

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 12821 OF 2012
IN
REVIEW APPLICATION STAMP NO. 25117 OF 2012
IN
SECOND APPEAL NO. 1367 OF 2004
WITH
REVIEW APPLICATION STAMP NO. 25117 OF 2012
IN
SECOND APPEAL NO. 1367 OF 2004**

Dattatraya S/o Gangadhar Joshi .. Applicant

Versus

1. Smt. Chabutai W/o Baburao Joshi
and another .. Respondents

Shri S. S. Chaudhari, Advocate hf/ Shri R. P. Dhase, Advocate for
the Applicant.

Shri Amol D. Lipne, Advocate h/f Shri A. R. Nikam, Advocate for
the Respondent No. 1.

CORAM : S. V. GANGAPURWALA, J.

DATE : 03RD FEBRUARY, 2017.

PER COURT :

. Mr. Chaudhari, the learned counsel for the review applicant submits that, this Court had dismissed the Second Appeal No. 1367 of 2004 under order dated 28.10.2010 on the premise that, the plaintiff and the defendant No. 1 both would be entitled for share in land gut No. 154. The learned counsel submits that, as per Sec. 9 of the Hindu Succession Act, those in

Ist entry in Schedule II shall be preferred to those in IInd entry. Those in IInd entry shall be preferred to those in IIIrd entry and so on in succession. The property went to the share of Devidas. Devidas died issueless. Devidas was uncle of plaintiff and defendant No. 1. As the defendant No. 1 is the son of the brother, he would be preferred as against the daughter of the brother that is the plaintiff. This aspect is required to be considered.

2. I have considered said submissions of the learned counsel. The said submissions made is difficult to comprehend. The brother's son and brother's daughter both are in entry IV of class II of the Schedule to the Hindu Succession Act. Same has been considered by me while dismissing the second appeal. There is no error apparent on the face of record. The civil application for condonation of delay as well as review application are dismissed. No costs.

[S. V. GANGAPURWALA, J.]