

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

WRIT PETITION NO. 3466 OF 2016

Sunil s/o. Raju Salampure .. Petitioner
Age. 25 years, Occ. Labour,
R/o. Pahadsingpura, Begampura,
Aurangabad.

Versus

1. The State of Maharashtra .. Respondents
Through Collector, Collector Office,
Aurangabad.
2. Principal
Agriculture Technical School
Paithan Road, Aurangabad.
3. Santosh s/o. Raju Salampure
Age. 28 years, Occ. Service,
R/o. Pahadsingpura, Begampura,
Aurangabad.
4. Uma @ Chinyabai Rama Salampure,
Age. Major, Occ. Household,
New Pahadsingpura, Begampura,
Aurangabad.

Mr.A.D. Kasliwal, Advocate for the petitioner.
Mr.S.K. Tambe, AGP for respondent/State.
Mr.A.D. Soman h/f. Mr.D.V. Soman, Advocate for R-4.

WITH

WRIT PETITION NO.3467 OF 2016

Sunil s/o. Raju Salampure .. Petitioner
Age. 25 years, Occ. Labour,
R/o. Pahadsingpura, Begampura,
Aurangabad.

Versus

1. Sau.Umabai @ Chainwabai Rama Salampure.. Respondents
Age. Major, Occ. Household,
New Pahadsingpura, Begampura,
Aurangabad.
2. The State of Maharashtra
Through its Collector, Aurangabad.

Mr.A.D. Kasliwal, Advocate for the petitioner.
Mr.A.D. Soman h/f. Mr.D.V. Soman, Advocate for R-1.
Mr.S.K. Tambe, AGP for respondent/State.

CORAM : S.B. SHUKRE, J.
DATED : 17.02.2017

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by consent.
2. The learned Adhoc District Judge-2 by relying upon the judgment of the Division Bench of this Court in the case of Smt. Nola Jonathan Ranbhise Vs. The Union of India & Ors., 2014(4) ALL MR 181, held that the appeal filed under section 388 of the Indian Succession Act, 1955 is not maintainable before the Court of District Judge.

3. I think, the learned District Judge has gone way off the mark in applying the ratio of **Smt. Nola (Supra)**. Said judgment considers Section 299 of the Indian Succession Act, wherein every order made under Chapter IV relating to practice in granting and revoking probates and letters of administration is appellable before the High Court. Said judgment, however, does not take into consideration the effect of section 388 of the said Act, which enables the State Government to invest in the Court inferior to the District Court by notification in the official gazette with power to exercise functions of the District Judge under Part X of Chapter 13 of the Indian Succession Act. Proviso to sub-section (2) of Section 388 of the said Act shows that an appeal from any order of an inferior Court shall lie not to the High Court but to the District Court. This statutory provision is clear and it enables a notified interior Court to exercise the powers and when the order is passed by the notified inferior Court, such order is appellable before the District Judge. Same view is taken by the learned Single Judge in the case of **Smt. Vitthal Ramchandra Mali Vs. Smt. Laxmi Ganapati Mali & Anr., 2006(4) ALL MR 389.**

4. The judgment of **Smt.Nola (Supra)**, therefore, has no application to the facts of the present case. In the

circumstances, the instant writ petitions deserve to be allowed and the same are allowed accordingly with costs. The impugned order is quashed and set aside. The matter is remanded back to the Court of District Judge, Aurangabad to decide afresh in accordance with section 388 of the Indian Succession Act, after giving reasonable opportunity of hearing to the rival parties. Since, one of the parties is a senior citizen, it will be appropriate that the appeal is disposed of as expeditiously as possible, preferably within three months from the date of appearance of the parties before the District Court. The parties shall appear before the District Court on 28th February, 2017. Parties to maintain status-quo till appearance of the parties before the District Court.

5. Rule made absolute accordingly.

[S.B. SHUKRE, J.]