

IN THE FAMILY COURT, KALPETTA

Present: Sri. Sunilkumar.K.R., Judge, Family Court, Kalpetta

Tuesday, the 17th day of March 2026

26th day of Phalguna, 1947

ORIGINAL PETITION (G&W) No.709/2023

(In the matter of Custody of Minor children Rudev Krishna, aged 7 years & Pallavi Krishna, aged 4 years).

Sumi P.S., aged 28 years, D/o.Sudhakaran,
Puthanveedu, Chulliyode Post, Nenmeni,
Sulthanbathery Village, Sulthanbathery Taluk,
Wayanad District. } Petitioner

Balasubrahmanyam, aged 28 years, S/o.Sivadas,
Chiraparambil House, Thovarimala Post,
Ambukuthi, Nenmeni, Wayanad District. } Respondent
Pin - 673 592

This Original Petition filed U/s.7,12 and 25 of Guardian & Wards Act and Sec.7 of the Family Court Act, coming on this day for hearing before me in the presence of Sri.N.Sadique, Advocate for the petitioner and respondent called absent set exparte and upon perusing the petition, the Court passed the following:

J U D G M E N T

This is a petition filed U/s. 7, 12 and 25 of the Guardian and Wards Act and Section 7 of the Family Court Act.

2. The marriage between the petitioner and the respondent was solemnized on 24.03.2014 at a temple in Alappuzha as per Hindu religious rites and ceremonies. Thereafter, they resided together as husband and wife at the house of the respondent. Two children, namely Rudev Krishna, aged 7 years, and Pallavi Krishna, aged 4 years, were born in the said wedlock. After the birth of

the children, the respondent did not show any affection or intimacy towards her and she was subjected to harassment by the respondent and his sister. The respondent's sister is a mentally ill person and, even for minor issues, she used to threaten to commit suicide and injure herself by inflicting wounds on her body. Therefore, the petitioner was afraid to file any complaint against them.

3. The respondent's sister used this situation to create circumstances in which the petitioner was subjected to physical and sexual exploitation. She would habitually threaten that if the petitioner opposed it or informed others about it, she would kill the petitioner's children and commit suicide. Whenever the petitioner informed the respondent about these issues, the respondent would assault the petitioner by slapping her, pulling her hair, dragging her to the floor and kicking her. As the petitioner was unable to continue living under such circumstances, she returned to her parental home on 01.10.2023. The petitioner's children are still residing with the respondent, which causes great fear and anxiety to the petitioner.

4. On 31.10.2023, when the petitioner went to see her children at the Government School, Ambalavayal, the respondent and his sister pulled the petitioner's hair, slapped her, struck her right hand with a helmet and sprayed pepper spray on her face. Following this incident, the petitioner sought treatment at Iqra Hospital, Sulthan Bathery. Thereafter, FIR No. 758/2023 was registered against the respondent and his sister at Noolpuzha Police Station.

5. After the petitioner left the respondent's house, the respondent's sister again inflicted serious injuries on her own neck & vain on her hand and sent a photograph of the same to the petitioner. In such circumstances, allowing the children to remain with the respondent and his sister poses a threat to their life. The

respondent is also incapable of properly supervising the children's education and providing them with proper discipline. Both the children share a deep emotional bond and affection with the petitioner. Despite the petitioner's repeated and sincere requests, the respondent has neither granted custody of the children to the petitioner nor allowed the petitioner to meet them. Therefore, it is humbly prayed that this Court may be pleased to grant custody of the petitioner's minor children to the petitioner, appoint the petitioner as their legal guardian, direct the respondent to produce the children before this Court and hand over their custody to the petitioner.

6. In this case, the respondent appeared before the court on summons and he filed counter later he went absent. Counsel for the respondent reported 'no instruction'. Hence the respondent is called absent and set exparte. From the side of the petitioner she was examined as PW1 and Ext.A1 marked.

7. The following points that arise for consideration are:-

1. Whether the petitioner entitled to appoint as the guardian of the minor children?
2. Whether the respondent is entitled to get the custody of the minor children?
3. Relief and costs ?

8. **Point No.1&2:-** The unchallenged oral testimony of PW1 and the pleadings in the petition would show that the marriage between the petitioner and the respondent was solemnized on 24.03.2014 at a temple in Alappuzha as per Hindu religious rites and ceremonies. Thereafter, they resided together as husband and wife at the house of the respondent. Two children, namely Rudev Krishna, aged 7 years, and Pallavi Krishna, aged 4 years, were born in the said wedlock.

9. Her evidence further shows that, after the birth of the children, the respondent did not show any affection or intimacy towards her, and she was subjected to harassment by the respondent and his sister. The respondent's sister is a mentally ill person and, even for minor issues, she used to threaten to commit suicide and injure herself by inflicting wounds on her body. So, the petitioner was afraid to file any complaint against them. The respondent's sister used this situation to create circumstances in which the petitioner was subjected to physical and sexual exploitation. She would habitually threaten that if the petitioner opposed it or informed others about it, she would kill the petitioner's children and commit suicide. Her evidence further shows that, due to the continuous harassment by the respondent and his mentally ill sister, she was ultimately compelled to return to her parental home to save her life.

10. After she returned to her house, on 31.10.2023, when she went to see her children at the Government School, Ambalavayal, the respondent and his sister pulled the petitioner's hair, slapped her, struck her right hand with a helmet and sprayed pepper spray on her face, as a result of which she sustained injuries. The sister of the respondent threatened the petitioner that she would commit suicide after killing the petitioner's children. Thereafter, the respondent's sister again inflicted serious injuries on her own neck & vain on her hand and sent a photograph of the same to the petitioner, which shows that there is a chance for inflicting injury to the minor children.

11. Her evidence further shows that, at present, the children are residing with the respondent and his mentally ill sister and that the respondent is not properly caring for them or providing them with proper education for their better future, which may adversely affect their mental health, education and overall well-

being. In such circumstances, allowing the children to remain with the respondent and his sister would pose a threat to their life and safety. Her evidence further shows that she is ready and willing to look after the affairs of the minor children and to bring them up in a proper manner by providing them with good education and discipline. When I personally interacted with the children, they expressed their willingness to reside with their mother, even if it requires shifting their school

12. Considering these circumstances, I am of the view that, in the interest of the welfare and well-being of the minor children, their custody has to be given to the petitioner. When I interacted with the children personally, they expressed their willingness to reside with their mother, even if it required shifting their school. Hence, these points are found in favour of the petitioner.

13. I have already found that giving the petitioner permanent custody of the children would benefit them, but the father has the right to interact with his children. So, I am of the view that, 'Visitation Rights' and 'Contact rights should be given to the father. Moreover in the decision reported in 2020 KHC 6045 Yashita Sahu v. State of Rajasthan and Others, the Hon'ble Apex court held that, A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents.

14. **Point No.3:-** On the findings on point Nos. 1 and 2, the petition is allowed, and the following orders are passed:

1. The petitioner/mother is appointed as the guardian of the minor children, namely Rudev Krishna, aged 7 years, and Pallavi Krishna, aged 4 years, and the permanent custody of the children is granted to the petitioner.
2. The respondent is directed to produce the minor children before this Court and hand over their custody to the petitioner after the completion of their examination, i.e., on 30.03.2026.
3. The respondent/father is permitted to interact with the children through phone calls, video calls or any other online platform, without affecting their studies.
4. The respondent/father is also permitted to meet and interact with the children from 10.00 a.m. to 1.30 p.m. on the second and fourth Sundays of every month, and the petitioner shall facilitate the same.

(Dictated to the Con. Asst., transcribed and typed by her, corrected and pronounced by me in open Court, this the 17th day of March, 2026).

JUDGE

APPENDIX:-

Petitioner's Witnesses:-

PW1 - 03-03-2026 Sumi P.S.

Petitioner's Exhibits:-

A1 - Copy of Ration Card

JUDGE

Typed by: Abhilash Devassy
Compared by: Sheeba.P.

FAIR JUDGMENT IN OP 709/2023
DATED : 17.03.2026