

FARAD CONTINUATION SHEET NO:

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
T. & I. J.

T.SUIT NO.39 OF 1989 IN PETITION NO.279 OF 1989  
WITH

T.SUIT NO.21 OF 1985 IN PETITION NO.296 OF 1985

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Office Notes, Office Memoranda of : Court's or Judge's orders.  
coram, appearances, Court's orders :  
or directions and Prothonotary's :  
orders. :  
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Mr.Gaurav Joshi with M.S.Dehlvi i/b Negandhi  
Shah & Himayatullah for the plaintiff in Suit  
No.39/89.  
Mr.R.S.Tripathi for defendant no.1.

CORAM : D.B.BHOSALE, J.  
DATED : 31ST MARCH, 2008.

P.C.:

. Heard learned counsel for the parties.

2. Learned counsel for defendant no.1  
submits that in view of the fact that the  
plaintiff-executrix in the instant suit has died  
the suit deserves to be dismissed as abated.  
For making such prayer, he placed reliance upon  
the judgment of Thrity Sam Shroff Vs. Shiraz  
Byramji Anklesaria & Anr. 2007 (2) Bom.C.R.560.  
Having confronted with this, the learned counsel  
for the heirs of the deceased plaintiff -  
executrix fairly submits that the suit may be  
disposed of as abated. He further states that  
his clients may be given liberty to adopt

appropriate proceedings to which learned counsel for defendant no.1 has no objection. Learned counsel for defendant no.1, however, submits that insofar as the court receiver, who is in possession of the suit property, is concerned, the court receiver may be directed to file report within the timeframe and obtain appropriate orders in respect of the suit property. Having considered the submissions of the learned counsel for the parties I am satisfied that the following order shall meet the ends of justice:

. Testamentary Suit No.21 of 1985 is dismissed as abated. Liberty to the plaintiffs, i.e. the heirs of the executrix, to adopt appropriate proceedings for appropriate relief/s within a period of eight weeks from today. The appointment of the court receiver shall remain in force for the period of eight weeks.

. It is open for the court receiver to file report in respect of the suit premises seeking appropriate directions within a period of four weeks from today. It is also open for the defendants to adopt appropriate proceedings, if they so desire to seek relief/s against the

plaintiffs.

. All contentions of the parties are kept open. It is needless to express that if the parties to the suit fail to take out appropriate proceedings and seek relief therein within a period of eight weeks, as aforementioned, it will be open for the heirs of the plaintiff to pray for possession of the suit premises, by filing affidavit, in the report, that will be filed by the court receiver in pursuance of this order.

**(D.B.BHOSALE, J.)**