**Appendix D - Preliminary Decree for Sale (Order XXXIV, Rule 4) (Where Accounts are Directed to be taken.)**

**(Title)**

1.     This suit coming on this..................day, etc.; It is hereby ordered and decreed that it be refered to..................................................as the Commissioner to take the accounts following:--

i.      an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable);

ii.     an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order of for the use of the plaintiff or which without the willful default of the plaintiff or such person might have been so received;

iii.    an account of all sums of money properly incurred by the plaintiff up to this for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate as is payable on the principal, or, failing both such rates, at nine per cent per annum);

iv.    an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage deed.

2.     And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii), together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3.     And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient dispatch after making all just allowances on or before the................................. day of...................................., and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4.     And it is hereby further ordered and decreed --

i.      that the defendant do pay into Court on or before the.............day of..................or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs............................................for the costs of the suit awarded to the plaintiff;

ii.     that on such payment 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, or Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents shall be delivered over to the defendant, 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 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 shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5.     And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and 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.

6.     And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall 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 be passed in this suit and in payment of any 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 paid to the defendant or other persons entitled to receive the same.

7.       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 amount payable to the plaintiff as aforesaid, the plaintiff 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 the defendant for the amount of the balance; and 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.