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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
GUARDIANSHIP PETITION NO. 42 OF 2015

Elena James Malyil, acting through Constituted Attorney Mrs. Pinky Jai Pujara ...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 Mrs. Pinky Pujara, a person resident in Mumbai who is not only the Constituted Attorney of the 1st Petitioner but is also the intending purchaser of the property, including the minor's share.

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. 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. Mr. Malyil died intestate on 17th May 2014. He was survived by the Petitioner and Yarina who is as yet a minor.

6. Paragraphs 7 and 8 of the Petition trace the title in respect of the property being Flat No. 3306 admeasuring about 847 square feet carpet area equivalent to 997 square feet of built up area on 33rd floor of Building 'C' of Oberoi Springs together with two car parking spaces in Oberoi Springs Cooperative Housing Society Limited, Andheri Link Road, Near Monginis Cake Factory, Opp. Citimall, Andheri (West), Mumbai. James Malyil acquired rights in this property by a sale deed dated 1st September 2009. On his death, following the Christian Law of Succession, a one-third share in the

property 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 property in India. The Petitioner says that she has entered into an Agreement for Sell dated 10th December 2014 with Ms. Pujara. The Petitioner has agreed to sell this property to Ms. Pujara firm subject to permission of this Court in this Petition. The Petitioner's interest is not adverse to that of the minor.

8. The property has been valued at Rs. 2,74,17,500/-. The sale price is Rs. 2,99,10,000/-. The minor's share would be Rs. 1,99,40,000/-.

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 Mrs. Pinky Jai Pujara;"

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

(G. S. PATEL, J.)