

**Rakhal Chunder Roy and anr. Vs. Modhusuddun Koer and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/864993](http://sooperkanoon.com/864993)

**Court :** Kolkata

**Decided On :** Oct-31-1887

**Reported in :** (1888)ILR15Cal104

**Judge :** W. Comer Petheram, C.J. and ;Tottenham, J.

**Appellant :** Rakhal Chunder Roy and anr.

**Respondent :** Modhusuddun Koer and anr.

**Judgement :**

W. Comer Petheram, C.J.

1. We think that this appeal must be dismissed.
2. The question which is raised before us is whether the Munsif has jurisdiction to try the suit which is brought to test the question, whether a property which has been attached in execution is liable to pay the claim of the creditor, the value of the property being over one thousand rupees, but the amount of the debt being less than one thousand rupees.
3. The question has never been actually before this Court so far as appears from the books, but it has been before the Courts of Bombay, Madras, and Allahabad, and these Courts have decided that the amount which is to settle the jurisdiction is the amount of the debt and not the value of the property. We think that, even if we had any doubt upon the point, it would be right to follow those decisions, as they

all appear to be uniform; but beyond that, and speaking for myself, I agree entirely with those decisions. The amount which is to settle the jurisdiction of the Court is the amount which is in dispute, and the amount which is in dispute is the amount which the execution-creditor will recover if he is successful, and the only amount which he would recover, if he is successful, would be the amount of his debt and not the value of the property attached, unless the two amounts happen to be identical.

4. For these reasons we think that the decisions in Madras, Bombay and Allahabad are correct, and they must be followed.

5. Some cases have been cited which were decided by this Court, but those cases are not in point. The only question decided in those cases is, whether in a suit of this kind, where only declaratory relief is sought for, a fixed Court fee or an ad valorem fee is to be paid ; but they do not deal with the amount of the ad valorem fee if such a fee is payable; therefore those decisions have no bearing on this case, and need not to further noticed. The appeal is dismissed with costs.