

**(2011) 12 KAR CK 0002**

**In the Karnataka High Court**

**Case No :** Regular First Appeal No. 1184 of 2008

M/s. TCI Finance Ltd.

APPELLANT

Vs

M/s. Nuoor Wires Ltd.

RESPONDENT

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**Date of Decision :** 07-12-2011

**Acts Referred:**

**Citation :** (2011) 12 KAR CK 0002

**Hon'ble Judges :** N. Kumar, J;H.S. Kempanna, J

**Bench :** Division Bench

**Advocate :** S. Siddappa, for the Appellant; K.N. Tejasvi, for M/s. P.M. Vaaudev and Co., for R-4 R1-R3 notice dispensed with, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

N. Kumar, J.—This appeal is preferred by the decree holder challenging the order passed by the Executing Court holding that the objector has proved his title of the property which is sought to be attached.

2. The decree holder M/s. TCI Finance Ltd., obtained a judgment and decree for recovery of money against M/s. Nucor Wires Ltd., and other. It appears in their records M/s. Nucor Wires Ltd., and others address was shown as No. 3-G at Lakeshore Manor No. 112, Gangadhar Chetty Read, Bangalore - 560042. After the decree when the Amount was not paid Execution No. 1248/2003 was filed for recovery of said amount by attachment of movables in the said premises under assumption that the judgment debtor is in occupation of the said premises and the movable found in the said premises belong to him. On coming to know of the said order, the objector entered appearance filed IA. No. 4 under Oder 21 Rule 58 and requested for recalling the order dated 06.01.2007 by which an order of attachment of movable was passed. The sail application was opposed by the decree holder by filing his objections. Therefore case was posted for trial The objector entered into the witness box and produced 3 sale deeds Exs. P2, P3 and P4 in which be had purchased 3 apartments Ex.P4 is the sale deed pertaining to "G" poperty, which is the subject matter of this proceedings. On the contrary, the

decree holder has not produced any material to show that the movables found in the said premises belongs to the judgment debtor.

3. On appreciation of the aforesaid oral and documentary evidence on record, the Trial Court held that the objector is the owner of the said premises. He is in peaceful possession and enjoyment of the said property from the year 2000 after purchase and naturally all the movables found in the said premises which is in his possession belongs to him and it cannot be held that the movables found in their premises belongs to the judgment debtor. In these circumstances it recalled the order of attachment and dismissed the execution petition. Aggrieved by the said order, the decree holder has preferred this appeal

4. The decree holder is unable to point out how the impugned order is erroneous. He is also unable to point out that the movable properties found in the said premises belongs to the judgment debtor. There is nothing on record to show that the judgment debtor is in possession of the said property, When once the objector has proved Ms title to the property by producing registered safe deed and has asserted that the movables found in the property belongs to him, the Trial Court committed no error in accepting his case and recalling the order of attachment.

5. No merits. Dismissed.