Form No. 36

Preliminary decree on mortgage, Mortgagee in possession.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. OF 19

CORAM :

DATE:

..... PLAINTIFF

versus

..... DEFENDANT.

The plaintiff claims to recover from the defendant the sum of Rs. ..... (here insert the particulars of claim) under a mortgage dated the ..... day of the ..... 19 and prays that the said mortgage may be enforced by foreclosure (or sale) of the property described in the schedule "A" hereto and the suit being this day called on for hearing and final disposal And upon hearing ..... Advocate for the plaintiff and upon the defendant being called and not appearing And upon proof of service of the writ of summons upon him And upon hearing evidence and perusing exhibits, this Court doth pass judgment for the plaintiff and doth order and decree that the suit be referred to the Commissioner for Taking Accounts to take the following accounts, viz.-

(1) An account of what is due on this date to the plaintiff for principal and interest on the mortgage mentioned in the plaint;

(2) An account of all sums of money properly incurred by the plaintiff upto this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage security and interest on such costs, charges and expenses;

(3) An account of the income of the mortgaged property received by the plaintiff upto this date or by any other person by the order or for the use of the plaintiff (or when specially directed, an account of the income of such property which but for the wilful default of the plaintiff might have been so received);

(4) 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 And this Court doth further order that any amount received under clause 3 or adjudged due under clause 4 above, together with interest thereon shall first be adjusted against any sums paid by the plaintiff under clause 2 above, 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 And this Court doth further order that the parties to the suit do appear before the said Commissioner And this Court, doth further order that the said Commissioner do report to this Court upon the matters hereby referred within six months from the date of the lodging of a certified copy of this decree in his office And this Court doth further order that upon the report of the Commissioner being received the said report be confirmed or modified by the Court after considering such objections as the parties to the suit may take And this Court doth further order that upon the amount due to the plaintiff being determined by the Court the defendant do pay into Court within such time as the Court may then direct the amount so determined and the sum of Rs. ..... for the costs of the suit and this Court doth further order 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 subsequent costs of the suit and such subsequent costs, charges and expenses as may be payable under Order 34, Rule 10 of the Code of Civil Procedure together with such subsequent interest as may be payable under Rule 11 of the said order, the plaintiff do reconvey to the defendant the said mortgaged property or where necessary assign the mortgage debt and transfer the mortgaged property to such third person as the defendant may direct free and clear of and from all incumbrances done by him the said plaintiff or by any person or persons claiming by, from or under him and do deliver all deeds, documents and writings of and relating to the said property in his possession, custody or control to the defendant or to whom he shall appoint and do deliver quiet and peaceful possession of the said property to the defendant or to whom he shall appoint and this Court doth lastly order that in default of the defendant paying into Court such sums as aforesaid by the aforementioned, the plaintiff be at liberty to apply for a final decree for sale of the said property (or foreclosure as the case may be).

Witness. ....., Chief Justice at Bombay aforesaid, this ..... day of 19

By the Court,

Prothonotary and Senior Master.

Sealer

The ..... day of ..... 19.

Preliminary Decree drawn on the

application of Advocate for .....

SCHEDULE "A"