

ADDITIONAL DISTRICT AND SESSIONS COURT, TALIPARAMBA

Present:- Sri.**Prasanth.K.N**, Additional District and Sessions Judge

Thursday, the 12th day of March, 2026/ 21st Phalguna, 1947

ORIGINAL PETITION (G&W) No. 390 OF 2025

Aleema.C, W/o.Late Aboobacker PCP, aged 50 years,
Residing at Baithul Yaseen, Thoufeeque Nagar,
Pushpagiri, Kuttiyeri, Taliparamba (PO),
Kannur District. Kerala 670141.

Petitioner

Vs.

Fathimath Rabeea P.C.P, D/o.Late Aboobacker PCP
Aged 22 years, Residing at Baithul Yaseen, Thoufeeque
Nagar, Pushpagiri, Kuttiyeri, Taliparamba (PO),
Kannur District. Kerala 670141.

Respondent

Petition filed U/s. 28 & 29 of the Guardians and Wards Act 1890

This petition coming on this day for hearing before me in the presence of S/Sri.P.M.Nandakumar & Manju.K.N, Advocates for the petitioner; Respondent is served called absent and the tribunal passed the following:-

ORDER

The beginning

“It is well settled that the principal consideration of the court whilst deciding an application of guardianship under the act in the exercise of its parens patriae jurisdiction would be the welfare of the minor children.”

V. Ravichandran V. Union of India, 2010 (1) SCC 174

1. The captioned petition is made under **Sections 7, 10 and 29** of the **Guardian and Wards Act, 1890**, by seeking multifarious reliefs to appoint the petitioner as a guardian of minor **Fathimath Rumana PCP** and permitting her

to sell or alienate the interest of the minor in the petition schedule property.

Case of the petitioner

2. The petitioner is the mother, and the respondent is the sister of the minor Fathimath Rumana PCP, who was born on **10.01.2009**. Mr. Aboobacker PCP was the father of the minor, who died intestate on 14.05.2023, who was the husband of the petitioner and the father of the respondent. The petitioner and her family belong to the Muslim community and are governed by the Muslim Succession laws. After the death of Aboobacker PCP, the properties were devolved upon his legal heirs, including the minor, the petitioner, and two major children.

3. As a matter of fact, the petition scheduled property belonged to the ownership of Aboobacker PCP, as per registered assignment deed No. 2112/2009 of Taliparamba SRO dated 05.06.2009, having an extent of 6.4 are (15.800 cents), situated in Re Survey 111/8 (old S. No.111/2/7) of Kuttyeri Amsom, Thalora Desom. As per the law of succession, after the death of his father, the minor will be entitled to 17/96 shares in the petition schedule property. It is stated that the fair value of the property is ₹1,18,800 per Are, so the total market value of the property will be ₹7,60,320, and the minor share is ₹1,34,619.

4. According to the pleadings, the petitioner wants to sell the share of the minor in the petition schedule property and to keep the sale proceeds as a

fixed deposit in a Nationalized Bank in the minor's name. No purpose would be served by keeping the share of the minor unsold while the co-sharers have decided to sell their respective shares, and it will result in a loss for the minor, as her share will not be able to be disposed of later at a high rate, as the minor's share is a nominal one only. If the minor's share is assigned to the same person along with other co-sharers, it will be an advantage to the minor in future if the sale proceeds are kept as a fixed deposit.

5. The minor, Fathimath Rumana PCP, is in the care and custody of the petitioner, and she has no interest other than the welfare of the minor. So, the petitioner contended that the sale of the property is necessary for the benefit of the petitioner, and she prayed that the guardian of the person and property of the minor be appointed and permitted to alienate the rights of the minor in the property.

Procedures

6. Subsequent to the institution of the original petition, due notices were served to the respondent, and the respondent entered into appearance and filed the counter, admitting all statements mentioned in the petition. Apart from the same, the institution of the petition was published in the newspaper, and the notices were affixed as envisaged under the Guardian and Wards Act. Even though all steps were completed, nobody approached to raise any objection in response to the affixture and publication.

7. On the side of the petitioner, she was examined as PW1 and Ext.A1 to A6 documents were marked. No evidence has been adduced on the side of the respondent.

8. Heard both sides and perused the documents.

9. On going through the factual matrix, the following points arise for consideration.

Points for consideration

1. *Can the petitioner be appointed as the guardian for the minor and her property?*
2. *Can the petitioner be permitted to act on behalf of the minor to sell the petition schedule properties and do all proceedings to comply with the registration?*
3. *If permitted, what should be the conditions?*

Discussion on Point No.1

10. The prayer to appoint the petitioner as the guardian of the minor should be assessed based on the prepositions of law. As per **Section 7(1)(g)** of the **Family Courts Act, 1987**, the proceedings in relation to guardianship shall be instituted before the family court if such a court is established. Further, as per **Section 8**, no district court or any subordinate civil court shall exercise any jurisdiction regarding the proceedings referred under the Act. The minor has

permanently resided in an area where the family court is already established. Therefore, the jurisdiction to decide the guardianship of the minor is vested with the family court having the jurisdiction, and this court has no power to appoint the guardian of a minor. At the same time, it is well settled that the question of the guardianship of the property of the minor can be decided by this court, and it will not fall under the purview of **Section 7(1)(g)** of the Family Court Act. The concept has been reiterated in *Narayana Elayathu K.S. V. Sandhya, 2022 (1) KHC 108*. So, the question of guardianship of the minor's property alone will be dealt with and decided in this case. Point No.1 is answered accordingly.

Discussion on Point No.2

11. The petitioner has filed an affidavit in lieu of chief examination and adduced evidence in tune with the petition. Ext.A1 is the Photocopy of the registered assignment deed No. 2112/2009 of Taliparamba SRO dated 05.06.2009, and Ext.A2 is the copy of the land tax receipt dated 23.06.2025. By adducing the Ext.A1 document, it is proved that the petition schedule property was derived in favour of Aboobacker PCP. Ext.A3 is the Legal heirship certificate issued by the Tahsildar, Taliparamba, which would show the legal heirs of the deceased Aboobacker PCP, including the minor and the petitioner. Ext.A4 is the death certificate of Aboobacker PCP, which proves his death and date as 14.05.2023, and Ext.A5 is the Aadhar card copy of minor Fathimath

Rumana PCP, proving that the date of birth of the minor is 10.01.2009. Ext.A6, the fair value details downloaded from the Kerala Reregistration Department website, show that the fair value of the petition schedule property is ₹1,18,800 per Are. As per the undisputed oral evidence of PW1, coupled with the Ext.A6 fair value certificate issued by the government, it is proven that the value of the property is as mentioned in the affidavit.

12. The oral and documentary evidence adduced by the petitioner regarding the facts was uncontroverted or rebutted by the respondent. On reviewing the documentary evidence, it is found that the minor is the daughter of Aboobacker, PCP, and she has a right to a 17/96 share in the petition schedule properties, valued at ₹1,34,619. As per the evidence adduced from the side of the petitioner, it is also proved that the petitioner is the mother of the minor, and she does not have any interest adverse to the interest of the minor, and the sale of the petition scheduled property is beneficial to the minor also. The petitioner is the natural and biological parent of the minor. It is a settled position of law that the biological parents are the natural guardians of the minor and should be treated as legal guardians if the requirement under **Section 4(2)** of the Act is complied with. Such a guardian could alienate or encumber the property of the minor for which no leave of the court is required, as distinguished by *Jince Mary Johns V. KP Johny, 2011 (4) KHC 343*.

Discussion Point No.3

13. **Resultantly**, the petition is allowed on conditions.
 - a. The petitioner is hereby appointed as the guardian of the property of minor **Fathimath Rumana PCP**.
 - b. The petitioner is permitted to execute the sale deed/deeds or alienate the rights in the petition schedule property, as shown in the petition, on behalf of the minor.
 - c. A certified copy of the sale deed/deeds shall be produced before this court within one month of its execution.
 - d. The petitioner shall execute a bond for **₹2,00,000** (Rupees Two Lakh Only) for the like sum within one month from the date of this order.
 - e. The amount derived from the sale of the minor's right over the petition schedule property shall be deposited in a Nationalized bank in the name of the minor as a fixed deposit till the minor attains the majority.
 - f. The amount referred to *supra*, shall not be less than **₹1,50,000** (Rupees One Lakh Fifty Thousand) if the sale is completed within a span of one year from the date of this order. Afterwards, the amount shall be increased by **10%** per year on a cumulative basis.
 - g. The bank shall note the lien on the fixed deposit receipts, and the attested copy shall be produced before the court.

- h.** The attestation of fixed deposit receipts shall be made by the CMO of the court, after comparing it with the original.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 12th day of March 2026.)

Sd/
**ADDITIONAL DISTRICT JUDGE
TALIPARAMBA**

Petitioner's Exhibits:-

| | | |
|----|------------|---|
| A1 | 05-06-2009 | Photocopy of Jenmam Deed No. 2112/2009 of SRO Taliparamba. |
| A2 | 23-06-2025 | Tax receipt issued by Kuttiyeri Village Officer |
| A3 | 15-12-2023 | Legal Heirship Certificate issued by Taluk Officer, Taliparamba |
| A4 | 14-05-2023 | Death Certificate of Aboobacker P.C.P |
| A5 | -- | Photocopy of Aadhar Card |
| A6 | -- | Fairvalue certificate |

Petitioner's Witness:-

PW1 Aleema.C

Respondent's Exhibit and Witness:- Nil

Sd/
**ADDITIONAL DISTRICT JUDGE
TALIPARAMBA**