**Decree for redemption of prior Mortgage and foreclosure or sale on subsequent Mortgage(Order XXXIV, Rules 2,3 and 4)**

[Plaintiff ……………………………….2nd Mortgagee,

*Versus*

Defendant No. 1 ……………………………Mortgagor,

Defendant No. 2 …………………………….1st Mortgagor].

**(Order XXXIV, Rules 2,3 and 4)**

IN THE COURT OF ……..

SUIT NO……… 20…...

The suit coming on this ……………. day, etc.; It is hereby declared that the amount due to the defendant No. 2 on the mortgage in the plaint calculated upto this day of …………..……. is the sum of Rs…………. for interest on the principal, the sum of Rs……….. for interest on the principal, the sum of Rs…………….. for costs, charges and expenses (other than the costs of suit) property incurred by defendant No. 2 in respect of the mortgage security with interest thereof and the sum of Rs………….. for the costs of this suit awarded to defendant the sum of Rs………..

*(Similar declaration 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 of (if there are several subsequent mortgagees) 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 been 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 plaintiff; and

(ii), that, on payment of the sum declared due to the defendant No. 2 by the plaintiff and defendant No. 1 or either of them in the manner prescribed in Cl.(i)(a) and on payment thereafter, before such date as the Court may fix of such amount with interest, if any, as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under Rule 7 of Order XXXIV of the First Schedule to the Code of Civil Procedure (Act V of 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 has made the payment); or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all encumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and also free from all liabilities 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 declaration to be introduced, if defendant No. 1 pays the amount found or declared due to the plaintiff, with such variation 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

(i) (In the case of mortgage by conditional sale or an anomalous mortgage where the only 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 so 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 purpose of such sale defendant No. 2 shall produce before the Court or 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 Cl. 4(ii) above] that the money realized by such sale shall be paid into Court and be duly applied (after deducting therefrom the expenses of the sale in payment of the amount payable to defendant No. 2 under the decree and any further orders that may have been passed after decree and in payment of the amount with interest if any, which the Court may have adjudged due to defendant No. 2 in respect of such cost of the suit and such costs, charges and expenses as may be payable to the plaintiff under Rule 7 of Order XXXIV of the First Schedule to the Code of Civil Procedure (Act V of 1908) and that the balance, if any, shall be applied in payment of the amount due to the plaintiff and that, if any further balance be left, if shall be paid to defendant No. 1 or other person entitled to receive the same; and

(iv) that, if the money realized by such sale shall not be sufficient for payment in full of the amounts due to defendant No. 2 and the plaintiff, the balance, if legally recoverable otherwise than out of the property sold, be personally paid by defendant No. 1 to defendant No. 2 or the plaintiff or both them, as the case may be.

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 adjudging due to defendant No.2 but defendant No. 1 makes default in the payment of the said amount, the plaintiff shall be entitled to keep defendant No. 2’s mortgage alive for his benefit and he shall be entitled to benefits similar to those conferred upon defendant No. 2 as per Cl. 4 above.

(i) that the 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)(in the case of mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage deed is foreclosure and not sale), that the whole of the liability of defendant No. 1 arising from the plaintiff’s mortgage and from the mortgage or defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

And it is hereby further ordered and decreed (in the case where a sale is ordered under Cl. 5 above) (i) that the money realized 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 costs of the suit in connection therewith 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 amount and any further order that may be passed after decree and in payment of the amount with interest, if any, which the Court may have adjudged due in respect of such costs of suit and such costs, charges and expenses may be payable to the plaintiff under Rule 7 of Order XXXIV of the First Schedule to the Code of Civil Procedure (Act V of 1908) and that the further balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same, and if the money realized by such shall be sufficient for payment in full of the amount due in respect of defendant No. 2’s mortgage or the plaintiff’s mortgage, the balance if legally recoverable otherwise than out of the property sold be personally paid by defendant No. 1 to defendant No. 2

SCHEDULE

**Description of the mortgaged property**