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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
GUARDIANSHIP PETITION NO. 44 OF 2015

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

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

CORAM: G.S. PATEL, J
DATED: 26th April 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 four immovable properties in question is proposed.

3. It is because of these unusual situation that A.K. Menon J. on 2nd February 2016 observed that the Petition raised several questions that were then insufficiently addressed. On 15th February 2016, he noted the statement made that the Petitioner would remain present in Court after 25th April 2016. This is how the matter comes to be listed before me today.

4. The Petitioner is present, as is the minor and so too Mr. Lall, the proposed purchaser. I have myself put to the Petitioner in Court today whether she has read over and understood the contents of this Petition and whether she presses for the reliefs sought. She confirms that she has and that it does.

5. A few facts may be necessary given this complexity. 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.

6. Paragraphs 8 to 10 of the Petition trace the title in respect of three properties (i) agricultural land admeasuring 3 H 45 Ares from and out of agricultural land bearing Gat No. 115 admeasuring 6 H 83 Ares + pot kharaba 7 Ares (total 6 H 90 Ares) at Village Mahadevpur, Taluka & District Nashik (Yarina Farm); (ii)

agricultural land Gatt No. 117/1 admeasuring 1 H 38 Ares + pot kharaba 4 Ares at Village Mahadevpur, Taluka & District Nashik; *(iii)* agricultural land Gatt No. 258/3 at Village Dugaon, Taluka & District Nashik. Mr. James Malyil appears to have acquired a 50% undivided share, right, title and interest in each of these three properties by sale deeds all dated 20th November 2007. On his death, following the Christian Law of Succession, a one-third share in his share in the properties devolved on the Petitioner and the remaining two-thirds devolved on the minor Yarina.

7. 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 James Malyil's share in 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. The Petitioner says that she has entered into Agreements for Sale dated 13th December 2014 with Mr. Jesus Sudhir Lall in respect of James Malyil's share in all these three properties.

8. The sale price in respect of all three properties is Rs. 2,00,00,000/-, higher than the valuations obtained and set out in paragraph 15 of the Petition. The minor's share would be Rs. 1,33,33,333/-.

9. 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.

10. 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 a sale deed/ conveyance deed and all such documents on behalf of the said Minor in respect of the subject property in favour of Mr. Jesus Sudhir Lall;”

11. Drawn up order is dispensed with.

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

(G. S. PATEL, J.)