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Ross, J.

injuries he was answerable for the injuries he caused, but the assembly, did not become thereby an unlawful assembly. In my opinion this contention is sound. This was not a riot. The accused and others ran to rescue Kirpal Singh and it is impossible to say that if they had not come on hearing Kirpal's cries, he would not have been further assaulted. Excessive force was used by some persons in the course of this transaction and for that these persons have been made answerable. It has not been ascertained who caused the injury to Balbhadra, the prosecution having failed to prove its allegation on this point; but the fact that Balbhadra was fatally hurt by some unascertained person is no reason for convicting all the members of the assembly of rioting.

I would therefore uphold the convictions and sentences of the three persons, Hariher Singh, Ragho Singh, and Mutru Singh under section 323 and would set aside all the convictions of rioting and the sentences passed against all the appellants under section 147. The appellants Ambika Singh and Jagnarain Singh will be released at once.

JWALA PRASAD J.—I agree.

Order modified.

APPELLATE CIVIL.

Before Jwala Prasad and Ross, JJ.

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December, 7.

RAJBANS SAHAY.

v.

ASKARAN BAID.*

Execution of decree—execution sale—price realized less than value entered in sale proclamation, whether sale can be set aside on ground that—Code of Civil Procedure 1908 (Act V of 1908), Order XXI, rules 66 and 90.

Where a dispute between the parties as to the value to be inserted in the sale proclamation under Order XXI, rule 66, of the Code of Civil Procedure, 1908, was settled by consent, and the value agreed upon by the parties was entered in the proclamation,

*Appeal from Original Order No. 144 of 1920, from an order of B. Janendra Chandra Bosu, Subordinate Judge of Gaya, dated the 21st June, 1920.

held, that the mere fact that the property realised at the auction sale considerably less than the value so entered was not by itself sufficient to justify the court in setting aside the sale on an application made in that behalf by the judgment-debtor under rule 90.

Surendra Mohan Tagore v. *Hurruk Chand* (1), referred to.

The facts of the case material to this report were as follows:—

The plaintiff was the holder of two mortgages for Rs. 20,000 and Rs. 25,000, respectively. A suit on the bonds was tried by the Additional Subordinate Judge of Gaya who delivered judgment on the 3rd May, 1918, for a consolidated sum of Rs. 1,01,283-8-3 on both bonds, including costs,

On the 7th June, 1919, the preliminary decree was made final and execution was levied. In the course of the execution proceedings a dispute arose between the parties as to what should be the value of the properties to be inserted in the sale proclamation under Order XXI, rule 66. By consent of the parties the value was eventually settled at Rs. 1,28,000. At the auction sale the properties were sold for Rs. 74,800 on the 24th April, 1920. The judgment-debtor applied under Order XXI, rule 90, to set aside the sale on the ground of material irregularity and fraud in publishing and conducting the sale, alleging that the inadequacy of price had caused him substantial injury. The first court held that the price obtained at the sale was the real value of the properties and that the judgment-debtor had not suffered any substantial injury.

The judgment-debtor appealed to the High Court.

Lachmi Narain Sinha, *Sivanandan Ray* and *Nawal Kishore Prasad*, for the appellant.

Kulwant Sahay and *Kailas Pati*, for the respondent.

JWALA PRASAD, J.—This appeal is directed against an order of the Subordinate Judge of Gaya, dated the 21st June, 1920, dismissing the application of the appellants judgment-debtors under Order XXI, rule 90, of the Code of Civil Procedure for setting aside the auction sale, dated the 24th April, 1920, on the ground of

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Jwala Prasad, J.

material irregularity and fraud in publishing and conducting the sale, and the consequent inadequacy of price thus causing substantial injury to the judgment-debtors.

On behalf of the judgment-debtors it is contended that the price fetched at the auction sale was inadequate by the sum representing the difference between the price mentioned in the sale proclamation and that fetched at the sale, namely, Rs. 53,200. He further contends that this inadequacy of price which is a substantial loss and injury to him is due to the material irregularity and fraud in publishing and conducting the sale. No substantial evidence, however, has been given by the judgment-debtors to show what the true value of the properties is, and as observed by the Court below the collection papers which must necessarily be with them have been withheld. The Court below found that one of the important villages Upraul Hamza was held by *mukarraridars* and practically no profit was made out of it by the judgment-debtors. The Court below was therefore perfectly justified in holding that the judgment-debtors failed to establish that the price fetched at the auction sale was not the true value of the properties in question. The learned Vakil on behalf of the judgment-debtors does not say that the properties in question were under-valued in the sale proclamation; he contends that the valuation of Rs. 1,28,000 entered by the Lower Court in the sale proclamation should be deemed to be the true value of the properties. He has referred us to various authorities in support of his contention. Those authorities do not go beyond holding that a proper estimate of the value of the properties to be sold is a very material fact for the purchasers to know, and, therefore, the value should be ascertained as nearly as possible by the Court in order to specify the same in the same proclamation. The leading case on the subject is the case of *Surendra Mohon Tagore vs. Hurruk Chand* (1) but that case, as well as the subsequent authorities, have emphasised the fact that a very elaborate enquiry should be made as to the true value of the property at the stage of issuing the sale proclamation. True it is

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that if a very grossly low valuation is shown in the sale proclamation the bidders might possibly be dissuaded and the property may fetch an inadequate price. In the present case the value of the property mentioned in the sale proclamation was almost double the sum fetched at the auction sale. Therefore, no bidders could possibly have been dissuaded by the value mentioned in the sale proclamation. No authority, however, has been shown to us that the value fixed by the Court for the preparation of the sale proclamation under Order XXI, rule 66, must be accepted as the true value of the property. Neither the Court nor the parties are in a position at that stage to appraise the real and proper price of the property. After all the value mentioned in the sale proclamation is a mere estimate which of course should as far as possible be a fair estimate, whereas if the sale proclamation is regular and there is no defect in the title, etc., of the property, the value fetched at the auction sale on a competition between bidders is the real market value of the property and must be deemed for the purpose of Order XXI, rule 90, to be the proper value of the property. We therefore have no hesitation in holding that the judgment-debtors have absolutely failed in this case to establish that the value fetched at the auction sale was in any way inadequate or that they suffered any material loss. A reference to the bid sheet will at once show that there was no lack of bidders at the time and there was keen competition. Consequently the price fetched was the best that the property could obtain. As there has been no material or substantial injury to the judgment-debtors they are not entitled to have the sale set aside even if it were established that there were irregularities or fraud in the publication and conduct of the sale. We have however heard in very great detail the learned arguments of Mr. *Lachmi Narain Singh* as to whether there was any irregularity in the publication and conduct of the sale and we have no hesitation in stating at once that no material flaw has been detected anywhere.

[The remainder of the judgement is not material to this report.]

Ross, J.—I agree. *Appeal dismissed.*