

**IN THE COURT OF THE ADDL. DISTRICT JUDGE-III, THALASSERY**

Present :- Smt. Ruby K Jose, Addl. District Judge-III.

Tuesday, the 26<sup>th</sup> day of May, 2026/5<sup>th</sup> Jyaishta, 1948.

**ORIGINAL PETITION (G&W) No.37 OF 2026**

(In the matter of minor children

1. Muhammed Zayan.C.P born on 21-07-2012,
2. Muhammed Azaan.C.P born on 22-09-2015)

Shamna.C.P., D/o.Aleema, Aged 30 years, Shalimas, Chirakkal amsom desom, (PO) Alavil, Kannur Taluk.	]	Petitioner
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V/s.

Muhammed Asharaf, S/o.Ashraf, Aged 38 years, Shalimas, Chirakkal amsom desom, (PO) Alavil, Kannur Taluk-670 008.	]	Respondent
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This petition coming on the 23<sup>rd</sup> day of May, 2026 for final hearing before me in the presence of S/Sri.Sivadasan Vengayil and C.Prasad, Advocates for the Petitioner; of Sri.Pramod Kumar.K., Advocate for the Respondent and having stood over for consideration till this day; the court passed the following:

**ORDER**

This petition is filed U/s.7 of the Guardian and wards Act (for short 'the Act') in respect of the minor children namely Muhammed Zayan.C.P and Muhammed Azaan.C.P to appoint the petitioner as the guardian of the person and property of the minors and to pass an order permitting the petitioner to release 2/58<sup>th</sup> shares of the minor children in the petition schedule property.

2. The averments in the petition are as follows:-

The petitioner is the mother of the minors namely Muhammed Zayan.C.P born on 21.07.2012 and Muhammed Azaan.C.P born on

22.09.2015. The respondent is the father of the minor children. They belonged to Muslim religion. The petition schedule property is originally belonged to one Dermon Panikkar and others and as per Registered Assignment Deed No.76/1965 of SRO, Valapattanam, the property was assigned to Puthiyapurayil Nabeesa and her children. After the death of Nabeesa, the property devolved to her entire children as Thavazhy property. The petitioner is the daughter of Aleema, one of the daughter of Nabeesa. The minors are entitled 1/58th share of joint right each in the schedule property as the co-owner in the thavazhi property. The petitioner has assigned her 1/58th share of joint right in the schedule property in favour of her relative Noorjahan C P by executing a Registered Release Deed No.1573/2023 of SRO, Valapattanam. The total value of 16/58<sup>th</sup> share of the schedule property is Rs.3,12,000/- per Ares. There is no purpose will be served keeping the minors' share idle without releasing the same along with the share of the petitioner. The release of the share of the minors over the petition schedule property shall be beneficial to the interest of the minors in all aspects. The petitioner is ready to deposit the share of the minors in any Nationalized Bank in the name of the minors till they attain majority. So, the petitioner seeks for an order appointing her as the guardian of the person and property of the minor children and to grant permission to release the 1/58th share of the minors over the petition schedule property.

3. Notice has been issued to the respondent. The respondent filed counter stating no objection for appointing the petitioner as the guardian of the person of the minors. A third party also filed an affidavit supporting the contentions of the petitioner.

4. A publication regarding the institution of the OP was duly made in Sudhinam dated 19.02.2026 inviting objections to the proceedings. No one entered appearance or raised any objection.

5. Petitioner filed affidavit and Exts.A1 to A5 documents were marked.

6. Heard the counsel for the petitioner and respondent and perused the records.

7. The points that arise for determination are:-

1. *Whether the petitioner can be appointed as the guardian of the person and property of the minors?*
2. *Whether permission can be granted to the petitioner to release the shares of the minors in the petition schedule property?*
3. *Relief and order as to costs?*

8. **Point Nos.1 and 2** :- The petitioner is the mother of the minor children namely Muhammed Zayan.C.P born on 21.07.2012 and Muhammed Azaan.C.P born on 22.09.2015. The respondent is the father of the minors. The petition schedule property originally belonged

to one Dermon Panikkar and others, and the same was assigned as per Registered Assignment Deed No. 76/1965 of SRO, Valapattanam, in favour of Puthiyapurayil Nabeesa and her children. After the death of Nabeesa, the property devolved upon all her children as thavazhy property. The petitioner is the daughter of Aleema, who is one of the daughters of Nabeesa. The minor children are entitled to a 1/58th share each in the joint rights over the schedule property as co-owners in the thavazhy property. The petitioner has assigned her 1/58th share in the joint rights over the schedule property in favour of her relative, Noorjahan C.P., by executing Registered Release Deed No. 1573/2023 of SRO, Valapattanam. There is no purpose will be served keeping the minors' share idle without releasing the same along with the share of the petitioner. The release of the share of the minors over the petition schedule property shall be beneficial to the interest of the minors in all aspects. The petitioner is ready to deposit the share of the minors in any Nationalized Bank in the name of the minors till they attain majority. Therefore, the petitioner seeks permission to release 2/58<sup>th</sup> share of the minor and to appoint her as the guardian of the person and properties of the minors.

9. No one including the respondent raised any objection to the prayer made by the petitioner. Since, there is no other person eligible to be appointed as the guardian for the property of the minors, the interest of justice warrants that the petitioner can be appointed as the

guardian, as prayed for. However, the prayer made by the petitioner that she is to be appointed as the guardian for the minors cannot be considered as the same is to be considered by the Family Court.

10. In order to prove the petitioner's case, as already stated, petitioner filed affidavit in lieu of Chief examination. The documents produced from the side of the petitioner are marked as Ext.A1 to A5. Ext.A1 is the certified copy of the Registered Sale Deed No. 76/1965 of SRO, Valapattanam executed by Dermon Panikkar and others in favour of Pazhayapurayil Nabeesa and others. Ext.A2 is the Registered Release Deed No.1803/2023 of SRO, Valapattanam executed by Sabira.C.P and others in favour of C P Noorjahan. Ext.A3 is the computer print of birth certificate of Muhammed Zayan.C.P which shows that he is born on 21.07.2012. Ext.A4 is the computer print of birth certificate of Muhammed Azaan.C.P which shows that he is born on 22.09.2015. Ext.A5 is the computer print of fair value statement in respect of the petition schedule property.

11. The definite case of the petitioner is that the petitioner and other co-owners are decided to release the share in the petition schedule property and deposit the sale proceeds of minors' share in their name. The interest of the sale proceeds can also be utilized for the benefit of the minors. The petitioner does not have any adverse interest to the interest of the minors. Before appointing the petitioner as the guardian of the property of the minors, the paramount

consideration should be the welfare of the minors.

12. The above documents coupled with the unchallenged versions of the petitioner prove that the petitioner is entitled to be appointed as the guardian of the property of the minors. So, this court is satisfied that the petitioner is entitled to the relief as sought for. However, the appointment of the petitioner shall be subject to the liabilities as contemplated in Chapter III of the Act and she is liable to execute a bond for Rs.1,00,000/- in terms of Sec.34 of the Act.

13. In this case, the minors are under the care and custody of the petitioner. On perusal of the entire records, it is clarified that this court is solely considering whether, based on the averments in the petition and the evidence adduced, a sufficient case has been made out for the transfer of the property, and whether such transfer is in the best interest of the minors. The adjudication of the court, permitting the petitioner to sell the minors' interest in the petition schedule properties, shall not confer any right, title, or interest upon the minors. Moreover, the averments in the petition and the chief affidavit remain uncontroverted and unchallenged.

14. Under Section 29 of the Guardian and Wards Act, 1890, a guardian cannot mortgage, sell, gift, exchange or otherwise transfer the immovable property of a ward without the prior permission of the Court. Under Section 31(1), such permission shall not be granted except in case of necessity or evident advantage to the minors.

Considering the facts and circumstances of the case, this court finds that the sale or transfer of share of the minors' property would be for the welfare and advantage of the minors.

15. However, this Court has no jurisdiction to appoint a guardian of the person of the minors, which lies within the domain of the Family Court. Hence, the relief is confined to the appointment of the petitioner as guardian of the property of the minors and to grant permission for alienation, subject to safeguards. In the said circumstances, this court holds that the petitioner can be appointed as the guardian of the property of the minors and that permission can be granted to sell the minors' undivided share of the petition schedule property, subject to conditions to ensure the welfare and financial security of the minors. Point Nos. 1 and 2 are answered accordingly.

16. **Point No.3:-** In view of the finding on point Nos.1 and 2, petition is allowed only to be partly.

**In the result,** the petition is allowed in part as follows:

- 1) The petitioner is appointed as the guardian of the property of the minors till they attain majority or until further orders of this Court.
- 2) The petitioner is permitted to sell the minors' property at the rate not below the fair value subject to the following conditions:-
  - a) The petitioner shall execute a bond for **₹1,00,000/- (Rupees One lakh only)** within a

period of two months from the date of this order in terms of Sec.34 of the Act.

- b) The petitioner shall deposit the share of the minors in the sale consideration of the minors' property in the name of the minors in a Nationalized Bank of her choice till the minors attains their age of majority and shall produce the fixed deposit receipt within two weeks of such deposit.
- 3) The Bank shall record a lien in favour of this Court on the Fixed Deposit.
- 4) The deposit shall not be prematurely withdrawn or encumbered without prior sanction of this Court.
- 5) The petitioner is permitted to withdraw the interest accrued from the Fixed Deposit for meeting the minors' educational, medical and maintenance expenses, and shall maintain proper accounts of such expenditure, to be produced before this Court as and when called for.
- 6) The validity of the sale of the minors' share shall be conditional upon compliance with deposit directions, and in case of default, the sale shall not bind the minors' interest.
- 7) It is clarified that this order relates only to the guardianship of the property of the minors. The question of guardianship of the person of the minors shall be within the jurisdiction of the competent Family Court.
- 8) Considering the nature and circumstances of the case, there will be no order as to costs.

9) If the transfer is effected in violation of any of these conditions, it will not be binding upon the share of the minors over the property.

(Dictated to the Confidential Assistant, typed by her directly into the computer, corrected and pronounced by me in open court, this the 26<sup>th</sup> day of May 2026).

ADDL. DISTRICT JUDGE-III

**APPENDIX:-**

PETITIONER'S WITNESS:- Nil.

PETITIONER'S EXHIBITS:-

A1.	16-01-1965	: Certified copy Sale Deed No.76/1965 of SRO, Valapattanam.
A2.	11-07-2023	: Certified copy Release Deed No.1573/2023 of SRO, Valapattanam.
A3.	23-10-2025	: Birth Certificate of Muhammed Zayan.C.P.. issued by Chirakkal Grama Panchayath.
A4.	23-10-2025	: Birth Certificate of Muhammed Azaan.C.P. issued by Kannur Municipal Corporation.
A5.	--	: Copy of Fair value of Land in respect of Petition Schedule Property.

RESPONDENTS' WITNESSES & EXHIBITS:- NIL.

ADDL. DISTRICT JUDGE-III

PM.

**IN THE COURT OF THE  
ADDL. DISTRICT JUDGE-III,  
THALASSERY**

Fair/Copy of Order in  
**OP(G&W)No.37/2026.**

Dated : **26-05-2026.**