IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 24

Civil Appeal No 141 of 2017

Between

CHAN LUNG KIEN

… *Appellant*

And

CHAN SHWE CHING

… *Respondent*

In the matter of HC/OS 918 of 2016

In the matter of
Orders 46 and 47 of the Rules of Court

And

In the matter of
Sections 105 and 106 of the Bankruptcy Act (Cap 20)

And

In the matter of
an application by Chan Lung Kien
for a portion of the proceeds obtained by Chan Shwe Ching
from the sale of 9 Jalan Tanah Rata, Singapore 465566

Between

CHAN LUNG KIEN

… *Plaintiff*

And

CHAN SHWE CHING

… Defendant

JUDGMENT

[Land] — [Interest in land] — [Joint tenancy] — [Severance]

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v
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21 March 2018

15 May 2018 Judgment reserved.

Judith Prakash JA (delivering the judgment of the court):

Introduction

1 The questions that we have to address in this appeal are first, whether a co-owner of registered land who holds his interest as a joint tenant with the other co-owner(s) can, outside of the statutorily provided procedure, unilaterally sever that joint tenancy by a declaration of intention to sever; and second, how the mode of severance provided for by ss 53(5) and (6) of the Land Titles Act (Cap 157, 2004 Rev Ed) (the "LTA") is to be applied or implemented.

Background

2 The facts leading up to this appeal are straightforward and not in dispute. The appeal pertains to the land and premises known as 9 Jalan Tanah Rata,

Singapore ("the Property"). The Property is registered land under the LTA and the Land-register, at all material times in 2015, showed that the owners of the Property, as joint tenants, were one Mdm Leong Lai Yee and her husband, Mr Lim Eng Soon. In early 2015, two separate actions were commenced in the High Court against Mdm Leong. The first was commenced by Ms Chan Shwe Chiang in April 2015 and the other was commenced in May 2015 by Mr Chan Lung Kien. Mr Chan Lung Kien and Ms Chan Shwe Chiang are, respectively, the appellant and respondent in the present appeal and to avoid confusion we will henceforth refer to them as such.

3 In May 2015, reports appeared in the local press suggesting that Mdm Leong was suspected of defrauding a number of people through a scheme involving investment in real property and that promises made by her to repay the investors had not been kept. The report mentioned that Mdm Leong could not be found or contacted. There was speculation that she had gone abroad.

4 In June 2015, the appellant and the respondent succeeded in their respective claims against Mdm Leong. The respondent obtained a summary judgment against her for approximately $1.4m plus interest and costs while the appellant entered judgment against her in default of appearance for in excess of $8.4m plus interest and costs. Thereafter, both sought to enforce their respective judgments. The respondent was the first to take action. On 10 July 2015, the respondent obtained an order for Mdm Leong's interest in the Property to be attached and taken in execution under a writ of seizure and sale to satisfy her judgment. The writ of seizure and sale was registered with the Singapore Land Authority on 24 July 2015 pursuant to s 132 of the LTA.

5 As the parties subsequently became aware, in the meantime Mr Lim, the co-owner of the Property, had taken steps in an attempt to sever the joint

tenancy over the Property. On 9 July 2015, Mr Lim appeared before a Notary Public in Melbourne and executed an instrument of declaration in the form approved pursuant to ss 53(5) of the LTA whereby he declared that he wished to sever the joint tenancy and hold the Property as a tenant in common with the other registered proprietor in the share proportionate to the number of joint tenants. Subsequently, on 4 August 2015, a notice entitled "Severance Notice" appeared in the Straits Times. The Severance Notice was addressed to Mdm Leong and gave her notice that Mr Lim as a registered proprietor of the Property intended to sever the joint tenancy and hold the Property as a tenant in common with her. The Severance Notice also stated that the instrument of declaration could be inspected at the offices of Mr Lim's solicitors in Singapore.

6 The Severance Notice came to the attention of the appellant who then decided to take action against the Property as well. On 16 September 2015, the appellant obtained a writ of seizure and sale against the Property and two months later, on 12 November 2015, this writ was registered with the Singapore Land Authority.

7 Thereafter, the bank which held a mortgage over the Property stepped in and procured a mortgagee's sale. The sale was completed on 19 April 2016 and, after settlement of the amount due to the bank, the balance remaining was $1,246,683.01. Mdm Leong's share of this amount, $623,341.50, was paid to the respondent's solicitors pending the outcome of the dispute between the appellant and the respondent as to whose writ of seizure and sale (henceforth "WSS") was effective to attach the sale proceeds. To add complication, on 21 April 2016, Mdm Leong was made a bankrupt and her estate in bankruptcy has a possible claim to the sale proceeds.

The proceedings below

8 The proceedings below were exclusively between the appellant and the respondent. Mdm Leong took no part in them. The Official Assignee was notified of the proceedings but did not appear. The proceedings related to the effectiveness of a WSS which is served to attach the interest of a joint tenant in property. They were commenced by an originating summons filed in September 2016 by the appellant in which he sought the following orders:

(a) A declaration that the respondent's WSS order obtained on 10 July 2015 was void and/or unenforceable and/or that the sum of $623,341.50 currently held by respondent's solicitors as stakeholders be paid to the appellant.

(b) In the alternative, that the sum of $623,341.50 be divided and paid to the appellant and the respondent in a ratio corresponding to the sums adjudged to be due to each of them pursuant to a number of orders of court as listed in the summons.

9 The originating summons was heard over several days before a High Court Judge ("the Judge"). It was assumed by the parties that if the respondent's WSS was set aside, the appellant's WSS would be effective on the basis that the joint tenancy had been severed by the Severance Notice. The parties were only alerted to the possibility that severance may not have been effected at all when the Judge questioned the status of the appellant's WSS at the hearing on 15 June 2017. The parties then made further submissions on the effect of the Severance Notice on the joint tenant's interest. In the event, the Judge held that the respondent's WSS was ineffective in attaching Mdm Leong's interest in the Property but he also went on to discuss the efficacy of the appellant's own WSS and concluded that it too was ineffective. The reasons for the Judge's decision

can be found in his judgment identified as *Chan Lung Kien v Chan Shwe Ching* [2017] SGHC 136 ("the Judgment").

10 The Judge examined two issues in arriving at his decision:

(a) whether a joint tenant's interest can be attached and taken in execution under a WSS; and

(b) whether the joint tenancy over the Property had been severed by the Severance Notice.

11 On the first issue, the Judge held that a joint tenant has no distinct and identifiable interest that can be attached under a WSS unless the WSS concomitantly severs the joint tenancy. He noted that it was established law that the mere registration of a WSS over land held under a joint tenancy did not sever the joint tenancy (Judgment at [23] and [31]). In so doing, the Judge upheld the case of *Malayan Banking Bhd v Focal Finance Ltd* [1998] 3 SLR(R) 1008 as good law and rejected the reasons given by the judge who granted the respondent's WSS order for departing from the case.

12 On the second issue, the Judge held that the Severance Notice did not sever the joint tenancy. Thus, the appellant's WSS was also ineffective in attaching Mdm Leong's interest in the Property and her share of the sale proceeds had to be paid to her trustee in bankruptcy. In summary, the Judge's reasons were as follows:

(a) There was no severance under ss 53(5) and (6) of the LTA (Judgment at [47]). While Mr Lim had served the instrument of declaration by way of the advertisement of the Severance Notice, he had not registered the instrument as required by s 53(6).

(b) There was no severance by signing and serving the instrument of declaration under s 53(5) of the LTA without the further step of registration (Judgment at [54]–[55]). The doctrine of severance *inter partes* pursuant to s 53(5) of the LTA, as propounded in *Diaz Priscilla v Diaz Angela* [1997] 3 SLR(R) 759 ("*Diaz*"), was no longer part of Singapore law after the enactment of s 53(8) of the LTA.

(c) There was no severance under the common law (Judgment at [60]). Before the English Law of Property Act 1925 (c 20) (UK) ("LPA 1925") introduced a new mode of severance by serving a written notice on the other joint tenant(s), it was not settled law in England that a joint tenant could sever a joint tenancy by way of a unilateral declaration of intent. *Sivakolunthu Kumarasamy v Shanmugam Nagaiah and another* [1987] SLR(R) 702 ("*Sivakolunthu*") was Court of Appeal authority that "it is not the law in Singapore that a unilateral declaration of intention to sever a joint tenancy, when communicated to the other joint tenant, has the effect of severing it into a tenancy in common" (at [14]).

The appeal

13 The appellant appealed against the Judge's holding that his WSS was ineffective. The basis of his appeal is that the Judge was wrong in deciding that the joint tenancy in the Property had not been severed by the Severance Notice and that therefore the sum of $623,341.50 formed part of Mdm Leong's estate in bankruptcy and had to be paid to the trustee in bankruptcy. The appellant did not appeal against the Judge's holding that prior to severance, a joint tenant's interest in jointly held property cannot be attached. The respondent did not do so either. Thus, this latter issue is not before this court and, although we are aware that there are High Court authorities which go both ways, we decline to

opine on the issue until it comes before us in a proper fashion and we have the full benefit of parties' submissions.

14 The respondent did not file any submissions or take any part in the hearing. This is unsurprising because the outcome of the appeal only affects the validity of the appellant's WSS. As such, the respondent's only interest in the appeal lies in the fact that the assets available to the pool of Mdm Leong's general creditors would be reduced if her half-share of the sale proceeds is held to have been successfully attached to satisfy the appellant's judgment debt.

15 The appellant's case is that at *common law* a unilateral declaration that is *clear*, *unequivocal*, *communicated* to the other joint tenant and *made public* (the appellant's "proposed test") is effective to sever a joint tenancy in equity. He contends that *Sivakolunthu* should be revisited and overruled to the extent that it holds that a unilateral declaration of intention does not sever a joint tenancy. This is because *Sivakolunthu* was apparently based on an erroneous reading of the English authorities, which on a proper reading support the view that a unilateral declaration that is *clear, unequivocal, and communicated* should effect severance in equity. Further, the appellant suggests that *Sivakolunthu* should be reconsidered in the light of subsequent developments, including the enactment of s 53 of the LTA in 1993, and subsequent academic commentary on *Diaz*. *Diaz* recognised that the signing and service of an instrument of declaration in the form approved pursuant to s 53(5) of the LTA is effective to sever a joint tenancy *inter partes* (see [49] below) notwithstanding its non-registration. The appellant argues that *Diaz* demonstrates that an unequivocal act that evinces a clear intention to sever should be treated as the act of a joint tenant "operating on his own share" so as to effect severance at common law.

16 The appellant's position was originally based entirely on the common law and not on the statutory mechanism in ss 53(5) and (6) of the LTA. Initially, this appeared to us to be fitting because the appeal record did not contain an instrument of severance in the form approved pursuant to s 53(5), even though it was common ground before the Judge that an instrument had been signed and served. During the hearing of the appeal, the appellant's counsel furnished us with copies of the instrument of severance in the approved form signed by Mr Lim on 9 July 2015 and served on Mdm Leong by unregistered mail addressed to her at the Property as evidenced by a certificate of post. The instrument was not registered. This raised the question of how the mode of severance provided for by ss 53(5) and (6) of the LTA operates, in particular what would be the effect of compliance with s 53(5) without compliance with s 53(6). It will be necessary to consider the correctness of *Diaz* when we address this question.

17 We will first consider the issue at common law and then move on to the statutory regime and discuss how the relevant sections should be interpreted. To reiterate for clarity, the position at common law as pronounced by the court in *Sivakolunthu* is that a unilateral declaration of severance by one joint tenant cannot sever a joint tenancy no matter how clear and unequivocal the declaration is.

The common law position on severance by unilateral declaration

18 The usual starting point for any discussion on severance of a joint tenancy is the classic *dicta* of Page-Wood VC in *Williams v Hensman* (1861) 70 ER 862 at 867. As this passage sets out the recognised common law methods of severance it bears re-citing below:

> A joint-tenancy may be severed in three ways: in the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share. The right of each joint-tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the *jus accrescendi*. Each one is at liberty to dispose of his own interest in such manner as to sever it from the joint fund – losing, of course, at the same time, his own right of survivorship. Secondly, a joint-tenancy may be severed by mutual agreement. And, in the third place, there may be a severance by any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common. When the severance depends on an inference of this kind without any express act of severance, it will not suffice to rely on an intention, with respect to the particular share, declared only behind the backs of the other persons interested. You must find in this class of cases a course of dealing by which the shares of all the parties to the contest have been effected …

19 Thus, three modes were accepted: (a) by "operating on his own share"; (b) mutual agreement; and (c) mutual conduct or course of dealing. The mode "operating on his own share" was in many quarters considered to only mean selling or assigning the share though, as we note below, some judges thought it also included making a unilateral declaration of severance. These modes of severance operated at common law in England until 1925, but after the LPA 1925 abolished tenancies in common at law and required all legal estates of co-ownership to be held in joint tenancies, these modes continued to operate in equity only. In Singapore, however, no similar legislation was enacted at that time and here the common law estates of joint tenancies and tenancies in common remained extant. No doubt was cast on the applicability of *Williams v Hensman*. Indeed, that case was applied in the local decisions of *Tan Chew Hoe Neo v Chee Swee Cheng and others* (1929) 1 MLJ 643 at 646 (well before the issue came up before the Court of Appeal in 1987) and in *Jack Chia-MPH Ltd v Malayan Credit Ltd* [1983–1984] SLR(R) 420 at [2]. In the former, the Privy Council held it could not infer any mutual agreement to sever the joint tenancy, and in the latter, the Court of Appeal found that the joint tenancy was severed

by the parties' course of dealing with the property as if they had individual shares.

The Sivakolunthu decision

20 In respect of the specific issue of severance by unilateral declaration, this court's decision in *Sivakolunthu* has long been recognised as stating the law in Singapore. The case concerned a property held in joint tenancy by a husband and wife. During the husband's lifetime, the court granted a decree *nisi* on the wife's petition for divorce and made an order ("the settlement order") for the sale of the property and equal division of the sale proceeds. Before the settlement order was implemented, the husband died. The husband's estate sought a declaration that half of the property was due to the husband's estate because the joint tenancy had been severed by the settlement order, such that survivorship did not operate in favour of the wife.

21 In the High Court, F A Chua J granted the declaration on the basis that "an order of court directing the sale and division of the proceeds of sale in accordance with the parties' respective interests in the joint tenancy operates as a severance of the joint tenancy the moment it is made" (*Shanmugam Nagaiah and another v Sivakolunthu Kumarasamy (Trustees of Ramakrishna Mission Boys' Home, interested party)* [1985–1986] SLR(R) 408 at [17]). In the course of arriving at this conclusion, F A Chua J considered the methods by which a joint tenancy may be severed, and concluded that a unilateral declaration of intention to sever, if communicated to the other joint tenant, is sufficient to effect a severance (at [17]). This was based on the English cases which we discuss below.

22 The Court of Appeal affirmed the ruling that the settlement order severed the joint tenancy in the property even before the order had been carried out (at [38]–[39]). However, with respect to severance by a unilateral declaration, the Court of Appeal held that "it is not the law in Singapore that a unilateral declaration of intention to sever a joint tenancy, when communicated to the other joint tenant, has the effect of severing it into a tenancy in common" (*Sivakolunthu* at [14]). A unilateral declaration was only effective for severance in England because of s 36(2) of the LPA 1925, which provided for severance by written notice. However, it was the common law prevailing before 1925 that applied in Singapore and in this regard, the court was satisfied that the law was as stated by various judges sitting in the English Court of Appeal. These judgments endorsed the position that prior to 1925, severance by unilateral action could not be effected by a written notice given by one joint tenant and the only effective unilateral action would be for that joint tenant to dispose of his interest to a third party (*Burgess v Rawnsley* [1975] 3 All ER 142 ("*Burgess*") (*per* Sir John Pennycuick and Browne LJ); *Harris v Goddard* [1983] 1 WLR 1203 ("*Harris*") (*per* Lawton LJ, with whom Kerr and Dillon LJJ agreed)).

23 The appellant contends that the discussion on severance by a unilateral declaration in *Sivakolunthu* was strictly speaking *obiter*. The holding that the settlement order effected severance was sufficient to dispose of the case. The settlement order was a form of involuntary alienation of the parties' interests as joint tenants, not a unilateral declaration by either joint tenant. The Court of Appeal did not include the issue of severance by unilateral declaration in its list of issues arising in the appeal (see *Sivakolunthu* at [9]). The appellant therefore contends that *Sivakolunthu* is not persuasive on the point.

24 The appellant urges us to depart from *Sivakolunthu* and replace it with the proposition that severance in equity may be effected by a unilateral declaration that is clear, unequivocal, communicated and made public. In our judgment, however, the appellant has not provided good reason for us to depart from *Sivakolunthu*.

Sivakolunthu is in line with the authorities

25 First, the appellant claims that *Sivakolunthu* misinterpreted some English authorities. The appellant relies principally on two English High Court cases which, according to him, stand for the proposition that a unilateral declaration may sever a joint tenancy in equity, without reliance on s 36(2) of the LPA 1925. If this is correct, then that proposition ought to form part of the law in Singapore. Section 36(2) of the LPA 1925 so far as is material provides:

> Provided that, where a legal estate … is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire or do such other acts or things as would, in the case of personal estate, have been effectual to sever the tenancy in equity, and thereupon the land shall be held in trust on terms which would have been requisite for giving effect to the beneficial interests if there had been an actual severance.

26 The first case, *Hawkesley v May* [1956] 1 QB 304 ("*Hawkesley*"), was actually concerned with breach of trust and not the severance of a joint tenancy. The plaintiff and his sister were co-beneficiaries of a trust fund. The plaintiff alleged that his trustee committed a breach of trust by, *inter alia*, failing to inform him that he had an interest in the trust fund and a right to sever the joint tenancy in the trust fund. As background to resolving the issues, Havers J found that the plaintiff's sister had severed the joint tenancy in the trust fund by writing a letter to the trustee directing that dividends from the trust fund's investments should be paid into her personal account (at 314). Notably, the letter was not

served on the plaintiff, but it was still considered a sufficient act for severance. According to Havers J, the first mode of severance of "operating upon his own share, obviously includes a declaration of intention to sever by one party" (at 313). Even if he was wrong on this, he held that the payment out to the sister of her share of the funds severed the joint tenancy. It should be noted that this was not a contested issue in the case and, in any event, at the time the letter was written by the sister in March 1942, s 36(2) of the LPA 1925 was in effect and there was no need to rely on the common law at all.

27 In *Sivakolunthu*, the Court of Appeal described *Hawkesley* as a case of severance by unilateral declaration *under s 36(2)* of the LPA 1925 (see [10]). In our view, the appellant is correct that this was a misreading. Havers J did not rely on s 36(2) for his analysis but premised his decision purely on the common law doctrine in *Williams v Hensman*.

28 Second, in *In re Draper's Conveyance* [1969] Ch 486 ("*Draper's Conveyance*"), the issue was whether the beneficial joint tenancy between ex-spouses in a house was severed in the husband's lifetime such that survivorship did not operate in the wife's favour. The wife had earlier issued a summons asking for an order that the property be sold and the proceeds of sale be distributed according to the parties' respective interests. She had also sworn an affidavit repeating this prayer and stating that she was entitled to half of the property. The husband's estate argued that by virtue of the wife's summons and affidavit, severance was effected under s 36(2) of the LPA 1925 or alternatively by conduct of the parties. Plowman J, referring to *Hawkesley*, held that "a declaration by one of a number of joint tenants of his intention to sever operates as a severance" (at 491G). This conclusion was reached on the basis of equitable doctrine, *before* he went on to hold that the summons also amounted to a notice in writing under s 36(2) of LPA 1925.

29 *Sivakolunthu* treated *Draper's Conveyance* as a case where the "application made and affidavit filed in support … together constituted a notice sufficient to effect a severance of a joint tenancy by virtue of s 36(2)" of the LPA 1925 (at [10]). Again, we agree with the appellant's reading that Plowman J found that *both* s 36(2) and the equitable doctrine of severance by conduct were satisfied.

30 Although *Sivakolunthu* may have misread these English High Court cases as demonstrating severance under s 36(2) of the LPA 1925 (which was a basis both could have been decided on), this alone cannot vindicate the appellant's position. When the whole corpus of case law is considered, the picture that emerges is rather different. There were a number of English cases decided at both first instance and appellate level that held that unilateral declarations of severance were ineffective. Indeed, in *Sivakolunthu* itself, the court referred to *Hawkesley* and *Draper's Conveyance* only in passing and preferred to rest its conclusions on *Burgess* and *Harris* (*Sivatholunthu* at [16]–[17]). Further, the appellant's arguments for preferring *Hawkesley* and *Draper's Conveyance* over the authorities to the contrary are not persuasive. We summarise these cases in turn.

31 *Partejche v Powlet* (1740) 4 West T Hard 788 (not cited by the appellant) was a case in which it was argued that a joint tenant of certain mortgage securities had declared a severance by the settlement she made upon her own marriage, even though she did not make an assignment of the mortgage securities. On appeal from a decision of the Master it was held by the Lord Chancellor in the court of Chancery that "declaration of one of the parties that it should be severed, is not sufficient" unless it amounts to an actual agreement or an alienation of the property (at 789–790).

32 More than a hundred years later, in *In re Wilks* (1891) 3 Ch 59 ("*Wilks*"), one of three joint tenants of a fund had applied to court for payment to him of one-third of the fund, but passed away before any order was made. The question was whether he had severed the joint tenancy in his lifetime. Stirling J held that a mere application to court was nothing more than a declaration that the joint tenant wished a severance. It had no effect on the joint tenancy because it was not an actual alienation or disposition or a contract to sever between joint owners. For an act to amount to severance, "it must be such as to preclude him from claiming by survivorship any interest in the subject-matter of the joint tenancy" (at 62). The joint tenant could have withdrawn his application at any time before an order was made thereon. The appellant does not seek to distinguish *Wilks* but simply relies on Lord Denning MR's *dicta* in *Burgess* (at 105–106) that the case should have been decided differently.

33 Next and more recently, in *Nielson-Jones v Fedden and others* [1974] 3 WLR 583 ("*Nielson-Jones*"), Walton J declined to follow *Hawkesley* and *Draper's Conveyance*. While negotiating to separate their financial affairs, two spouses signed a memorandum that the husband would sell the matrimonial home in which they were joint tenants, and use the proceeds to provide himself with a home. The husband passed away before the sale was completed and before negotiations on their financial affairs resulted in an agreement. The wife applied for a declaration that she was absolutely entitled to the matrimonial home and the proceeds of sale thereof. Walton J granted the declaration, holding that even if the correspondence during the negotiations disclosed an unequivocal declaration by the husband to the effect that he wished to sever the joint tenancy, a beneficial joint tenancy could not be severed by a unilateral declaration of intention to sever (at 590E–G).

34 Walton J considered that the "whole current of authority was against severance by means of such a declaration" (at 593). He noted that a unilateral declaration had no effect on any of the essential features of a joint tenancy which are the four unities, that is, unity of title, unity of interest, unity of possession and unity of time (at 588C–H and 590F). He criticised *Hawkesley* as a misapprehension of *Williams v Hensman* because there was no actual alienation until the sister's share of the trust fund was paid to her. He declined to follow *Hawkesley* and *Draper's Conveyance* because none of the relevant cases, especially *Wilks*, were cited to the courts. If *Hawkesley* and *Draper's Conveyance* were correct, s 36(2) of the LPA 1925 would be otiose and even restrictive because there would already be in existence an even simpler method of severing a joint tenancy (at 596D).

35 The appellant attempts to distinguish *Nielson-Jones* on three grounds. First, he relies on Lord Denning's comment in *Burgess* that *Wilks* (on which *Nielson-Jones* relies) ought to have been decided differently. Second, the appellant argues that his proposed test will address Walton J's concern that a declaration must be irrevocable or unequivocal, unlike the incomplete negotiations in *Nielson-Jones*. Finally, he claims that even if equity allowed severance by unilateral declaration, s 36(2) would not be otiose if it declared the law or if it offered a simpler mode of severance (in contrast to the stricter criteria under the appellant's proposed test for a unilateral declaration to effect severance in equity). In our view, the second and third grounds are self-referential in that they only succeed in distinguishing *Nielson-Jones* if the appellant's proposed test is indeed accepted. They do not deal with Walton J's point that under *established* law, a unilateral declaration is ineffective to sever a joint tenancy. As for the first ground, we explain below why the view of the

majority in *Burgess* is to be preferred to Lord Denning's minority judgment, as we turn now to the English appeal cases.

36 We consider that *Sivakolunthu* was correct to follow the English appeal cases instead of *Hawkesley* and *Draper's Conveyance*. The first of these was *Burgess* ([22] *supra*). An unmarried couple bought a house as joint tenants, each contributing to half the purchase price. They did not marry and the woman ultimately did not move into the house. The county court judge found that the woman had reneged on an oral agreement with the man to sell her share in the house to him for a specified price. After the man died, his estate claimed it was entitled to a half-share of the house because the joint tenancy had been severed in equity. The appeal bench comprising Lord Denning MR, Sir John Pennycuick and Browne LJ held that the joint tenancy had been severed by the oral agreement even though the agreement was not specifically enforceable. Since the case was determined on the basis of the second mode of severance by mutual agreement, the discussion regarding unilateral declarations was *obiter* (as the judges acknowledged).

37 The appellant relies heavily on the *dicta* of Lord Denning. Lord Denning said, first, that it was sufficient for severance if there was a course of dealing which, although not amounting to an agreement, showed that one party made it clear to the other that he desired that their shares should no longer be held jointly but in common. In other words, the course of dealing need not consist of *mutual* conduct but could include unilateral conduct that communicated a clear intention to the other joint tenant. Second, Lord Denning considered that s 36(2) of the LPA 1925 was "declaratory of the law as to severance by notice and not as a new provision confined to real estate" (at 105G). Thus, notice in writing was effective *in equity* to sever a joint tenancy. Lord Denning based this on the wording of s 36(2) which stated that notice in writing was one of "such *other*

acts or things as would, in the case of personal estate, have been effectual to sever the tenancy in equity" [emphasis added]. This was taken to imply that there was a pre-existing right in equity to sever by notice. Lord Denning concluded that *Nielson-Jones* and *Wilks* were not decided correctly because a clear intention to sever was declared in those cases.

38 It has been observed that Lord Denning's analysis was based "entirely on statutory implication and not on authority" and was also *obiter* (see Louise Tee, "Severance Revisited" [1995] Conv 105–113). More significantly, the other two members of the *coram* expressed a different view. Sir John Pennycuick considered that s 36(2) of the LPA 1925 had "radically altered the law in respect of severance by introducing an *entirely new* method of severance as regards land, namely notice in writing" [emphasis added] (at 112F). Thus apart from the statute, equity would not allow severance by written notice. To the extent that s 36(2) implied that notice in writing would be effective to sever personal estates even under pre-existing law, Sir John Pennycuick was not convinced this was supported by authority or defensible (at 112H). Browne LJ agreed that s 36(2) "made a radical alteration in the previous law by introducing the *new method* of severance by notice in writing" [emphasis added] (at 110A) although he agreed with Lord Denning that the wording of s 36(2) appeared to imply otherwise. The Court of Appeal in *Sivakolunthu* considered all of the *dicta* and preferred the majority view as better representing the position at common law.

39 The second influential English appellate decision is *Harris* ([22] *supra*). A wife served a petition for divorce on her husband, including a prayer for an order for the transfer or settlement of property including the former matrimonial home which was held in joint tenancy. Before the hearing, the husband died. His executors sought a declaration that the joint tenancy in the matrimonial

home had been severed prior to his death, relying on the prayer in the divorce petition as a notice of severance under s 36(2) of the LPA 1925. The English Court of Appeal decided that the petition did not qualify as a notice under s 36(2) because it did no more than invite the court to consider exercising its jurisdiction to divide property at some future time and did not evince an intention to bring about a severance immediately. Although the case did not concern the equitable doctrine, Lawton LJ observed (at 1209B) that severance by a unilateral notice was not possible before s 36(2) was enacted:

> Unilateral action to sever a joint tenancy is *now possible. Before 1925* severance by unilateral action was only possible when one joint tenant disposed of his interest to a third party. [emphasis added]

Just before the cited passage, Lawton LJ stated that the language of s 36(2), to wit, "do such other acts or things as would … have been effectual to sever the tenancy" was referring to the other ways of effecting severance mentioned in *Williams v Hensman*. Whilst clearly aware of the meaning given to the same phrase by Lord Denning MR (see [37] above), he rejected that meaning entirely.

40 The appellant here contends that this view is less persuasive because Lawton LJ did not cite authority for his observation. However, it is evident from the law report that the relevant cases including *Wilks, Draper's Conveyance*, *Burgess* and *Nielson-Jones* were cited to the court and would have been in the judge's mind when the legal pronouncement was made. The appellant also notes that Lawton LJ affirmed *Draper's Conveyance* (at 1209H–1210A) but we do not find that affirmation significant in our context since at that point the learned judge was only concerned with what qualified as a notice under s 36(2). Therefore, he was affirming the *outcome* of the case only to the extent that *Draper's Conveyance* was decided under s 36(2). Dillon LJ expressly confined his approval of *Draper's Conveyance* to the extent that the judgment was based

on s 36(2) (at 1210C). In sum, we find nothing in *Harris* that supports the appellant's position.

41 To conclude, since the effect in equity of unilateral declarations did not form part of the *ratio* of the cases before the English Court of Appeal, and since there are a few conflicting first instance authorities, the most that can be said is that the point has not been settled in England. Perhaps, therefore, *Sivakolunthu* thought the law in England to be more settled than it actually is. In our view, however, there is more than sufficient material from which it may be concluded that in England, if it were not for s 36(2) of the LPA 1925, a unilateral written notice would not suffice to sever a joint tenancy in equity.

42 The Court of Appeal in *Sivakolunthu* considered all the relevant cases and adopted a fair and sensible reading of them. It established the law in Singapore on modes of severance at common law. As a matter of authority, there is no reason for us to depart from *Sivakoluthu*. More importantly, *Sivakoluthu* has not only stood for decades but Parliament, on the basis that that case correctly expressed the law, took legislative action in order to provide a statutory mode of severance by unilateral declaration.

43 Having concluded that *Sivakolunthu* is good law and should not be over-ruled, we hold that the appellant's proposed test for establishing effective unilateral declarations of intention to sever does not represent the common law. We decline to accept it. We now go on to consider whether severance of the joint tenancy here was effected through compliance with the statutory mode introduced by Parliament.

The statutory regime

44 In 1993, Parliament passed legislation providing for a statutory mode of severance by unilateral declaration. For registered land, the relevant provision was s 53 of the LTA while s 66A(3) of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) ("CLPA") was enacted to provide for unregistered land. Since their enactment, ss 53(5) and (6) of the LTA have only been amended to specify that upon severance, the co-owners shall hold as tenants in common in equal shares and that such allocation is statutorily presumed rather than determined by the Registrar.

45 In debating the proposed amendments contained in the Land Titles Bill (No 36 of 1992), Parliament recognised that the then existing law on severance of a joint tenancy was restrictive in that a joint tenant had to rely on mutual agreement or mutual conduct and, *if acting unilaterally, could only effect severance by disposing of his/her interest*. Implicitly, this debate accepted the law as stated in *Sivakolunthu* and recognised that without the amendments, it would not be possible to sever by a unilateral declaration (written or otherwise). If it were needed, this Parliamentary acceptance provides a further reason for not departing from that authority.

46 The purpose of s 53 of the LTA was to grant joint tenants the "full dispositive power" to convert their interests into those of a tenant in common by a new, additional and simple procedure. As the Minister for Law Professor S Jayakumar explained during the second reading (*Singapore Parliamentary Debates, Official Report* (18 January 1993) vol 60 at cols 374–377):

> Next, unilateral severance of a joint tenancy. The Bill allows a person owning land jointly with another person to unilaterally sever a joint tenancy.

> …
>
> … [A] joint tenancy, by its very nature, also has some serious disadvantages in cases where one co-owner, for good reasons, does not wish the survivor to take the whole of the property. To achieve that, he has to destroy the right of survivorship by severing the joint tenancy. The effect of the severance is to create a tenancy in common under which each co-owner holds a distinct share in the property. …
>
> *Existing law permits severance of a joint tenancy only in very limited circumstances, for example, by mutual agreement or conduct of the parties; by one co-owner selling and transferring his share to a third party; by an order of court; or where there is a bankruptcy. But a co-owner may wish to sever the joint tenancy in a simpler way, without having to transfer away his or her share of the property and without having to obtain the consent of the other party, which sometimes may not be feasible, especially in certain domestic situations.*
>
> …
>
> Therefore, the proposed amendment will enable a son/daughter or wife to secure his or her interest in the property for himself or herself or her immediate family in a situation where he or she may need to do so. The Bill provides for severance of a joint tenancy in respect of both registered and unregistered land. A joint tenant may sever a joint tenancy in respect of registered land by an instrument of declaration and by serving a copy of the instrument on the other joint tenants. In respect of unregistered land, a joint tenant may sever a joint tenancy by a deed of declaration and by serving a copy on the other joint tenant/s.
>
> …
>
> Sir, this amendment is in the public interest. In fact, in England, the law was changed as long ago as in 1925 to allow a co-owner to sever a joint tenancy by a simple unilateral notice in writing. The amendment enabled co-owners to have full dispositive powers over their interest in property by this simple procedure. *What our amendment seeks to do is to give property owners in Singapore the same rights that joint tenants have in the United Kingdom.*
>
> [emphasis added]

47 The Land Titles Bill was then referred to a select committee. On the third reading, the Minister for Law explained that the clause enacting s 53(5) had been further amended to clarify that "unilateral service of a declaration to

sever is an *additional means* of severing a joint tenancy. Other recognised methods of severing a joint tenancy will still be applicable" [emphasis added] (*Singapore Parliamentary Debates, Official Report* (30 August 1993) vol 61 at col 476). The Land Titles Bill was passed on 30 August 1993 and took effect on 1 March 1994.

48 At this point it may be helpful to set out the relevant legislation as enacted. First, ss 53(5) and (6) of the LTA. These sub-sections provide:

> **Manner of holding by co-owners**
>
> **53.**— …
>
> (5) Without prejudice to any rule or principle of law relating to severance of a joint tenancy, any joint tenant may sever a joint tenancy of an estate or interest in registered land by an instrument of declaration in the approved form and by serving a copy of the instrument of declaration personally or by registered post on the other joint tenants.
>
> (6) Upon the registration of the instrument of declaration which has been duly served as required by subsection (5), the respective registered estates and interests in the registered land shall be held by the declarant as tenant in common with the remaining joint tenants, and the declarant shall be deemed to hold a share that is equal in proportion to each of the remaining joint tenants as if each and every one of them had held the registered land as tenants in common in equal shares prior to the severance.

On a plain reading of the provisions, a joint tenant who is desirous of severing his joint tenancy in registered land using the statutory mode would have to take three steps. The first step would be to execute an instrument of declaration in the approved form. The second step would be to serve this instrument personally or by registered post on every other joint tenant. The final step would be to register the instrument on the Land-register. It should be noted that at the time the provision was enacted, in order to procure registration of the instrument of declaration, the severing joint-tenant needed to produce the original certificate

of title of the affected property to the Registrar of Titles. In 2001, the LTA was amended by the enactment of s 53(8) which allowed the Registrar of Titles to dispense with the production of the certificate of title if he was satisfied that the applicant for registration of an instrument of declaration was unable to produce it despite the applicant's best efforts to do so.

49 The case of *Diaz* decided by the Court of Appeal in 1997 rejected the plain reading of the sub-sections and held that a severance as between the joint tenants themselves would occur on completion of the first two steps. In the court below, the Judge considered that the basis for *Diaz* had been removed by the enactment of s 53(8) and that the doctrine espoused by it of severance acting only *inter partes* was no longer good law (at [54] of the Judgment).

50 To an extent, the *Diaz* decision brought the position of joint tenancies in registered land in line with that for unregistered land. In relation to the statutory mode of severance of joint tenancy in unregistered land, the governing provisions are ss 66A(3) and (4) of the CLPA which provide:

> (3) Without prejudice to any rule or principle of law relating to severance of a joint tenancy, a joint tenant may sever a joint tenancy of an estate or interest in land by a deed of declaration and by serving a copy of the deed of declaration personally or by registered post on the other joint tenants.
>
> (4) Upon the making of the deed of declaration and the service of the deed of declaration pursuant to subsection (3), the respective estates and interests in the land shall be held by the declarant as tenant in common with the remaining joint tenant, and the declarant shall be deemed to hold the share that is equal in proportion to each of the remaining joint tenants as if each and every one of them had held the land as tenants in common in equal shares prior to the severance.

It can be seen that in the case of unregistered land, to effect a severance by unilateral declaration, a joint tenant need only follow two steps instead of three. The severance will be complete upon service of the deed of declaration.

51 The Property here is registered land. This means that if a plain reading of ss 53(5) and (6) is adopted, as discussed above, the attempted severance by Mr Lim in July 2015 was ineffective because he failed to complete the third step of the procedure, that of registration. The appellant argues that on the contrary severance in equity was effected once the first two steps were completed and that the third step is only required to effect legal severance which basically means notifying the world by way of the Land-register that the property is no longer in the hands of joint tenants. The appellant's argument is based on an extended application of the decision in *Diaz*. In itself, *Diaz* is not helpful to the appellant because the severance effected therein operated only between the joint tenants themselves but he contends a proper understanding of the reasoning of the court in *Diaz* assists him.

Discussion of Diaz

52 In *Diaz*, a mother and one of her two daughters were joint tenants of a property registered under the LTA. The mother ("M") signed an instrument of declaration in the proper form under s 53(5) declaring her intention to sever the joint tenancy and hold the property as tenant in common with her co-tenant ("P"). A copy of the instrument was served on P. The instrument was stamped but not registered, so the property remained in the names of M and P as joint tenants. After M died, her other daughter ("A") who was the beneficiary and executor of M's estate lodged a caveat on the property, claiming an interest as beneficial tenant in common of an undivided half share in the house. P applied for the caveat to be removed, asserting that the entire property was hers by operation of the doctrine of survivorship. The issue was whether M had effectively severed the joint tenancy by her execution and service of the instrument. The High Court held that M had effected a severance of the joint tenancy that was effective between the co-owners and that therefore M's estate

had a caveatable interest. However, until the instrument was registered, third parties were entitled to treat the joint tenancy as subsisting.

53 P was unsuccessful in her appeal to the Court of Appeal. The court's construction of ss 53(5) and (6) of the LTA is found at [25] of its judgment:

> In our judgment, under s 53(5) a joint tenant may sever the joint tenancy by signing an instrument of declaration in an approved form and serving a copy thereof on the other joint tenants, and *once he has done that, the severance, as between the joint tenants, is effected*, and *upon registration of the declaration under s 53(6) the severance is completed in the sense that the severance is reflected on the register*, and thenceforth on the register the tenants hold the land as tenants in common. In our opinion, this construction of sub-ss (5) and (6) of s 53 of the Act promotes the purpose or object of the statutory provisions, and this is the construction we are disposed to adopt. [emphasis added]

54 Thus, this court held that once the instrument of declaration is served on the other joint tenant(s) under s 53(5), the joint tenancy is severed as between the joint tenants. However, third parties are only bound to treat the joint tenancy as severed upon registration under s 53(6). Its reasoning was as follows. The object of the statutory provisions was to provide a co-owner with a simpler way of severing the joint tenancy without having to obtain the consent of the other party which sometimes may not be feasible (see [46] above). If severance of the joint tenancy only became effective upon registration of the instrument of declaration under s 53(6), this purpose would not be achieved in some situations, *eg*, where the duplicate certificate of title could not be produced because it was in the possession of one of the other joint tenants or another person such as a mortgagee who refused to release it (at [24]). Thus, this court reasoned that, in order to give effect to the legislative purpose, severance must be effected once s 53(5) was complied with. The court also dismissed P's argument that s 45(1) of the LTA prevented the construction given to s 53(5).

Section 45(1) requires that an instrument be registered in order to be effectual to pass an estate or interest in land. The court reasoned that s 45(1) was not applicable in the situation before it because an instrument of declaration of severance does not pass any interest (at [31]), the joint tenants remaining registered proprietors of the property as they were before the instrument, albeit no longer enjoying the right of survivorship.

55 *Diaz* was a difficult case. It was clear from the facts that M wanted the property to be shared equally by her daughters, P and A, upon her death. For some unexplained reason, however, although everything was in place, the instrument of declaration was not registered during the period of 14 months that passed before she died. It can be appreciated that the court was doing its best to give meaning to both ss 53(5) and (6) while also finding an equitable solution to the conundrum before it. While the outcome of *Diaz* was generally accepted as just, its reasoning has been the subject of some academic comment, in particular in relation to the assertion that there can be severance which is only effective between the parties.

56 Barry Crown in "*Severance of a Joint Tenancy*" [1998] Sing JLS 166 ("Crown (1998)") and Tan Sook Yee *et al*, in *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) ("*Singapore Land Law*") at para 9.27 criticised the concept of severance which only operates between parties. They observed that the difficulty lies in the correct way of characterising the right held by the co-owners where a joint tenancy has been severed between themselves but not against the whole world. Since the right to a half-share of the property may only be exercised against the other co-owner and not against third parties, Crown deduces that this must be a personal equity and not a right *in rem* (at 169). Yet, the Court of Appeal did not disturb the High Court's holding that M's estate had a caveatable interest in the property. Only an interest

in land is caveatable (s 115(3) of the LTA) and a personal equity therefore cannot support the lodging of a caveat. Thus, by upholding the caveat, the Court of Appeal seemed to accept that the severance had an effect *in rem* in which case it should also have been recognised as binding third parties as well. During the hearing of this appeal, the appellant added that on the facts of *Diaz*, A was acting in her capacity as beneficiary rather than as executor of M's estate (see *Diaz* at [25]). As such, he contends that *Diaz* in reality involved not a contest between the joint tenants but between a joint tenant and a third party.

57 To overcome the difficulty of characterising the co-owner's right as a personal right and a caveatable interest at the same time, Crown (1998) re-interprets *Diaz* as a case where service of an instrument of declaration under s 53(5) severed the joint tenancy in equity by an act of a joint tenant operating on her own share (*ie*, the first mode of severance in *Williams v Hensman*) (at 170). Thus, upon severance each co-owner held a proprietary half-share in equity rather than a personal equity that was binding between themselves only.

58 As referred to earlier, in 2001, the LTA was amended to introduce s 53(8), which allows the Registrar to dispense with the production of the certificate of title. The parliamentary debates contain no discussion of the rationale for introducing s 53(8). In a later article, Crown argues that the basis for the *Diaz* decision has been removed by the enactment of s 53(8) (Barry Crown, "Developments in the Law of Co-Ownership" [2003] Sing JLS 116 ("Crown (2003)") at 120). This is because s 53(8) addresses *Diaz*'s concern that a joint tenant may be unable to register the instrument of severance because he cannot produce the duplicate certificate of title. With the enactment of s 53(8), Crown states that there is "no longer any need to adopt a strained construction of s 53, and the doctrine of severance acting only *inter partes* does not form part of Singapore law today" (at 120). The authors of *Singapore Land Law* affirm

Crown's views: see para 9.30.

59 Notwithstanding this, Crown maintains that the service of an instrument under s 53(5) should effect severance in equity under the first head of *Williams v Hensman* because it is an unequivocal act that declares a clear intention to sever (at 122). Thus, Crown transforms *Diaz* from a case rationalised by an interpretation of s 53 to a case rationalised by a (proposed) common law doctrine of severance by unilateral declaration. *Singapore Land Law* agrees that on the facts of *Diaz* there were sufficient acts to support a conclusion that the joint tenant acted on her share so as to sever the joint tenancy in equity, which would have given her a proprietary half-share as a tenant in common in equity instead of a mere personal equity (see para 15.69 at footnote 112). While the academic opinions expressed were confined to the facts of *Diaz* (which entailed the completion of the two steps in s 53(5)) the appellant seems to rely on their views to support his wider argument that any unilateral declaration that is clear, unequivocal, communicated and public can effect a severance in equity.

60 Several interlocking issues are raised by the discussion above, namely:

(a) Did *Diaz* correctly decide that severance occurs upon the completion of the two steps in s 53(5) without the third step of registration in s 53(6)?

(b) If *Diaz* was correct, what rights would a co-owner acquire upon severance? Would these rights be exercisable between the joint tenants only or would they in reality be capable of binding third parties?

(c) If *Diaz* was correct, on what basis should *Diaz* be rationalised: (i) on the basis of statutory interpretation of s 53(5) (as the court in *Diaz*

reasoned); or (ii) on the basis of an act of a joint tenant operating on his own share (as Crown (2003) and the appellant propose)?

61 The resolution of these issues is of great importance to the appellant. If *Diaz* is rationalised on a footing that grants the co-owner an equitable proprietary interest instead of a personal equity, then the co-owner's interest would be capable of binding the world except for a *bona fide* purchaser for value without notice (*cf* the Judgment at [55]). The appellant, as a third party, would be entitled to treat the joint tenancy as severed. Furthermore, if *Diaz* is rationalised not on the basis of statutory interpretation but on common law doctrine, then a wider range of unilateral declarations would be capable of effecting severance, not only those that satisfy the two steps in s 53(5).

62 Assuming for now that *Diaz* was correctly decided, we acknowledge the difficulty of characterising the right held by the co-owners upon a severance between themselves only (as discussed at [56] above). In our view, however, it is not possible to rationalise *Diaz* on the basis suggested by Crown (2003) so as to sever the joint tenancy in equity. His contention that service of an instrument under s 53(5) amounts to an act operating on one's own share actually fits *Diaz* into the first mode of severance mentioned in *Williams v Hensman*. This is unacceptable. In the first place, why should service of an instrument under s 53(5) amount to an act operating on one's own share? Under established law, a unilateral declaration, even if communicated or unequivocal or clear, does not operate on a joint tenant's share at common law as *Sivakolunthu* has established. Going back to first principles, the act of serving the instrument does not destroy any of the four unities. Secondly, it was not the purpose of the legislation to expand on the first mode of severance: the intention, as clear from the Parliamentary debates, was to provide a completely new mode of severance and Parliament's intention must be respected.

63 *Diaz* has given rise to some confusion in the law. This is evident from the case of *Ng Kim Chwee (executor and trustee of the estate of Ng Ham Chau, deceased) v Chua Chiew Hai and others* [1998] 2 SLR(R) 111 ("*Ng Chwee Kim*"). During her lifetime, Mdm Ng Ham Chau and her husband were joint tenants of a Housing & Development Board ("HDB") flat, which was not registered land. Mdm Ng signed an instrument of declaration in the form prescribed under s 53(5) of the LTA on 13 June 1994. This instrument was not a deed as required by s 66A of the CLPA. After her death, which occurred only four days later, her widower sold the flat and retained all the proceeds as sole beneficial owner. Mdm Ng's estate, asserting that the HDB had been negligent in approving the sale, claimed half the proceeds of sale from the HDB. The High Court found that no severance had been effected because for unregistered land under the CLPA, severance could only be effected by a deed of declaration within the terms of s 66A. The instrument of declaration was not such a deed. The judge further held that the HDB was not liable because, until the proper form of severance was used, HDB was entitled to treat the joint tenancy as subsisting. There can be no quarrel with the correctness of this decision. The complication arises from the judge's suggestion, citing *Diaz*, that severance had occurred as between the co-owners (though this was *obiter*). He said at [8] and [13]:

> 8 Until such making of the deed, the severance of a joint tenancy of unregistered land affected only co-owners themselves *qua* co-owners, and third parties are entitled to treat the joint tenancy as subsisting and conduct any dealings they may have in relation to the land on that basis: see *Diaz Priscillia v Diaz Angela* [1997] 3 SLR(R) 759 and *Sivakolunthu Kumarasamy v Shanmugam Nagaiah* [1987] SLR(R) 702.
>
> …
>
> 13 The severance of the joint tenancy affected only the co-owners themselves *qua* co-owners, and not third parties: *Diaz Priscillia v Diaz Angela* ([8] *supra*). The plaintiff's claim of severance, even if valid, was as between the joint tenants only

> and Madam Ng's estate would be entitled to look to Madam Ng's husband only for relief.

This was a puzzling observation because Mdm Ng had not executed the correct form to initiate the statutory procedure for severance in respect of unregistered land. It was, with respect, not logical that the effect of s 53(5) (as determined by *Diaz*) was thought to apply to unregistered land just because a joint tenant had used the form prescribed by s 53(5). Moreover, the reasoning in *Diaz*, that compliance with s 53(5) of the LTA should be effective to sever *inter partes* so that the requirement for registration does not impede the objective of providing joint tenants with a simple mode of severance, does not apply to unregistered land, because registration is not required under the CLPA.

Our approach to Diaz and ss 53(5) and (6)

64 From the discussion above, there is no doubt that although the decision in *Diaz* was well-intentioned, it purported to lay down a principle which is at odds with commonly accepted concepts of land law. We also agree with Crown that it has given a strained interpretation to ss 53(5) and (6) of the LTA by viewing each of them as a separate mode of severance with an independent legal effect. In our judgment, ss 53(5) and (6) have to be looked at as a whole and as providing for a single mode of severance which is made up of three steps. The fact that in the case of unregistered land only two steps are required to effect severance is beside the point. The vital difference between unregistered and registered land is the Land-register established under s 28 of the LTA. The purpose of the Land-register is to display the ownership of, and all dealings with, registered land so that an inspection of the Land-register will notify all persons of the same. Generally speaking, an interest which is not shown on the Land-register will not be recognised. The Land-register will only serve its purpose if relevant instruments are presented for registration. Accordingly,

registration under s 53(6) is, in our view, a vital part of the unilateral declaration mode of severance provided for by the LTA. This is made quite clear by the language of s 53(6) itself because it is only upon the registration of the instrument of declaration that the estates and interests in the land are held by the registered proprietors as tenants in common. Reading compliance with s 53(5) alone as having the effect of effecting severance in equity would strip s 53(6) of meaning and make registration a mere administrative act. This would work against the whole rationale of the LTA.

65 In our judgment therefore, the holding in *Diaz* cannot be supported. It is helpful that it is now easier for a joint owner of registered land who has executed an instrument of declaration to have the same registered on the Land-register because production of the certificate of title may be dispensed with. That, however, is not the basis of our decision. Our construction of ss 53(5) and (6) is based on a plain reading of the language of the sections in their context and with a view to implementing the Parliamentary intention they represent.

66 As far as the facts of this case are concerned, our reading of ss 53(5) and (6) means that because it was not registered, the instrument of declaration executed by Mr Lim was not effective at all under the LTA to sever the joint tenancy with Mdm Leong. Severance only occurred subsequently by operation of law when Mdm Leong was made a bankrupt. Accordingly, Mdm Leong's share of the sale proceeds of the Property must be paid to her estate in bankruptcy.

67 We would observe that, in any case, Mr Lim did not even completely comply with s 53(5) and therefore the instrument he executed was not registrable before Mdm Leong became a bankrupt. We are referring to the manner in which Mr Lim purported to serve the instrument. Section 53(5)

requires service "personally or by registered post". The importance of the mode of service is emphasised by the prescribed form of the instrument which contains an "Endorsement of Service" which has to be completed by the declarant. The declarant completes the endorsement by declaring that to the best of his information, knowledge and belief, a copy of the instrument of declaration was duly served on the other registered proprietor either personally or by registered post on a specified date. Mr Lim did not complete the Endorsement of Service and could not do so because the instrument was not served personally on Mdm Leong or by pre-paid registered post.

68 In our judgment, the modes of service adopted, which were posting the instrument via a certificate of posting and placing a newspaper advertisement in Singapore, did not satisfy the statutory requirement. There is no provision in the LTA providing for the specified mode of service to be dispensed with or substituted. Whilst this lack might appear to render the modes of service unfairly rigid, that appearance is ameliorated by s 60A(4)(*b*) of the LTA which provides that when a document is sent by pre-paid registered post, it shall be deemed to have been duly served on the person to whom it was addressed two days after the day the notice or document was posted, notwithstanding it is returned undelivered. Further, under s 60A(2) the address of any person specified in an instrument by which that person becomes a registered proprietor may be regarded as his address for service. Thus, even if Mr Lim was not aware of Mdm Leong's whereabouts at the time he executed the instrument of declaration and thus could not effect personal service, it would not have been very difficult for him to have effected service properly by registered post.

69 We extend our observation on the necessity for full compliance with the statutory mode of severance to cases of unregistered land. As *Ng Chwee Kim* correctly demonstrated, if the form of declaration used does not comply with

the requirements of s 66A of the CLPA then severance of a joint tenancy in unregistered land cannot be effected notwithstanding that the form chosen works for registered land.

Conclusion

70 For the reasons we have given above, we hold that the joint tenancy over the Property was not severed by the instrument of declaration executed by Mr Lim in July 2015. Accordingly, this appeal must be dismissed. We make no order as to costs since the respondent played no part in the appeal. The security deposit shall be released to the appellant's solicitors.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal

Tay Yong Kwang Judge of Appeal	Steven Chong Judge of Appeal

Chan Wai Kit Darren Dominic and Daniel Ng
(Characterist LLC) for the appellant;
Respondent in person (absent).
