

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.312 OF 2015

WITH

CIVIL APPLICATION NO.707 OF 2015

(Usha Dattatray Choudhary Vs. Balwantsingh Shivsingh Rathod and anr.)

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| Office Notes, Office Memoranda of Coram, appearances, Court's orders, or directions, and Registrar's Orders | Court's or Judge's orders |
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Mr. Raju D. Suryawanshi for Appellant-Applicant.
Mr. Mandar Limaye for Respondent No.1.

CORAM : R. G. KETKAR, J.**DATE : 21ST APRIL, 2015****P.C.:**

Not on Board. At the request of Mr. Suryawanshi, taken up in the production board.

2. Heard Mr. Suryawanshi, learned Counsel for appellant and Mr. Limaye, learned Counsel for respondent No.1.

3. Leave to amend is granted. Mr. Suryawanshi submitted that respondent No.1 instituted Suit for declaration that the plaintiff alone being the structure owner is liable to pay taxes to the respondent No.2-Corporation as also for mandatory injunction directing respondent No.2-Corporation to restore the assessment tax entries as they existed prior to their cancellation by it. He submitted that the trial Court decreed the Suit. Appeal preferred by the appellant is dismissed. He submitted that having regard to the provisions of Chapter VIII (Taxation Rules) in Schedule 'D' of Maharashtra Municipal Corporations

Act (for short 'Act'), the Suit instituted by respondent, itself, is not maintainable.

4. In view of these submissions, issue notice to respondents, returnable on 17.06.2015. Humdast is permitted. Mr. Limaye waives service for respondent No.1. Parties are put to notice that subject to the time constraint and convenience of the Court, the Appeal may be disposed of finally, at the stage of admission, on the following substantial questions of law:

- a. Whether the jurisdiction of the learned trial Court to entertain Suit against fixation of tax is expressly or impliedly barred in view of Section 9 of the Code of Civil Procedure, 1909?
- b. Whether the learned trial Court has jurisdiction to try and entertain the Suit in view of the statutory appeal available under Section 406 of the Act?
- c. Whether the Courts below committed serious error of law in not framing issue of jurisdiction?
- d. Whether the Courts below erred in not considering the provisions of Chapter VIII in Schedule 'D' of the Act which sets out the Taxation Rules?
- e. Whether the Courts below erred in not considering Section 139(1)(a-1) of the Act?

(R. G. KETKAR, J.)