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JITENDRA SHANKAR NIJASURE
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Date: 2024.08.23 13:00:29 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

MISCELLANEOUS PETITION NO.1 OF 2024

Master Yashraj Sanjiv Deshpande ...Minor

And

Sonal Sanjiv Deshpande ...Petitioner

Vishal Kanade, Chirag Dave and Soumya Srinivasan i/b. Legasis Partners for the Petitioner.

CORAM : R.I. CHAGLA J.

DATE : 21ST AUGUST, 2024.

ORDER :

1. By this Petition, the Petitioner is seeking leave to deal with the share of the Minor in flat no. 803 admeasuring built up area 30.70 square meters equivalent to 330.40 square feet i.e. approximately carpet area 27.41 square meters equivalent to 295 square feet and flat no.804 admeasuring built up area 41.11 square meter equivalent to 442.4 square feet i.e. approximately carpet area 36.71 square meters equivalent to 395 square feet on the 8th Floor of Wing B of building namely Mayfair Symphony Springs (forming part

of Mayfair Symphony Springs Co-operative Housing Society Limited) at Veer Savarkar Road, Park Site, Vikhroli West situated on CTS No. 2A/4E, Village Ghatkopar, Taluka Kurla, District Mumbai in the registration sub-registration district of Mumbai City and Mumbai Suburban in the state of Maharashtra along with (i) 5 (five) shares having face value of Rs. 50 each, and the aggregate Rs.250/- bearing distinctive no. 1036 to 1040 (both inclusive) and (ii) 5 shares having face value of Rs. 50 each, and the aggregate value of Rs.250/- bearing distinctive no. 1041 to 1045 (both inclusive) issued by the Mayfair Symphony Springs Co-Operative Society Limited and represented through share certificates dated February 27, 2014 bearing nos. MSS/246 and MSS/247, under section 8 (2) of the Act (for short 'Mayfair premises') and authorize the petitioner to execute and register, for and on behalf of the Minor, all such agreements, deeds and documents in favour of the above identified buyers as may be necessary for concluding the sale of the Mayfair Premises.

2. The Petitioner is the natural guardian of Master Yashraj Sanjiv Deshpande ('the Minor'). The present Petition is filed under Section 8(2) of the Hindu Minority and Guardianship Act, 1956. The Petitioner is the wife of deceased Sanjiv Digambar Deshpande alias

Sanjiv Deshpande, who died at Thane on 27th February, 2022. The said deceased died intestate leaving behind no testamentary writing or a Will and the same is a matter of record. Further, the said deceased at the time of his death, left behind him as his heirs and legal representatives under the Hindu Succession Act, 1956 by which he was governed. These are the persons mentioned in the tabular form in paragraph 3 of the Petition and which includes the Petitioner, the wife of the deceased, as well as the mother of the said deceased and the Minor. It is mentioned that save and except these persons the deceased has left no other legal heirs and next of kin.

3. The Minor was born on 30th September, 2013 and he is 10 years of age. The Minor is under the care and protection of his mother who is the Petitioner and the Petitioner is bearing all the expenses for his education, health and other necessities.

4. The said deceased who is husband of the Petitioner has left certain movable and immovable properties standing in his name during his lifetime. The said deceased has filed Miscellaneous Petition bearing No.350 of 2023 before this Court for issuance of legal heirship certificate in favour of the Petitioner declaring the Petitioner,

the wife of the deceased, the Minor as the son of the deceased as well as the Mother of the deceased as his legal heirs. This Court vide Order dated 7th August, 2023, granted heirship certificate to the Petitioner.

5. The Petitioner has stated that the deceased during his life time, jointly, with Suyash Shekhar Deshpande was seized and possessed of Mayfair Premises and they each held 50% share in said Mayfair premises.

6. The Petitioner further states that pursuant to the demise of her husband, his right, interest and shares in the said Mayfair Premises (being 50%) devolved upon the said heirs i.e. the share of the deceased in the Mayfair Premises being 16.666% each. Further, Suyash Shekhar Deshpande gifted his undivided share in the Mayfair Premises (being 50%) in favour of the Petitioner vide two gift deeds in the year 2022. The said gift deeds are annexed at Exhibits G-1 and G-2.

7. The Petitioner states that the mother of the deceased Nirmala Digambar Deshpande has gifted her share in the Mayfair

Premises to the Minor. The gift deeds have been annexed to the Petition at Exhibits H1 and H2.

8. Pursuant to the execution of the gift deeds the Mayfair Premises the shares have been transferred in the name of the Petitioner and the Minor. The Petitioner states that currently the Petitioner and the Minor are having share in the Mayfair Premises in the proportion of 66.66% and 33.34%.

9. The Petitioner states that the share of the Minor in the Mayfair Premises is the subject matter of the Petition and the Petitioner has sought permission of this Court with respect to transfer of the share of the Minor (being 33.34%) in the Mayfair Premises by way of sale.

10. The Petitioner further states that she does not wish to stay in the Mayfair Premises and has identified the buyers namely Mr. Tabrez Abdul Razak Sumra and Mrs. Shahenaz Tabrez Sumra who are interested in purchasing the Mayfair Premises for a total sale consideration of Rs.1,50,00,000/- and have entered into a term sheet setting out broad commercial terms agreed between the parties.

11. The Petitioner further states that the Agreement for Sale is being executed between the proposed buyers and the Petitioner with leave of this Court and has been prepared and annexed at Exhibit K to the Petition.

12. The Petitioner has obtained valuation report from the Sub-Registrar, Kural No.3 of assurances where ready reckoner value of the Mayfair Premises is determined at Rs.1,13,65,873.80. Thus the sale consideration which is being received from the proposed buyers is far higher than the ready reckoner value and is therefore reasonable considering the present market conditions prevalent in the area where the Mayfair Premises is located.

13. The Petitioner further states that she intends to sell the Mayfair Premises for the advantage of the Minor and undertakes to keep the consideration amount received against / proportionate to the share of the Minor as fixed deposit receipts in a bank which entitles the account owner to receive interest thereon and the same will be highly profitable till the Minor attains the age of majority. The Petitioner states that said monies would be later on realized / used for the Minor's benefit such as his education, investment, marriage

and other expenses in the interest of the Minor on the minor attaining majority for the reasons / purpose he deems fit.

14. The Petitioner has also mentioned the reason for proposed sale which is namely, due to the advance age of the other two heirs of the said deceased i.e. the mother of the deceased and the Petitioner who is the wife of the said deceased, the Mayfair Premises is not occupied personally by the heir and the Petitioner is facing difficulty in maintaining the Mayfair Premises in relation to the other multiple properties left behind by the said deceased.

15. The Petitioner has accordingly sought for the aforementioned relief in the Petition.

16. I have heard Mr. Vishal Kanade, the learned Counsel appearing for the Petitioner and considering the submissions as well as averments in the Petition, in my view as the Petitioner and the Minor are the joint owners of the Mayfair Premises, having share of 66.66% and 33.34% respectively and given the reasons for proposed sale of the Mayfair Premises which would be in the interest and welfare of the Minor and that the Minor's share will be secured in the

form of fixed deposit receipt in a bank which will earn interest, this is a fit case to grant the relief sought for in the Miscellaneous Petition.

17. Hence, the Miscellaneous Petition is made absolute in terms of prayer Clauses (a), (b) and (c) which read thus:-

> "*(a) That issuance of Notice under Section 31(4) of the Guardian and Wards Act, 1890, may be dispensed with;*
>
> *(b) that this Hon'ble Court may be pleased to allow the present Petition and grant leave to the Petitioner to deal with the share of the Minor in the said Mayfair Premises being flat no. 803 admeasuring built up area 30.70 square meters equivalent to 330.40 square feet i.e. approximately carpet area 27.41 square meters equivalent to 295 square feet and flat no.804 admeasuring built up area 41.11 square meter equivalent to 442.4 square feet i.e. approximately carpet area 36.71 square meters equivalent to 395 square feet on the 8th Floor of Wing B of building namely Mayfair Symphony Springs (forming part of Mayfair Symphony Springs Co-operative Housing Society Limited) at Veer Savarkar Road, Park Site, Vikhroli West situated on CTS No. 2A/4E, Village Ghatkopar, Taluka Kurla, District Mumbai in the registration sub-registration district of Mumbai City and Mumbai Suburban in the state of Maharashtra along with (i) 5 (five) shares having face value of Rs. 50 each, and the aggregate Rs.250/- bearing distinctive no. 1036 to 1040 (both inclusive) and (ii) 5 shares having face value of Rs. 50 each, and the aggregate value of Rs.250/- bearing distinctive no. 1041 to 1045 (both*

inclusive) issued by the Mayfair Symphony Springs Co-Operative Society Limited (for short 'Mayfair premises') and represented through share certificates dated February 27, 2014 bearing nos. MSS/246 and MSS/247, under section 8 (2) of the Act and authorize the petitioner to execute and register, for and on behalf of the Minor, all such agreements, deeds and documents in favour of the above identified buyers as may be necessary for concluding the sale of the Mayfair Premises.

(c) The Hon'ble Court be pleased to grant the Petitioner leave to receive the proportionate amount against the share of the Minor out of the total sale consideration to be received against sale of the said Mayfair Premises (being 33.34%) and invest the same into a separate fixed deposit to be created for the benefit of the Minor."

18. The Miscellaneous Petition is disposed of and there shall be no order as to costs.

[R.I. CHAGLA J.]