

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

CIVIL REVISION APPLICATION NO.616 OF 2018

M/s. Casby Logistic Private Limited & Ors. ... Petitioners

Vs.

Kashibai Bhaskar Gharat and Ors. ... Respondents

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Mr. V.V. Walawalkar I/b. Mr. Amey C. Sawant for the Petitioners.

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CORAM : M. S. KARNIK, J.

DATE : 30th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioners.
2. The petitioners are the original defendant Nos.1 to 3. The petitioners filed an application for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure. It is the contention of learned counsel for the petitioners that plaintiffs have clubbed the reliefs barred by limitation with the reliefs which are within limitation. It is his contention that the suit has been filed by the plaintiffs against defendant Nos.4 and 5 seeking partition and separate possession of the plaintiffs 1/5th share in the suit property. It is the case of the plaintiffs that the sale deed dated 29.7.2015 which was executed on the basis of agreement of

sale dated 3.2.2006 by defendant Nos.4 and 5 in favour of petitioners-defendant Nos.1 to 3 is illegal. The plaintiffs have also prayed that the Power of Attorney executed by defendant Nos.4 and 5 in favour of defendant Nos.1 to 3 be declared as null and void.

3. As indicated earlier, it is the petitioners case that the agreement of sale dated 3.2.2006 and even the Power of Attorney are of the same date, the present suit obviously is barred by Law of Limitation.

4. I have gone through the order passed by the Trial Court. The plaintiffs have filed a suit for partition and seeking their 1/5th share in the suit property. Though the date of agreement of sale is 3.2.2006, the sale deed is executed on 29.7.2015. The plaintiffs are praying that the sale deed dated 29.7.2015 be declared as null and void. In such circumstances, whether the suit is barred by Law of Limitation is a question which will have to be decided by the Trial Court on the basis of evidence.

5. I do not see any reason to interfere with the order passed by the Trial Court. Keeping the issue of limitation open, as it is not possible to come to a conclusion that the suit is ex-facie barred by Law of Limitation, the present petition is dismissed with no order as to costs.

(M. S. KARNIK, J.)