

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

GUARDIAN PETITION [L] NO. 71 OF 2017

Elena James Malyil] Petitioner

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Ms. Ambiech Saheed i/b MDP & Partners, for petitioner.

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CORAM : R.G. KETKAR, J.

DATE : 29th AUGUST, 2017.

P.C.:

Heard Ms. Saheed, learned Counsel for the petitioner. She has invited my attention to the various orders passed by this Court.

2. This 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.

3. The Petition is filed through one Antony Thomas, a person resident in Nashik 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.

4. On the earlier occasion, this Court has passed orders in five similar Petitions. There is no reason why similar order should not be made in this Petition also.

5. 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.

6. 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 40 to 44. That tabulation also shows that the total consideration and the 2/3 share of the minor daughter Yarina. Paragraph 8 of the Petition sets 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.

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 these properties to Harish Veerappa Kanchan subject to permission of this Court in this Petition. The petitioner's interest is not adverse to that of the minor.

8. The petitioner has entered into Agreement dated 12th December, 2014 on behalf of herself and the minor with Harish Veerappa Kanchan in respect of Plot No.1 out of Gat No. 349/1/4 (P)+350/2 (P), admeasuring 7403.50 square meters, situate at Village Jalalpur, Taluka and District Nashik, Taluka Panchayat Samiti and Jalalpur Grampanchayat.

9. Total consideration for sale of the said property is Rs. 4 Crores. Out of that Rs. 25,00,000/- have been paid by the prospective purchaser to the petitioner and remaining amount of Rs. 3.75 Crore is to be paid subject to obtaining permission for sale of the minor's share from the competent Court. The minor's share in these subject properties is Rs. 2,66,66,667/-.

10. 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.

11. 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 Agreement to Sell deeds/conveyance deeds and all such documents for herself and on behalf of the said Minor in respect of the subject property or part thereof in favour of Mr. Harish Veerappa Kanchan.

12. Ms. Saheed submitted that original power of attorney of Antony Thomas is filed before learned Principal District Judge, Nashik and, therefore, Petition is filed. Photo copy of the general power of attorney in favour of Anthony Thomas is annexed at Exhibit F pages 55 to 60 of this Petition. She submitted that objection raised by the Registry as regards filing of original power of attorney may be dispensed with. Office objection as regards filing of original Power of Attorney is dispensed with.

13. Petition is disposed of in terms of prayer clauses (a) and (b).

[R.G. KETKAR, J.]