**Decree for sale(Order XXXIV, Rules 4)**

[Plaintiff ……………………………….Sub or Derivative Mortgagee

*Versus*

Defendant No. 1 ……………………………Mortgagor,

Defendant No. 2 …………………………….Original Mortgagee].

**(Order XXXIV, Rules 4)**

IN THE COURT OF ……..

SUIT NO……… 20…...

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

2. And it is hereby ordered and decreed as follows :

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

*(Similar declarations to be introduced with regard to the amount due to the plaintiff, defendant No. 2 being at liberty to pay such amount).*

(ii) that on payment to the sum declared due to defendant No. 2 by defendant No. 1 in the manner prescribed in Cl. (2)(i) 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 s may be payable under Rule 7 or Order XXXIV of the First Schedule to the Code of Civil Procedure (Act V of 1908), the plaintiff and defendant No. 2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned and all such documents (except such as relate only to the sub-mortgage) shall be delivered over to defendant No. 1 or to such person as he appoints and defendant No. 2 shall if so required, re-convey or re-transfer the property to defendant No. 1 free from the said mortgage 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 free from all liability arising from the mortgage or this suit and shall, if so required, deliver up to defendant No. 1 quiet and peaceable possession of the said property; and

(iii) that upon payment into the Court by defendant No. 1 of the amount due to defendant No. 2 the sum declared due to the plaintiff together with subsequent costs of the suit and other 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) be paid to him and that the balance, if any, shall then be paid to defendant No. 3 and that if the amount paid into the plaintiff, the balance if legally recoverable otherwise than out of the property sold, be personally paid by defendant No. 2 the plaintiff.

3. And it is further ordered and decreed that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, the plaintiff shall bring into the Court all documents, etc. as in sub-rule (ii) of Cl. 2.

4. And it is hereby further ordered that, in default to payment by defendant Nos.1 and 2 as aforesaid, the mortgaged property or a sufficient part thereof shall be directed to be sold; and that for the purposes of such sale the plaintiff and defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in their possession or power relating to the mortgaged property.

5. And it is hereby further ordered and decreed that the money realized by such sale shall be paid into Court and be duly applied (after deduction there from of the expenses of the sale) first in payment of the amount due to the plaintiff as specified in Cl. (i) of para 2 above with such costs of the suit and other costs, charges and expenses as may be payable under Rule 7 of Order XXXIV of the First Schedule to Code of Civil Procedure (Act V of 1908), and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2, and that, if any balance be left it shall be paid to defendant No. 1 or other persons entitled to receive the same.

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

And it is hereby further ordered and decreed that, if defendant No. 2 pass into Court to the credit to his suit the amount adjudged due to the plaintiff but defendant No.1 makes default in payment of the amounts due to defendant No. 2.

(i) (In the case of a 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 defendants 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 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 Clause 7 (ii) above) that the money realized by such sale shall be paid into Court and be duly applied (after deducting therefrom of the expenses of the sale) in payment of the amount of payable to defendant No. 2 under the decree and any further orders that may be passed after decree and in payment f the amount with interest, if any, which Court may, have adjudged due to defendant No. 2 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 in 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 balance be lift, it shall be paid to the defendant No. 1, or other persons entitled to receive the same; and

(iv) that, if the money realized by such sales shall not be sufficient for payment in full of the amounts due to the defendant No. 2 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**

[Kerala Gazette 13-1-1974, No. 3, Pt. III-G 347/S]