**Appendix D - Preliminary Decree for Foreclosure or Sale**

[Plaintiff....... 1st Mortgage,

Vs.

Defendant No.1....... Mortgagor.

Defendant No.2....... 2nd Mortgagee.]

(Order XXXIV, rules 2 and 4)

(Title)

1.             The suit coming on this ......................day, etc.; It is hereby declared that the amount due to the plaintiff 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) incurred by the plaintiff in respect of the mortgage-security with interest thereon and the sum of Rs............ For the costs of this suit awarded to the plaintiff, making in all the sum of Rs............

(Similar declarations to be introduced with regard to the amount due to defendant No.2 in respect of his mortgage if the mortgage-money due there under has become payable at the date of the suit.)

2.             It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No.2 {Words not required to be deleted} [or (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 defendants 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 the plaintiff; 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 defendant No.2; and

                             ii.        that, on payment of the sum declared to be due to the plaintiff by defendants 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 in 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, the plaintiff 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 defendant No. (who has made the payment) or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all in cumbrances created by the plaintiff 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 defendant No. (who 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 to be due to defendant No.2 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 the plaintiff, the plaintiff shall be at liberty to apply to the court for a final decree-

                              i.                {Words not required to be deleted} [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 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 plaintiff quiet and peaceable possession of the said property; or

                             ii.                {Words not required to be deleted} [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 the plaintiff shall produce before Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and

                            iii.                {Words not required to be deleted} [in the case where a sale is ordered under clause 4 (ii) above] that the money realised by such sale shall be paid into Court and be duly applied (after deduction there from of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to the plaintiff in 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, 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 the 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 the plaintiff and defendant No.2, the plaintiff or defendant No.2 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 defendant No.2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No.1 makes default in the payment of the said amount, defendant No.2 shall be at liberty to apply to the Court to keep the plaintiff's mortgage alive for his benefit and to apply for a final decree (in the same manner as the plaintiff might have done under clause 4 above)-

                                                  i.    {Words not required to be deleted} [(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 defendant No.2 quiet and peaceable possession of the said property;] or

                                                 ii.    {Words not required to be deleted} [(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes 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;]

b.and (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 {Words not required to be deleted} [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 there from of the expenses of the sale) first in payment of the amount paid by defendant No.2 in respect of the plaintiff's mortgage and the costs 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 defendant No.2 in respect of his own mortgaged 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 this suit and such costs, charges and expenses as may be payable to defendant No.2 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 the plaintiff's mortgage or defendant No.2'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 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.