

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8977 OF 2017

Dnyanoba Kushaba Kambale & Anr.	...	Petitioners
V/s.		
Sunanda Prakash Bhosale & Anr.	...	Respondents

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Mr. Ajit Kenjale with Mr. Suraj Bansode for the
petitioners.

Mr. Vilas B. Tapkir for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 28, 2024

P.C.:

1. The petitioners are challenging order dated 8 May 2017 passed by District Judge – 4, Satara in Miscellaneous Civil Appeal No.20 of 2016. The Appellate Court dismissed the appeal on the ground that the appeal is not maintainable relying on the Division Bench judgment of this Court in **Nola Jonathan Ranbhise V. Union of India** reported in 2014 (2) AIR Bom.R. 465 : 2014 (4) All MR 181. However, a coordinate Bench of this Court **Sunil Raju Salampure V. State of Maharashtra & Ors.** Reported in 2017 (3) Mh.L.J. 404 has taken a view that an appeal made under Section 388 of the Indian Succession Act, 1925 shall lye to the District Court.

2. Hence, in view of the judgment in **Sunil Raju Salampure** (supra), the writ petition succeeds.

3. Impugned order is quashed and set aside.
4. Miscellaneous Civil Appeal No.20 of 2016 is restored to file of the District Judge, Satara, who shall decide the appeal on its own merits.
5. If the petitioner has received appeal memo as per the impugned order, he shall re-admit the appeal in the District Court, and in case the appeal memo is not returned to the petitioner, the District Judge shall decide the appeal on merits.
6. Considering pendency of this writ petition, the Appellate Court shall decide the appeal filed by the petitioner within three months from the date of receipt of this order.
7. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)