

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CHAMBER SUMMONS NO. 770 OF 2016

IN

SUIT NO. 1688 OF 1981

Gangaprasad Chetnarayan Mishra

...Applicant/legal heirs of
Orig.Defendant

In the matter between

Shah Babulal Khimji

Through Legal Heirs,

1b. Vijay Babulal Shah & Ors.

...Plaintiffs

VS.

Chetnarayan Bhagawati Mishra (since deceased) ...Defendant

None for Applicant.

Mr.Dinesh P. Shah for Plaintiffs.

CORAM : S.C. GUPTE, J.

9 JUNE 2017

P.C. :

This chamber summons is taken out for vacating an exparte decree passed by this court on 11 December 2001. The decree was a decree of specific performance. After nearly 15 years, this chamber summons is taken out seeking to set aside the exparte decree. The Applicants are legal heirs of the original Defendant. The Applicants are absent.

2 The original Plaintiffs have filed their reply to the chamber summons. It is submitted in the reply that the Applicants had filed an independent suit, being Suit No.3116/2008, to set aside the exparte decree dated 11.12.2001 passed by this court. The Applicants have also taken out a notice of motion in that suit. The notice of motion was dismissed. It is submitted that the chamber summons on the same cause of action is not

maintainable.

3 The chamber summons is dismissed both for want of prosecution as well as on merits. No order as to costs.

(S.C. Gupte, J.)