ORDER SHEET IN THE HIGH COURT OF SINDH AT KARACHI

Ex. No.06/2006

Date Order with signature of Judge

- 1. For hearing of CMA No.394/2009 (U/o.21 R-58 CPC)
- 2. For hearing of CMA No.395/2009 (U/o.21 R-58 CPC)
- 3. For hearing of Ex. Application

05.10.2016

Mr. Mustafa Ali, advocate for D.H. Mr. Salim Thepdawala, advocate for J.D. Mr. Bashir Ahmed, advocate for applicant.

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Through CMA No.394/2009 the applicant seeks to frustrate judgment and decree in favour of D.H on the ground that the J.D are having certain agreement with the applicant in respect of the property which was subject matter of mortgage decree. Therefore, public auction of the said properties would frustrate the rights of applicant under the agreement with the J.D. After judgment and decree, a third party cannot claim any right on the suit property which is subject matter of judgment and decree on the ground that some agreements have been executed by J.D with the said third party (applicant). Even otherwise mere agreements which were entered into by J.D with the applicant do not confer any right, title and interest in favour of the applicant to frustrate the decree. The right, title and interest, if any, accrued to the applicant by virtue of the agreement mentioned in the application are independent rights enforceable only against J.D. The applicant has already filed suit for specific performance of all such agreements. The suit had been decreed on 12.09.2005 and all the agreement are subsequent to the date of decree. The agreements on the face of it appears to have been designed to unnecessarily delay the execution of decree.

In the circumstances, no case is made out for applicant to seek any relief trough listed applications. Both these applications are dismissed.

JUDGE

SM