**Preliminary Decree for Sale**

**[Plaintiff......Sub or derivative mortgage,**

**vs.**

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

**Defendant No.2.... Original mortgagee.]**

**(Order XXXIV, rule 4.)**

**(Title)**

1.     This suit coming on this day, etc.; It is hereby declared that the amount due to defendant No.2 on his mortgage 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) 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 plaint)] in respect of his mortgage)

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

                              i.                that defendant No.1 do pay into Court on or before the said day of or any later date up to which time for payment may be extended by the Court the 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 of the sum declared due to defendant No.2 by defendant No.1 in the manner prescribed in clause 2 (i) 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 and defendant No.2 shall bring into Court ail 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 in cumbrances 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 plaintiff shall be at liberty to apply for payment to him of the sum declared due to him together with any subsequent costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interests 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 then be paid to defendant No.2; and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff, the plaintiff shall be at liberty (if such remedy is open to him by the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No.2 for the amount of the balance.

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-clause (ii) of clause 2].

4.             And it is hereby further ordered and decreed that, in default of payment by defendants Nos.1 and 2 as aforesaid, the plaintiff may apply to the Court for a final decree for sale! and on such application being made 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 of power relating to the mortgaged property.

5.             And it is hereby further ordered and decreed 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 due to the plaintiff as specified in clause 1 above with such costs of the suit and other 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 defendant No.1 or other persons entitled to receive the same.

6.             And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amounts payable 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 (if such remedy is open under 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.2 or defendant No.1 (as the case may be) for the amount of the balance.

7.             And it is hereby 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, but defendant No.1 makes default in payment of the amount due to defendant No.2, defendant No.2 shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be)-- (declarations in the ordinary form to be introduced according to the nature of defendant No.2's mortgage and the remedies open to him there under).

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