

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
GUARDIANSHIP PETITION NO. 23 OF 2016

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

...Petitioner

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

CORAM: G.S. PATEL, J
DATED: 7th December 2016

PC:-

1. The Petition is under Sections 27, 29 and 31 of the Guardians and Wards Act, 1890. The Petitioner, Elena Minodora Malyil, alias Elena James Malyil is the mother and natural guardian of one Yarina James Malyil also known as Yarina Mihaela Malyil. This fact is borne out of the copy of the Birth Certificate, PAN Card and Passport of the Petitioner and the minor annexed to the Petition. 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 immovable property in question is proposed.

3. 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.

4. The Petition traces the title of James Anthony Malyil in respect of a 50% undivided share in non-agricultural land (*i.e.*, 6425 sq. mtr. of land along with constructed (load bearing) premises admeasuring 199.01 sq. mtr.), part of non-agricultural property bearing Gat Nos. 151/1, 151/2, and 151/3 at village Mundhegaon, taluka Igatpuri and District Nashik within the limits of Zilla Parishad, Nashik, popularly known as "Elizabeth House". James Malyil acquired rights in the property by sale deed dated 30th December 2006. 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.

5. Since both the mother and daughter live in Romania, they do not wish to look after the immovable property in India. The Petitioner proposes to sell this property 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.

6. The Petitioner has agreed to sell the property to Jesus Sudhir Lall at sale price of Rs. 1,30,90,000/-, a price higher than their valuations (set out in the Petition). The minor's share would be Rs. 87,26,000/-.

7. 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.

8. Having regard to these facts, 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 a sale deed/ conveyance deed and all such documents on behalf of the said Minor in respect of the subject property in favour of Jesus Sudhir Lall;”

9. Drawn up order is dispensed with.

10. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)