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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
GUARDIANSHIP PETITION (L) NO. 60 OF 2016

Elena James Malyil, acting through Constituted Attorney Mr. Jesus Sudhir Lall ...Petitioner

Mr. Simil Purohit, *with Mr. Prakash Shinde and Ms. Ambreen Saheed, i/b MDP & Partners, for the Petitioner.*

CORAM: G.S. PATEL, J
DATED: 6th June 2016

PC:-

1. The Petition is under Sections 27, 29 and 31 of the Guardians and Wards Act, 1890. The Petition is somewhat unusual. The Petitioner is the mother and natural guardian of one Yarina James Malyil. The Petitioner by virtue of her marriage to an Indian citizen is said to be a person of Indian Origin, holding an OCI Card. She is however a Romanian citizen with a Romanian passport. The minor Yarina is also a Romanian citizen and holds her own Romanian passport. The minor lives with the Petitioner.

2. The Petition is filed through one Jesus Sudhir Lall, a person resident in Mumbai who is not only the Constituted Attorney of the 1st Petitioner but is also the person in whose favour an alienation of

the minor's interest in the twelve immovable properties in question is proposed.

3. In the previous term, I have passed orders in five similar Petitions. There is no reason why a similar order should not be made in this Petition too.

4. A few facts may be necessary. The Petitioner married one James Anthony Malyil on 17th August 2000. James Malyil was an Indian citizen. He was a Christian. Yarina was born to them on 3rd April 2003. James Malyil died intestate on 17th May 2014. He was survived by the Petitioner and Yarina who is as yet a minor.

5. James Anthony Malyil, the deceased father of the minor, passed away leaving certain immovable properties that are the subject matter of this Petition. There are 12 such properties, which are more particularly described in Annexure "A" to this order. They are also more particularly described in the comprehensive schedule at Exhibit "D" to the Petition from pages 41 to 43. That tabulation also shows the total consideration and the 2/3rd share of the minor daughter Yarina. Paragraphs 8 to 19 of the Petition set out exhaustively the devolution of title of these properties and the manner in which James Anthony Malyil acquired his interest in each of them. In the Petition, these properties are collectively referred to as the subject properties. On his death, following the Christian Law of Succession, a one-third share in the properties devolved on the Petitioner and the remaining two-thirds devolved on the minor Yarina.

6. Since both the mother and daughter live in Romania, they do not wish to look after the immovable properties in India. The Petitioner proposes to sell these properties to Jesus Sudhir Lall subject to permission of this Court in this Petition. The Petitioner's interest is not adverse to that of the minor.

7. The Petitioner has entered into different Agreements on behalf of herself and the minor with Jesus Sudhir Lall in respect of all 12 properties. The particulars are set out in paragraph 24 of the Petition show that the total consideration is Rs. 6,82,80,400/- for all 12 properties, a price higher than their valuations (set out in paragraph 24 of the Petition). The minor's share in these subject properties is Rs. 4,55,20,267/-.

8. The father having died, the Petitioner is the natural and also the legal guardian of the minor. Prayer (a) is therefore, strictly speaking, unnecessary; but it is granted by way of abundant caution.

9. Having regard to these facts, the presence of the parties in the Court, and the Petitioner's confirmation of the relief sought, the Petition is made absolute in terms of prayer clauses (a) and (b), which read as follows:

“(a) That this Hon'ble Court be pleased to appoint the Petitioner as the legal guardian of the said Minor;

(b) That this Hon'ble Court be pleased to grant leave to the Petitioner to enter into, execute and sign into Sell deeds/ conveyance deeds and all such documents on behalf of the said Minor in respect of the subject

properties or part thereof in favour of Jesus Sudhir Lall and Dhvani Jesus Lall (Property No. 1) and Mr. Jesus Sudhir Lall (Property No. 2 to 12);”

10. Drawn up order is dispensed with.
11. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)

ANNEXURE “A”

a) Property 1

Vide a Registered Development Agreement and Power of Attorney dated 14th August 2002 executed by and between one Mr. Purushottam Bapurao Bhalerao and Others (Owners) of the One Part and Mr. James Anthony Malyil and Mr. Naresh Sudam Achara of the Other Part (Developers) the said James Anthony Malyil and One Mr. Naresh Sudam Achara acquired developmental rights in property bearing Survey No.901 Plot No.128 totally admeasuring 1867.33 sq.mtr. situated within the limits of village Nashik, Taluka and District Nashik within the limits of Nashik Municipal Corporation, Nashik It is stated that the said *James Anthony Malyil has an undivided 75% right title and interest in the abovesaid Property No.1 which is sought to be sold.*

b) Property 2

Vide a registered Sale Deed dated 28th January 2013 executed by and between Mr. Vishwanath Mukunda Tidame and Others (Vendors) of the One Part and Mr. James Anthony Malyil and Mr. Ravindra Ganpat Iyer of the Other Part the said James Anthony Malyil and Ravindra Ganpat Iyer became the co-owners of agricultural property bearing Survey No.104/5A admeasuring 00 Hec. 84.5 Ares plus Pot Kharab 00 Hec. 04 Ares, thereby totalling area 00 Hec. 88.5 Ares situated at village Pimpalgaon Garudeshwar, Taluka and District Nashik within the limits of Zilla Parishad,

Nashik . By virtue of the aforesaid James Anthony Malyil's became entitled to 50% undivided share right title and interest in the abovesaid property admeasuring **00 Hec. 14.75 Ares**.

c) Property 3

Vide a registered Sale Deed dated 16th April 2007 executed by and between one Mr. Sadashiv Walu Tidame of the One Part and Mr. James Anthony Malyil and Mr. Viraj Subhashchandra Yevle of the Other Part the said James Anthony Malyil and Viraj Subhashchandra Yevle became the co-owners of agricultural property bearing Survey No.104/5B admeasuring 00 Hec. 84.5 Ares plus Pot Kharab 00 Hec. 04 Ares, thereby totaling area 00 Hec. 88.5 Ares situated at village Pimpalgaon Garudeshwar, Taluka and District Nashik within the limits of Zilla Parishad, Nashik. By virtue of the aforesaid James Anthony Malyil's became entitled to 50% undivided share right title and interest in the abovesaid property admeasuring **00 Hec. 44.25 Ares**.

d) Property 4

Vide a registered Sale Deed dated 7th May 2007 executed by and between Mr. Madhukar Sukdev Tidme and of the One Part (Vendor) and (1) Vikrant Prakash Mate and (2) Mr. Malyil James Anthony of the Other Part (Purchasers) the said Purchasers became the co-owners of agricultural property bearing Survey No.99/2 admeasuring 01 Hec. 42 Ares plus Pot Kharab 00 Hec. 09 Ares, thereby totalling area 01 Hec. 51 Ares situated at village Pimpalgaon

Garudeshwar, Taluka and District Nashik within the limits of Zilla Parishad, Nashik. By virtue of the aforesaid James Anthony Malyil's became entitled to 50% undivided share right title and interest in the abovesaid property admeasuring **75.5 Ares of Agricultural Land.**

e) Property 5

Vide a Sale Deed dated 4th February 2003 executed by and between One Mr. Khandu Ramji Shirsath and another of the One Part (Vendors) and Mr. Malyil James Anthony and Mr. Vinod Fagunmal Valecha of the Other Part (Purchasers) and registered in the office of the Sub-Registrar, Nashik at Serial No.661/2003, the said Mr. James Anthony Malyil and Mr. Vinod Fagunmal Valecha became the co-owners of landed property bearing **Survey No.285/3E/3** totally admeasuring 00 Hec. 20 Ares situated within the limits of village Pathardi, Taluka and District Nashik within the limits of Nashik Municipal Corporation, Nashik. By virtue of the aforesaid James Anthony Malyil's became entitled to 50% undivided share right title and interest in the abovesaid property admeasuring **00 Hec. 10 Ares of non-agricultural land.**

f) Property 6

Vide a Registered Sale Deed dated 11th July 2013 executed by and between Mr. Mulchand Shamji Sethia and 3 Others of the One Part (Vendors) and Mr. James Anthony Malyil and Mr. Naresh Sudam Achara of the Other Part (Purchasers) and, the said James Anthony Malyil and Naresh Sudam Achara became the co-owners of an area

01 Hec. 00 Ares of all that agricultural property bearing **Gat No.350/1A** admeasuring 05 Hec. 81 Ares plus Pot Kharab 00 Hec. 25 Ares, thereby totaling area 06 Hec. 06 Ares situated at village Jalalpur, Taluka and District Nashik within the limits of Zilla Parishad, Nashik . By virtue of the aforesaid James Anthony Malyil's became entitled to 50% undivided share right title and interest in the abovesaid property admeasuring **00 Hec. 50 Ares of Agricultural Land.**

g) Property 7

Vide a Registered Sale Deed dated 24th January 2013 executed by and between Mr. Philip Peter Gonsalvis of the One Part (Vendor) and Mr. Malyil James Anthony and Mr. Naresh Sudam Achara of the Other Part (Purchasers) the said James Anthony Malyil and Naresh Achara became the co-owners of an Area 40 Ares out of agricultural property bearing **Survey No.30/2/1A totally** admeasuring 01 Hec. 99 Ares situated at village Gangavarhe, Taluka and District Nashik within the limits of Zilla Parishad, Nashik. The said Mr. Naresh Sudam Achara sold, transferred and conveyed his undivided share (i.e. 20 Ares) from and out of the said property unto and in favour of the Purchaser herein (Mr. Jesus Lall) vide registered Sale Deed; By virtue of the aforesaid James Anthony Malyil's became entitled to 50% undivided share right title and interest in the abovesaid property admeasuring **40 Ares of Agricultural Land.**

h) Property 8

Vide a Registered Sale Deed dated 28th December 2012 executed by and between Mr. Viraj Subhashchandra Yevle of the One Part (Vendor) and Mr. James Anthony Malyil of the Other Part (Purchaser), Mr. James Anthony Malyil acquired agricultural property bearing **Survey No.99/3+4** admeasuring 01 Hec. 35 Ares plus Pot Kharab 00 Hec. 04 Ares, thereby totalling area 01 Hec. 39 Ares situated at village Pimpalgaon Garudeshwar, Taluka and District Nashik within the limits of Zilla Parishad, Nashik By virtue of the aforesaid James Anthony Malyil's became entitled to undivided right title and interest in the abovesaid property.

i) Property 9

Vide a Registered Sale Deed dated 28th December 2012 executed by and between Mrs. Raina Asher Shaikh and another of the One Part (Vendor) and Mr. James Anthony Malyil of the Other Part (purchaser) and registered in the office of the Sub-Registrar, Nashik at Serial No.11653/2012, the said James Anthony Malyil became the absolute owner of all that agricultural property bearing **Survey No.30/2/1A** admeasuring 01 Hec. 99 Ares situated at village Gangavarhe, Taluka and District Nashik within the limits of Zilla Parishad, Nashik. By virtue of the aforesaid James Anthony Malyil's became the sole and absolute owner of the abovesaid property admeasuring **00 Hec. 40 Ares**.

j) Property 10

Vide a registered Deed of Apartment dated 23rd February 2006 executed by and between Mr. Naresh Sudam Achara and Others of the First Part, Mr. Malyil James Anthony of the Second Part and Ananth Jayanthi Developers through its Proprietor Mr. Harish Veerappa Kanchan of the Third Part, James Anthony Malyil became the absolute owner of the Flat/Apartment bearing No.101 admeasuring 94.76 sq.mtr. built-up i.e. 1020.00 sq.ft. on the First Floor in the residential building known as 'TIARA' constructed on Plot No.2 out of Survey No.589/1/9/2 admeasuring 335.16 sq.mtr., Plot No.3 out of Survey No.589/1/9/3 admeasuring 298.50; and Plot No.4 out of Survey No.589/1/9/4 admeasuring 329.88 sq.mtr., within TP Scheme - II having Final Plot No.112 situated within the limits of village Nashik, Taluka and District Nashik, within the limits of Nashik Municipal Corporation, Nashik. By virtue of the aforesaid James Anthony Malyil's became the sole and absolute owner of the abovesaid flat.

k) Property 11

Vide a Deed of Apartment dated 23rd February 2006 executed by and between Mr. Naresh Sudam Achara and Others of the First Part, Mr. James Anthony Malyil of the Second Part and Ananth Jayanthi Developers through its Proprietor Mr. Harish Veerappa Kanchan of the Third Part, Mr. James Anthony Malyil became the absolute owner of the said Flat/Apartment bearing No.502 admeasuring 137.21 sq.mtr. built-up i.e. 1477.00 sq.ft. on the Fifth

Floor in the residential building known as 'TIARA' constructed on Plot No.2 out of Survey No.589/1/9/2 admeasuring 335.16 sq.mtr., Plot No.3 out of Survey No.589/1/9/3 admeasuring 298.50; and Plot No.4 out of Survey No.589/1/9/4 admeasuring 329.88 sq.mtr., within TP Scheme - II having Final Plot No.112 situated within the limits of village Nashik, Taluka and District Nashik, within the limits of Nashik Municipal Corporation, Nashik. By virtue of the aforesaid James Anthony Malyil's became the sole and absolute owner of the abovesaid flat.

l) Property 12

Vide a registered Deed of Apartment dated 21st March 2009 executed by and between Ananth Jayanthi Developers through its Proprietor Mr.Harish Veerappa Kanchan of the First Part (Vendor) and Mr. James Anthony Malyil of the Other Part and registered in the office of the Sub-Registrar, Nashik at Serial No.2015/2009, the said James Anthony Malyil became the absolute owner of the said Flat/Apartment bearing No.11 admeasuring 356.37 sq.mtr. built-up i.e. 3836.00 sq.ft. on the Sixth Floor in the residential building known as 'ORCHID' constructed on N.A. Plot No.1A+30 out of Survey No.10A-3+14/2/11 admeasuring 1058.00 sq.mtr. situated within the limits of village Anandwalli, Taluka and District Nashik, within the limits of Nashik Municipal Corporation, Nashik . By virtue of the aforesaid James Anthony Malyil's became the sole and absolute owner of the abovesaid flat.