel Kadam and Mr. Deepak Enakphale i/b. Mr. Mohanish Chaudhari for the plaintiff.

Ms. Sunila C. Chavan for the defendant no.1.

Mr. Suresh Dubey i/b. Mr. P.S. Gidwani for the defendant nos.2,3 and 5.

Mr. Sualeh Nagvadaria for the defendant no.6.

Mr. B.K. Bali i/b. M/s. Bali Associates for the applicant in NMS/1209/2015 and NMS/1373/2015.

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**CORAM : K.R.SHRIRAM, J.**

**DATE : 17<sup>th</sup> FEBRUARY, 2017**

**PC.:**

1 By consent, in issue no.2 that was settled on 23<sup>rd</sup> September, 2015, in view of the subsequent amendment to the plaint and further written statement filed, after the words ***“or any of them”*** the following be added :

***“/or any other property of the deceased.?”***

2                   Therefore, issue no.2 will read as under :

*“2. Whether the plaintiff has a right, title or interest in the suit properties set out at **Exhibits B to F and U** or any of them/or any other property of the deceased?”*

3                   Mr. Lohia, counsel for the plaintiff states that the plaintiff has already filed affidavit of documents and given inspection of the documents to the defendants but they are yet to receive the statement of admission and denial with reasons for denial from the defendants. Mr. Lohia further states that notwithstanding not receiving the statement of admission and denial with reasons for denial, they have already affirmed the affidavit in lieu of examination in chief.

4                   Ms. Chavan, Mr. Dubey and Mr. Nagvadaria state that they have not been served a copy of the evidence affidavit. Mr. Lohia states that even assuming that they have been served, they will serve a fresh copy of the evidence affidavit. Mr. Lohia states that since the issues have been modified marginally and based on the statement of admission and denial with reasons for denial, if the plaintiff is advised to file further affidavit in lieu of examination in chief, they will file the affidavit within one week of receiving the statement of admission and denial with reasons for denial. Ms. Chavan, Mr. Dubey and Mr. Nagvadaria state that within one week from today they will give their statement of admission and denial with

reasons for denial. Statements from all the counsel are accepted and so ordered.

5            Suit be listed on 27<sup>th</sup> March, 2017 for marking of documents/  
receiving evidence on record on which date plaintiff's first witness shall  
remain present in court.

**(K.R. SHRIRAM, J.)**