

  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**JODHPUR**

S.B. Civil Second Appeal No. 73/2016

Gopal Krishna

----Appellant

Versus

Lrs Og Hasmukh And Anr.

-----Respondent

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For Appellant(s) : Mr. M.C. Bishnoi

For Respondent(s) :

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**HON'BLE MR. JUSTICE MANOJ KUMAR GARG**

**Order**

**29/07/2024**

After hearing the counsel for the appellant, in my considered opinion, the following substantial questions of law arise for consideration in this second appeal:-

1. Whether both the Courts below had committed substantial error of law and facts, which is apparent on the face of record, inasmuch as, both the learned Courts below have held that the way marked 'X' is being used as way by all those persons whose house are situated on it and opening towards east side?
2. Whether in view of undisputed and proved fact that the plaintiff's real brother Satish Chandra whose house is situated adjacent to the appellant's house in the north is using the same way marked 'X' in map Ex.1 for about last one year of course after winning the litigation involving the similar question against Shanker Lal, on the basis of right of equality and parity, the plaintiff's suit deserves to be decreed?

3. Whether the finding recorded by both the learned courts below regarding the land अ ब स द is perverse and deserves this Hon'ble High Court's indulgence under Section 100 C.P.C.?

4. Whether in facts and circumstances of the case, both the learned courts below committed substantial error of law in drawing adverse inference against the appellant for not getting the Commissioner's report produced in his own case but producing the Commissioner's report in case of appellant's brother Suresh Kumar?

Admit.

Issue notice to the respondents, returnable within ten weeks.

**(MANOJ KUMAR GARG),J**