# In the Court of ......................................

A.B. ......................

Plaintiff  
  
 against  
  
 C.D ....................

Defendant  
  
  
[The Union of Inida or the State of ................. , as the case may be.]  
  
The Advocate General of .................................  
  
The Collector of .....................................  
  
The State of .......................................  
  
The A.B. Company, Limited having its registered office at ..............  
  
A.B., a public officer of the C.D. Company.  
  
A.B, on behalf of himself and all other creditors of C.D. late of (add description and residence).  
  
A.B. ,on behalf of himself and all other holders of debentures issued by the Company .... Limited.  
  
The Official Receiver  
  
A.B., a minor, by C.D. [or by the Court of Wards], his next friend.  
  
A.B, a person of unsound mind [or of weak mind], by C.D. his next friend  
  
A.B., a firm carrying on business in partnership at  
  
A.B., by his constituted attorney C.D. (add description and residence)  
  
A.B., shebait of Thakur ...............  
  
A.B., executor of C.D., deceased. ..........  
  
A.B, heir of C.D., deceased.

PRELIMINARY DECREE FOR REDEMPTION OF PRIOR MORTGAGE AND FORECLOSURE OR SALE ON SUBSEQUENT MORTGAGE

|  |  |  |
| --- | --- | --- |
| [Plaintiff | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | 2st Mortgagee, |
|  | vs |  |
| Defendant No. 1 | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | Mortgagor, |
| Defendant No. 2 | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | 1nd Mortgagee.] |

(Order XXXIV, rules 2, 4, and 7)

(Title)

The suit coming on this ......... day, etc.; It is hereby declared that the amount due to defendant No. 2 on the mortgage mentioned in the plaint calculated up to this ............ day of ............... is the sum of Rs. ................. for principal, the sum of Rs. ................ for interest on the said principal, the sum of Rs. .............. for costs, charges and expenses (other than the costs of the suit) properly incurred by defendant No. 2 in respect of the mortgage-security with interest thereon and the sum of Rs. .......... for the costs of this suit awarded to defendant No. 2, making in all the sum of Rs. ...................

(Similar declarations to be introduced with regard to the amount due from defendant No. 1 to the plaintiff in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit.)

2. It is further declared that defendant No. 2 is entitled to payment of the amount due to him in priority to the plaintiff \*[or ( if there are several subsequent mortgages) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively :-]

3. And it is hereby ordered and decreed as follows:-

(i) (a) that the plaintiff or defendant No. 1 or one of them do pay into Court on or before the .... day of ................... or any later date up to which time for payment has extended by the Court the said sum of Rs. ................... due to defendant No. 2; and

(b) that defendant No. 1 do pay into Court on or before the ................ day of ................. or any later date up to which time for payment has been extended by the Court the said sum of Rs. ............ due .................. to the plaintiff; and

(ii) that, on payment of the sum declared due to defendant No. 2 by the plaintiff defendant No 1 or either of them in the manner prescribed in clause (i)(a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, defendant No. 2 shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents shall be delivered over to the plaintiff or defendant No. 1 (whoever made the payment), or to such person as he appoints, and defendant No. 2 shall, if so required, reconvey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff or defendant No. 1 (whoever has made the payment) quiet and peaceable possession of the said property.

(Similar declarations) to be introduced, if defendant No. 1 pays the amount found or declared due the plaintiff with such variations as may be necessary having regard to the nature of his mortgage.)

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid, of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court that the suit be dismissed or a final decree-

(i) \*[in the case of a mortgage by conditional sale or an anomalous mortgage where the or remedy provided for in the mortgage-deed is foreclosure and not sale] that the plaintiff and defendant No. 1 jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall; if required, deliver to the defendant No. 2 quiet and peaceable possession of the said property; or

(ii) \*[in the case of any other mortgage] that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale defendant No. 2 shall produce before the Court such officer as it appoints, all documents in his possession or power relating to the mortgaged property and

(iii) \*[in the case where a sale is ordered under clause 4 (ii) above] that the money realised such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of sale) in payment of the amount payable to defendant No. 2 under the decree and any further orders that may be passed in this suit and in payment of the amount which the Court may adjudge due to defendant No. 2 in respect of such costs of the suit and such costs, charges and expenses as may be payable to plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908; and that the balance, if any, shall applied in payment of the amount due to the plaintiff and that, if any balance be left, it shall be paid defendant No. 1 or other persons entitled to receive the same; and

(iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to defendant No. 2 and the plaintiff, defendant No. 2 or the plaintiff or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed,-

(a) that, if the plaintiff pays into Court to the credit of this suit the amount adjudged due to defendant No. 2 but defendant No. 1 makes default in the payment of the said amount, the plaintiff shall be at liberty to apply to the Court to keep defendant No. 2's mortgage alive for his benefit and to apply for final decree (in the same manner as the defendant No. 2 might have done under clause 4 above)-

\*[(i) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property]; or

\*[(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;] and

(b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed (in the case where a sale is ordered under clause 5 above)-

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by the plaintiff in respect of defendant No. 2's mortgage and the cost of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may by payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same; and

(ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of defendant No. 2's mortgage or the plaintiff's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

1. Subs. by Act 21 of 1929, s. 8 and Schedule, for Forms 3 to 11.

\* Words not required to be deleted.

Schedule

Description of the mortgaged property