IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC 224

Originating Application No 72 of 2025

In the matter of the estate of Ang Geok Kheng, deceased

And

In the matter of Block 247 Jurong East Street 24 #13-16 Singapore 600247

Between

Koh You Quan (executor of
the estate of Ang Geok Kheng,
deceased)

… *Applicant*

And

Koh Hock Meng

… *Respondent*

JUDGMENT

[Civil Procedure — Originating processes — Applicant bringing originating application with unsatisfactory evidence — Whether originating application should be converted into originating claim]
[Land — Interest in land — Joint tenancy — Joint tenant attempting to statutorily sever joint tenancy — Whether statutory severance was properly effected — Sections 53(5) and 53(6) of the Land Titles Act 1993]

[Trusts — Constructive trusts — Common intention constructive trusts — Executor claiming common intention constructive trust over property — Whether there is sufficient evidence of common intention]
[Trusts — Resulting trusts — Presumed resulting trusts — Executor claiming presumed resulting trust over property — Whether there is sufficient evidence of financial contributions to purchase price of property]

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v
Koh Hock Meng

[2025] SGHC 224

General Division of the High Court — Originating Application No 72 of 2025
Mohamed Faizal JC
26 March, 29 October 2025

11 November 2025 Judgment reserved.

Mohamed Faizal JC:

Introduction

1 An uncontested application is never, and should never be treated as, a mere formality. The court's role is never to simply endorse what is being asked of it; instead, it is to ensure that every order granted, as seductively simple as the request may seem, rests on a sound footing in principle, fact and law. The absence of opposition does not lighten the court's burden. Indeed, if anything, it necessarily calls for the court to exercise greater care to ensure that the evidence put forth truly supports the remedy claimed, in order to ensure that the court's process does not end up being utilised as a vehicle for unwarranted relief. The present case brings such considerations into sharp focus.

2 In HC/OA 72/2025 ("Application"), the executor of the estate of the deceased, Ang Geok Kheng ("Deceased"), seeks a declaration that the

Deceased's share in the property at Block 247 Jurong East Street 24 #13-16 Singapore 600247 ("Property") is held on trust by Koh Hock Meng ("Father") for the Deceased's estate. The Deceased was married to the Father at all material times. The executor ("Son"), who is the younger of two sons of the Deceased and the Father, claims that the beneficial title to the Property was held by the Deceased and the Father in unequal shares of 85.8% and 14.2% respectively, by virtue of a presumed resulting trust. In the alternative, the Son claims that there arose a common intention constructive trust under which the Deceased held the full beneficial title to the Property. The Son also seeks further orders that the Father take all necessary steps to transfer to the Deceased's estate the share of the Property which he holds on trust for the Deceased, and to sell his remaining share of the Property (if any) to the estate at market value.

3 These proceedings, in which the Father was absent and unrepresented, traversed several months as a result of the dearth of material evidence in the supporting affidavits, and unfortunately, since then, any relevant evidence has only been produced in dribs and drabs. Having considered the matter, I decline to grant the orders sought by the Son, as there is insufficient evidence to support the existence of a presumed resulting trust or a common intention constructive trust over the Property, let alone to make any informed determination as to the legal and beneficial title to the Property. If the Son intends to pursue the matter, this Application is to be converted into an originating claim, and the Son is to file the statement of claim within three months of the release of this judgment. If the Son does not intend to pursue the matter, or otherwise decides not to file the statement of claim, then the Application is dismissed. In my view, if indeed these proceedings ought to continue, they should be dealt with as an originating claim as there are, for reasons I explain below, crucial factual issues that remain unresolved.

Facts and procedural history

Background

4 The Deceased and the Father married in November 1977.[1] In March 1983, they purchased the Property from the Housing Development Board ("HDB") as joint tenants for 99 years for the price of $30,900. The original agreement with HDB indicates that they paid an upfront deposit of $13,476. The remaining balance and other miscellaneous fees, collectively amounting to $18,400, were financed by way of a housing loan from HDB ("Housing Loan") which was to be repaid over 15 years at an interest rate of 6.25% per annum. This, in essence, resulted in the need to make 180 monthly payments of $160.50 with effect from April 1983. The total financial outlay for the acquisition of the Property was therefore $42,366.[2] Records indicate that the Housing Loan was indeed fully repaid around 15 years after the Housing Loan was taken out, *viz,* in October 1998.[3]

5 The circumstances surrounding these proceedings largely find their genesis in developments that straddled a couple of weeks at the start of last year. On 2 January 2024, the Deceased was diagnosed with stage four cancer and advised by doctors that she only had a few months left to live.[4] Exactly a week later, on 9 January 2024, the Deceased executed a statutory declaration ("Statutory Declaration") and a will ("Will").[5]

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1 Applicant's written submissions dated 19 March 2025 ("AWS") at para 4.

2 Koh You Quan's affidavit affirmed on 22 January 2025 and filed on 23 January 2025 ("Son's First Affidavit") at para 5 and pp 23–26; AWS at para 36.

3 Son's First Affidavit at pp 472 and 474; AWS at para 8.

4 Son's First Affidavit at para 22.

5 Son's First Affidavit at para 6.

6 In the Statutory Declaration, the Deceased claimed the following:[6]

(a) While the Deceased and the Father held the Property as joint tenants, the Father did not contribute towards the repayment of the Housing Loan, and the Deceased *fully serviced the loan by way of cash payments until the loan was fully settled sometime in 2013*.

(b) The Father neglected to take care of the Deceased and their two sons. He only returned home occasionally, engaged in extramarital affairs, was incarcerated a few times for drug offences, and had gotten the family into trouble with illegal moneylenders. Sometime in 2006, the Father left the Property and never returned. The Deceased and her two sons lost contact with him entirely.

(c) After receiving her diagnosis on 2 January 2024, there was insufficient time for the Deceased to commence divorce proceedings against the Father or apply to the court for a determination of her share of the Property. Thus, she decided to sever the joint tenancy into a tenancy in common in equal shares to preserve her 50% share of the Property which was to be given to her two sons. Despite doing this, she did not accept that her share in the Property was limited to 50%. Instead, the severance of the joint tenancy was merely an expedient step done in order to preserve her 50% share, with her wish being for her two sons to apply to the court after her death for a determination of her rightful share of the Property. She believed this to be at least 80% as she made most of the financial contributions to the Property.

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6 Son's First Affidavit at pp 10–12.

7 In the Will, the Deceased appointed the Son as the sole executor and trustee and bequeathed her estate to her two sons in equal shares.[7]

8 The Deceased passed away on 12 January 2024, just three days after executing the Statutory Declaration and the Will.[8]

9 The Son filed the Application on 23 January 2025, and the papers were personally served on the Father on 3 February 2025.[9] Despite counsel for the Son ("Mr Tan") notifying the Father of these proceedings on multiple occasions, the Father did not attend any of the case conferences or hearings for this Application and did not file any affidavits or written submissions.[10]

Matters leading up to the hearing on 26 March 2025

10 The first supporting affidavit filed by the Son broadly echoed the points made by the Deceased in her Statutory Declaration. It also contained the following points:

(a) The Son claimed that the Father did not hold any proper or formal job. The Son further claimed that the Father had told the Deceased that he was giving the Property to her and their two sons when he left the household in 2006 ("Parting Remark").[11] In this regard, the Son exhibited what appears to be the Deceased's handwritten notes. One

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7 Son's First Affidavit at pp 14–16.

8 Son's First Affidavit at paras 7 and 33.

9 AWS at paras 14–16; Mohamed Esham bin Abdul Salam's affidavit dated 12 February 2025 at para 2.

10 AWS at paras 17–22; Notes of Evidence ("NEs") (26 March 2025) at 2:7–11; Applicant's further written submissions dated 15 October 2025 ("AFWS") at paras 5–7; Minute Sheet ("MS") (29 October 2025) at p 1.

11 Son's First Affidavit at paras 11 and 14.

such note appears to be addressed to the Father where the Deceased wrote: "Albert, / if anything happen to me / I hope you will give half / of the property to my two son / Leslie & John / my son must have the / share of my property / we have separate at 2006 you leave / the house and say you will not coming back / son and house give me" ("Handwritten Note").[12] For ease of understanding, "Albert" is a reference to the Father and "Leslie" and "John" are references to the two sons.

(b) The Son claimed that the Father did not contribute to the repayment of the Housing Loan. The Son contended that the Father could not have done so in view of his irresponsible behaviour, and certainly did not do so after he left the household in 2006.[13] Instead, it was the Deceased who had made monthly cash payments of $135 over 30 years to repay the Housing Loan, which was fully repaid sometime in 2013. The Deceased also paid for the initial renovations of the Property in 1983 as well as other miscellaneous charges over the years.[14]

(c) The Son claimed that the Deceased had the requisite mental capacity to execute the Will and the Statutory Declaration despite her illness.[15] He was present when the Deceased's lawyer ("Ms Chua") was taking instructions from the Deceased. The Deceased told Ms Chua that she wanted to distribute her assets between her two sons equally and asked Ms Chua to help her two sons "fight back" for their rightful share

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12 Son's First Affidavit at p 22.

13 Son's First Affidavit at para 15.

14 Son's First Affidavit at para 16.

15 Son's First Affidavit at para 27.

of the Property.[16] The Son also exhibited a medical memorandum issued by Dr Janice Tan on the day the Will and the Statutory Declaration were executed, certifying that the Deceased had mental capacity for decision making at the time of writing.[17] The Son claimed that the Deceased was not of unsound mind or under any influence at the material time, notwithstanding her illness.[18]

11 In the first written submissions filed by the Son, the following submissions were made:

(a) The Son submitted that the joint tenancy over the Property was severed into a tenancy in common in equal shares on 9 January 2024. On that day, the Father was notified by letter of the severance and did not express any objections.[19]

(b) The Son submitted that it could be inferred from the circumstances that the Deceased and the Father had an agreement, at the time the Property was acquired, that the Deceased would substantially contribute to the purchase price. This was borne out by the parties' subsequent conduct, as the Father's vices and repeated incarcerations meant he was unable to hold a job and contribute financially to the purchase price, whereas the Deceased worked various jobs to make the monthly payments on the Housing Loan by way of cash payments.[20]

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16 Son's First Affidavit at paras 28 and 30.

17 Son's First Affidavit at para 31 and p 556.

18 Son's First Affidavit at para 32.

19 AWS at para 28.

20 AWS at paras 37–38.

(c) While the financial documents evidencing the parties' financial contributions to the purchase price were sparse, the Son contended that the available evidence indicated that the Deceased contributed 85.8% of the purchase price. As there was no direct evidence on how the parties contributed to the initial deposit of $13,476, the Son claimed that this meant that the parties held their beneficial interests in the same manner as their legal interests, *ie*, in equal shares of 50% each. The Deceased also contributed $5,055 towards the initial renovations in 1983. Together with the Deceased's making of all the monthly payments on the Housing Loan, it was alleged that the Deceased's total financial contribution to the purchase price was $40,683, thereby entitling her to 85.8% of the beneficial title under a presumed resulting trust.[21]

(d) The Son submitted that *there was a lack of evidence of any discussions or statements between the Deceased and the Father to support the existence of a common intention in respect of their beneficial interests in the Property*.[22] The Deceased had clear intentions not to benefit the Father with her financial contributions to the acquisition of the Property. The subsequent severance of the joint tenancy over the Property, and the making of the Will and Statutory Declaration, indicated that the Deceased had no intention to benefit the Father.[23] The Deceased made the monthly payments on the Housing Loan to ensure that her two sons would have a roof over their head and not to benefit the Father with her direct financial contributions towards the Property.[24]

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21 AWS at paras 39–44.

22 AWS at para 47.

23 AWS at para 51.

24 AWS at para 53.

12 At the first hearing of this matter on 26 March 2025 ("First Hearing"), I highlighted to Mr Tan what were, in my view, glaring deficiencies in the first supporting affidavit:

> (a) First, as to the Son's claim that the joint tenancy was severed into a tenancy in common in equal shares on 9 January 2024, I could only assume this was a reference to the mode of statutory severance under ss 53(5) and 53(6) of the Land Titles Act 1993 (2020 Rev Ed), which applies to HDB properties as well (see, *eg*, *Sitiawah Bee bte Kader v Rosiyah bte Abdullah* [1999] 3 SLR(R) 606; *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR(R) 265; and *Tien Choon Kuan v Tien Chwan Hoa* [2016] SGHC 16). To effect such statutory severance, a joint tenant would be required to execute an instrument of declaration in the approved form, serve this instrument personally or by registered post on every other joint tenant, and register the instrument on the land register (*Chan Lung Kien* v *Chan Shwe Ching* [2018] 2 SLR 84 ("*Chan Lung Kien*") at [48]). However, apart from the Son's bare assertion that the Father was notified of such severance by way of letter on 9 January 2024, there was absolutely no evidence to show that any of the steps in statutory severance were properly taken, or indeed, if the requisite instrument was even filled up and lodged. There was therefore in that sense no evidence before me to support the proposition that any severance in law had even taken place. After I highlighted this, Mr Tan clarified that the requisite documents are in existence but were, for some reason, not exhibited in the first supporting affidavit.[25]

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[25] NEs (26 March 2025) at 2:29–3:25.

(b) Second, the issue of the Deceased's testamentary capacity and the possibility of any undue influence were inadequately addressed. The fact that the Deceased executed the Will, the Statutory Declaration, and the purported instrument of declaration for statutory severance seven days after her diagnosis and a mere three days before her passing, and all within the time span of a few hours on 9 January 2024, necessarily required the court to carefully scrutinise the circumstances surrounding their execution. In this regard, affidavit evidence from disinterested third parties would be useful.[26]

(c) Third, I invited Mr Tan to consider if the Application should be converted into an originating claim given the unsatisfactory nature of the evidence before me.[27]

13 I thus granted an adjournment for Mr Tan to consider the issues I had highlighted, with liberty to seek further directions if needed.[28]

Matters leading up to the hearing on 29 October 2025

14 In subsequent correspondences between Mr Tan and the court, I granted the Son permission to file further affidavits and written submissions in support of the Application.

15 In the second supporting affidavit filed by the Son, he explained the following:

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[26] NEs (26 March 2025) at 3:27–4:3.

[27] NEs (26 March 2025) at 4:7–4:13.

[28] NEs (26 March 2025) at 5:12–5:13.

(a) The Deceased executed the instrument of declaration for statutory severance and served it on the Father by registered post on or around 9 January 2024. The instrument was lodged with the Singapore Land Authority on 11 January 2024 and registered on 12 January 2024.[29]

(b) Mr Tan wrote to HDB on 8 April 2025 for records and information regarding the parties' respective contributions to the initial deposit and the Housing Loan. HDB replied on 21 April 2025 stating that the monthly payments of $160.50 were deducted from the Father's Central Provident Fund ("CPF") Ordinary Account and they did not have any copies of payment receipts for cash contributions by either party to the Housing Loan.[30]

(c) Mr Tan wrote to the CPF Board on 8 April 2025 requesting for records showing the Deceased's financial contributions to the acquisition of the Property from her CPF account. The CPF Board replied on 21 April 2025 stating they were unable to provide such information as a result of their legal duties to maintain the confidentiality of CPF account holders and suggested that the Son obtain a court order directing the CPF Board to release the requested information to him.[31]

(d) The Son claimed that there were no material facts in dispute in the Application since the Father had been entirely absent from the proceedings, had not filed any affidavit and had adduced no contrary evidence to dispute the claim or contradict the facts. Even if there were

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29 Koh You Quan's affidavit affirmed on 2 September 2025 and filed on 11 September 2025 ("Son's Second Affidavit") at para 6 and pp 9–21.

30 Son's Second Affidavit at paras 10–11 and pp 23–50.

31 Son's Second Affidavit at para 14 and pp 67–91.

material facts in dispute, the Application may continue as an originating application and the makers of the affidavits may be cross-examined by the court. Thus, the Application should not be converted into an originating claim.[32]

16 Ms Chua also filed an affidavit explaining that, prior to taking instructions from the Deceased, she had spoken to one of the Deceased's doctors who confirmed that the Deceased was lucid and had mental capacity. The doctor also agreed to issue a medical memorandum certifying the same.[33] This appears to be a reference to the medical memorandum from Dr Janice Tan that had been exhibited in the Son's first supporting affidavit (see [10(c)] above).

17 Ms Chua's observations when taking instructions from the Deceased were as follows:

(a) When she explained to the Deceased that a proper will had to be executed if the Father was to not inherit her estate, the Deceased appeared alerted and understood the explanation.[34]

(b) When the Deceased expressed her wish to divide her assets equally between her two sons, she spoke clearly, at an audible volume, and was able to recite her identification number without difficulty.[35]

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32 Son's Second Affidavit at paras 17–18.

33 Chua Ying Jie Eunice's affidavit dated 12 September 2025 ("Ms Chua's Affidavit") at para 8.

34 Ms Chua's Affidavit at para 9.

35 Ms Chua's Affidavit at para 10.

(c) The Deceased demonstrated clarity of mind and memory as she could recall details such as the year of her marriage, the year she acquired the Property, and the Property's purchase price.[36]

(d) When affixing her thumbprint on the Will and the Statutory Declaration, the Deceased displayed notable physical strength. She also shook hands with Ms Chua firmly.[37]

18 Ms Chua also noted that the Deceased mentioned that she was the one who *mainly* contributed to the monthly payments on the Housing Loan and that *the Father had only made some payments towards the Property through his CPF account*.[38]

19 Dr Cai Mingzhe, another doctor who attended to the Deceased, also filed an affidavit exhibiting a medical memorandum stating that, based on the clinical documentation at the material time, the Deceased did demonstrate mental capacity for making decisions on her medical care.[39]

20 In the second written submissions filed by the Son, the following submissions were made:

(a) The Son submitted that the legal requirements for statutory severance were validly met, as supported by the facts and documentary evidence set out in the Son's second supporting affidavit.[40]

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36 Ms Chua's Affidavit at para 14.

37 Ms Chua's Affidavit at para 15.

38 Ms Chua's Affidavit at para 12.

39 Dr Cai Mingzhe's affidavit sworn on 15 August 2025 and filed on 11 September 2025 at p 4.

40 AFWS at paras 12 and 14–16.

(b) The Son submitted that the Deceased had testamentary capacity when she executed the Will and the Statutory Declaration, as supported by the affidavit evidence of Ms Chua and Dr Cai Mingzhe.[41]

(c) The Son submitted that there were no disputes or controversies over the facts in this Application as the Father has not participated in these proceedings and has raised no such dispute.[42] Since it was the Father's choice to allow the proceedings to continue in his absence, he should now stand or fall by such conduct.[43] Even if there were disputes of fact, the court may order that the makers of the affidavits be cross-examined instead.[44] Thus, the Application should not be converted into an originating claim.[45]

(d) The Son submitted that it could be inferred that the Deceased and the Father had a common intention that the Father's share of the Property would be left to the Deceased and their two sons after he left the household in 2006. This was supported by the Handwritten Note and the Statutory Declaration which stated that the Father had mentioned the Parting Remark when leaving the household in 2006. Thus, a common intention constructive trust arose over the Property.[46]

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41 AFWS at paras 18–24.

42 AFWS at paras 27, 29 and 31–32.

43 AFWS at para 39.

44 AFWS at paras 34 and 37.

45 AFWS at paras 33 and 40.

46 AFWS at paras 41 and 44–45.

Issues to be determined

21 The primary issue to be determined is whether there is sufficient evidence of a presumed resulting trust or a common intention constructive trust such that the Deceased's estate is entitled to 85.8% or 100% of the beneficial title to the Property as the case may be. For the reasons set out below, I find that there is insufficient evidence of either type of trust. The evidence before me points in a multitude of directions and is so unsatisfactory that it would be unsafe for this court to come to any informed determination as to the legal and beneficial title to the Property. If the Son intends to pursue the matter, I am of the view that the Application should be converted into an originating claim.

There is insufficient evidence of a presumed resulting trust or a common intention constructive trust

Presumed resulting trust

22 I deal first with the Son's claim that there is a presumed resulting trust over the Property. A resulting trust may arise where A pays for the purchase of property which is vested in the joint names of A and B. Here, there may be a presumption that A did not intend to make a gift to B and so the property is held in shares proportionate to the parties' contributions (*Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") at [34], citing *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 708). The presumed resulting trust is thus a means by which equity intervenes in a legal joint tenancy. As a result of the presumed resulting trust, such legal joint tenants are presumed to hold the property on trust for themselves as tenants in common in accordance with their respective contributions to the purchase price (*Lau Siew Kim* at [83]).

23 In *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*"), the Court of Appeal set out a series of steps to analyse a property dispute involving parties who have contributed unequal amounts towards the purchase price of a property and who have not executed a declaration of trust as to how the beneficial interest in the property is to be apportioned ("*Chan Yuen Lan* framework"). The first step is as follows (*Chan Yuen Lan* at [160(a)]):

> (a) Is there sufficient evidence of the parties' respective financial contributions to the purchase price of the property? If the answer is 'yes', it will be presumed that the parties hold the beneficial interest in the property in proportion to their respective contributions to the purchase price (*ie*, the presumption of resulting trust arises). If the answer is 'no', it will be presumed that the parties hold the beneficial interest in the same manner as that in which the legal interest is held.

24 Therefore, the first order question is whether there is sufficient evidence of the Deceased's and the Father's respective financial contributions to the purchase price of the Property. In this regard, the Son submits that the Deceased's financial contributions fall into three categories: (a) her contribution of $6,738 to the initial deposit of $13,476 (*ie*, 50% of the initial deposit); (b) her contribution of $5,055 to the initial renovations of the Property in 1983; and (c) her contribution of $28,890 to all the monthly payments on the Housing Loan. In my view, all of these are, on the facts, problematic. I deal with each of these alleged financial contributions in turn.

25 As far as the initial deposit is concerned, the Son admits that there is in fact no direct evidence on each parties' respective contributions.[47] The Son's submission that the Deceased's contribution to the initial deposit should be pegged at 50% so as to follow the manner in which the parties' legal interests are currently held is plainly illogical. Since a resulting trust crystallises at the

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47 AWS at para 40; MS (29 October 2025) at p 2.

time the property is acquired, the respective contributions of the parties to the purchase price, which when unequal gives rise to a presumption of resulting trust, must similarly be determined at the time of acquisition (*Lau Siew Kim* at [112]). The Property was acquired in 1983. For the longest time, legal title to the Property remained as a joint tenancy. The fact that, close to 41 years later, the legal joint tenancy was purportedly severed into a tenancy in common in equal shares by way of statutory severance has absolutely no bearing whatsoever on what the parties' respective factual financial contributions were to the initial deposit. All that can be concluded from the evidence before me is that it is unknown which person(s) paid for the initial deposit and in what proportions those payments were made.

26 Next, I deal with the initial renovations in 1983. I accept that where a property is redeveloped closely after purchase and its value is increased by the redevelopment, contributions to the costs of redevelopment can be relevant in determining the respective proportions of contributions to the purchase price of the property for the purposes of a presumption of resulting trust (*Lau Siew Kim* at [126], citing Robert Pearce & John Stevens, *The Law of Trusts and Equitable Obligations* (Oxford University Press, 4th Ed, 2006) at p 246). However, the Son has adduced absolutely no evidence to show that the Property was in fact renovated in 1983, what those renovations were, how those renovations increased the value of the Property, that the costs of those renovations were $5,055, and that it was the Deceased who had paid for those renovations. Despite $5,055 being an oddly specific number, Mr Tan eventually conceded at the further hearing on 29 October 2025 ("Second Hearing") that he had no documentary evidence to explain how the sum was derived. When I queried on this, Mr Tan initially suggested that the sum was the result of tabulating the receipts for the renovations, but he did not take the point further after I pointed

out to him that no such receipts could be found in the affidavits.[48] Thus, the Son's submission that the Deceased's financial contributions to the purchase price of the Property should include her purported payments for the initial renovations in 1983 is a complete non-starter.

27 Last, I deal with the monthly payments on the Housing Loan. The starting point is the Deceased's claim in her Statutory Declaration that the Father did not contribute towards the repayment of the loan and she fully serviced the loan by way of cash payments until it was fully settled sometime in 2013 (see [6(a)] above). I note that the objective records contradict almost every single facet of this claim. For one, the objective records exhibited in the Son's first supporting affidavit clearly show that the Housing Loan was fully repaid in October 1998 (see [4] above). The fact that the Deceased misremembered this date by around 15 years puts the credibility of her assertions in her Statutory Declaration in some doubt. If it is true that the Deceased had made all the monthly payments, one would ordinarily expect that she would remember, with some degree of accuracy, the date range in which the Housing Loan became fully repaid. I accept that she might not remember the exact date, or even the specific year, but the significant variance in this case (*ie*, the objective records showing it took 15 years, but the Deceased claiming it took 30 years) is somewhat alarming, and raises more questions about whether, and to what extent, the Deceased made the monthly payments. When I highlighted this at the Second Hearing, Mr Tan suggested that the Deceased might have mixed up the monthly payments with other conservancy charges.[49] This argument was, with respect, itself plainly illogical. If the Deceased was actually referring to such conservancy charges, she would have been paying those even

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48 MS (29 October 2025) at p 2.

49 MS (29 October 2025) at p 3.

on her deathbed, and not only up till 2013, as they are permanently recurring charges. In any event, it is unpersuasive to speculate whether the Deceased had benign reasons for misremembering the date on which the Housing Loan became fully repaid, since there is no way to verify those guesses. Mr Tan further argued that, if this court accepts that the Deceased was the one who made the monthly payments, then it is irrelevant whether the Housing Loan was fully repaid in 1998 or 2013.[50] However, the inaccuracy in the Statutory Declaration is clearly relevant as it squarely puts into question the credibility of the Deceased's assertion, and consequently the Son's submission, that the Deceased made all the monthly payments.

28 There are other troubling features in this regard. The Deceased's claim that she fully serviced the Housing Loan by way of cash payments is not supported by any evidence. In fact, the evidence strongly hints to this assertion being incorrect. In the Son's first supporting affidavit, he exhibited what appears to be photocopies of copious pages from the Deceased's bank book with the Post Office Savings Bank.[51] When I perused that document, I found it to be irrelevant. The entries in the bank book reflect transactions from July 2001 onwards. By definition, none of these entries could have been in relation to the Housing Loan that had been fully repaid by 1998. To make matters worse, HDB has also stated that it does not have any copies of payment receipts for cash contributions by either party to the Housing Loan (see [15(b)] above). In fact, the Son's two supporting affidavits also exhibit multiple statements of account from HDB in relation to the Housing Loan over the years. Where payments of $160.50 (*ie*, the monthly payments) were recorded, the statements appear to indicate that they were made from a CPF account, although it is unclear whose

50 MS (29 October 2025) at p 3.

51 Son's First Affidavit at pp 68–398.

CPF account this was.[52] This further contradicts the Deceased's claim that she made the monthly payments by way of cash payments. When I highlighted this at the Second Hearing, Mr Tan suggested that the Deceased could have paid moneys into her CPF account to then make the monthly payments. However, when pressed, Mr Tan accepted that this was entirely speculative on his part and conceded there were no documents to support such an assertion.[53] This is all above and beyond the fact that any such assertion seems not to be aligned with the thrust of the assertions till that point which was that the monthly payments were all made *by cash*. To be fair, the statements of account also record a number of instalment payments of varying sums that appear to have been made by cash or cheque.[54] Nonetheless, it is again entirely unclear who made these cash or cheque contributions. In any event, it does not detract from the fact that, contrary to the Deceased's case theory, a sizeable portion of the monthly payments clearly appear to have emanated from a CPF account.

29 I further note that Ms Chua explained in her affidavit that, whilst she was taking the Deceased's instructions, the Deceased said she was the one who mainly contributed to the monthly payments and the Father had only made *some payments* towards the Property through his CPF account (see [16] above). This hints to the fact that even the Deceased accepted that the Father did contribute to the purchase price of the Property through his CPF account, albeit her claim was that his contributions were limited. Yet, quite concerningly, this nuance was not reflected in the Statutory Declaration where the Deceased took the absolute position that the Father did not contribute towards the repayment of the

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52 See, *eg*, Son's First Affidavit at p 45 and Son's Second Affidavit at pp 53–54.

53 MS (29 October 2025) at p 5.

54 See, *eg*, Son's Second Affidavit at pp 60–65.

Housing Loan *at all*. This inconsistency further puts into question the credibility of the position taken in the Statutory Declaration.

30 The inaccuracies in the Statutory Declaration were then perpetuated in the Son's first supporting affidavit, where the Son claimed that the Deceased made monthly cash payments of $135 over 30 years to repay the Housing Loan, which became fully repaid sometime in 2013 (see [10(b)] above). We now know almost the entirety of this claim to be untrue because, as I have already explained, the objective records show that the monthly payment was primarily made from a CPF account and the Housing Loan was fully repaid in October 1998. Rather curiously, those objective records were exhibited in the *very same* supporting affidavit in which the *very opposite* conclusion was stated to the court as fact. Some of these inaccurate details were only clarified and corrected in the Son's first written submissions.[55]

31 Subsequently, and even more distressingly, in further correspondence between Mr Tan and HDB which were exhibited in the Son's second supporting affidavit, HDB stated that the monthly payments of $160.50 were deducted *from the Father's CPF Ordinary Account* (see [15(b)] above). Whilst HDB did not provide any documentary evidence to substantiate this statement, it suffices to say that such a statement necessarily contradicts the Deceased's claim that *she* had made all the monthly payments by way of *cash payments*. As I explained to Mr Tan at the Second Hearing, HDB's response hints to a possible, if not likely, inference that the Father had contributed to most, if not all, of the monthly payments from his CPF account.[56]

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55 See, *eg*, AWS at f/n 12.

56 MS (29 October 2025) at p 3.

32 Even if it can be proven that the Deceased made all the monthly payments on the Housing Loan, such payments do not constitute direct contributions to the purchase price of the Property unless they are referrable to, and in keeping with, a prior agreement between the parties, at the time the Property was acquired and the Housing Loan was taken out, as to who would be liable to repay the loan (*Su Emmanuel v Emmanuel Priya Ethel Anne* [2016] 3 SLR 1222 ("*Su Emmanuel*") at [89]). In the present case, there is absolutely no evidence of the Deceased and the Father having an agreement, at the time the Property was acquired and the Housing Loan was taken out, that the Deceased would be liable to make all the monthly payments. Even though subsequent conduct can shed light on the existence of such an agreement (*Su Emmanuel* at [90]), the evidence is unresolved as to who exactly made the monthly payments. To the extent the Son claims that such a contemporaneous agreement can be inferred from the Father's vices, repeated incarceration and inability to hold a job to financially contribute to the purchase price of the Property (see [11(b)] above), this is, with respect, a complete *non sequitur*. While the Deceased (in her Statutory Declaration) and the Son (in his supporting affidavits) have sought to characterise the Father as an absent and irresponsible figure in most of their lives, there is no evidence regarding when the parties' relationship first broke down and when the Father's alleged character flaws first emerged. It cannot simply be assumed that the negative characterisation of the Father, even if true for most of the Son's life (and I should stress I take no position on the veracity of such a scathing account as it is quite self-evidently a one-sided narration), was in existence at the time the Property was acquired and thereby informed an agreement between the parties as to who would be liable for the monthly payments on the Housing Loan.

33 It is therefore clear to me that there is close to no evidence of the parties' respective financial contributions to the purchase price of the Property. This is supported by the fact that, in his second supporting affidavit, the Son candidly admits that "[f]rom the available documents and information from HDB to-date, there is no objective evidence of parties' contributions to the [Property]".[57] Likewise, in the second written submissions, it is admitted that "[the Son] does not have objective documentary evidence from HDB and the CPF Board to show [the] parties' complete financial contributions to the [Property]".[58] Indeed, as I have explained, the Son's version of events does not even appear to be reflective of what happened and who, and how, the monthly payments were in fact made, based on the precious little evidence that exists. That being the case, the evidential substratum from which a resulting trust can be presumed simply does not exist.

Common intention constructive trust

34 I deal next with the Son's claim that a common intention constructive trust arose over the Property. The common intention constructive trust is a remedy applied where it is clear that there is a common intention among the parties as to how their beneficial interests are to be held (*Su Emmanuel* at [83]).

35 In this regard, the second, third and sixth steps in the *Chan Yuen Lan* framework are as follows (*Chan Yuen Lan* at [160(b)]–[160(c)] and [160(f)]):

> (b) Regardless of whether the answer to (a) is 'yes' or 'no', is there sufficient evidence of an express or an inferred common intention that the parties should hold the beneficial interest in the property in a proportion which is different from that set out in (a)? If the answer is 'yes', the parties will hold the beneficial interest in accordance with that common intention instead, and

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57 Son's Second Affidavit at para 13.

58 AFWS at para 42.

> not in the manner set out in (a). In this regard, the court may not impute a common intention to the parties where one did not in fact exist.
>
> (c) If the answer to both (a) and (b) is 'no', the parties will hold the beneficial interest in the property in the same manner as the manner in which they hold the legal interest.
>
> …
>
> (f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a subsequent express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from that in which the beneficial interest was held at the time of acquisition of the property? If the answer is 'yes', the parties will hold the beneficial interest in accordance with the subsequent altered proportion. If the answer is 'no', the parties will hold the beneficial interest in one of the applicable modes set out at (b)–(e) above, depending on which is applicable.

36 The Court of Appeal in *Su Emmanuel* also highlighted three important principles regarding the common intention constructive trust (*Su Emmanuel* at [83]):

> … First, in the absence of any evidence of a common intention between the parties as to how the beneficial interest in the property concerned is to be held, the resulting trust remains the default analysis (*Chan Yuen Lan* at [158]). Second, to successfully invoke the common intention constructive trust, the common intention (which may subsist either at, or subsequent to, the time the property was acquired) between the parties may either be express or inferred. Third, there must be *sufficient and compelling* evidence of the express or inferred common intention (see *Chan Yuen Lan* at [160(b)] and [160(f)]).

37 The key question, therefore, is whether there is sufficient evidence of a common intention between the Deceased and the Father as to their beneficial title to the Property. The Son's argument centres around the Father's purported Parting Remark, *ie*, the allegation that the Father had told the Deceased that he was leaving the Property to her and their two sons when he left the household in 2006. The Son claims this is evidence that the Deceased and the Father had a

common intention since 2006 that the beneficial title to the Property would vest fully in the Deceased.[59] I am, with respect, unpersuaded by this argument. I make five points in this regard.

38 First, I note that the Son took the position in his first written submissions that there was a lack of evidence to support the existence of a common intention between the parties in respect of their beneficial interests in the Property (see [11(d)] above). Yet, close to seven months later, the Son raises this new argument of a common intention constructive trust for the very first time in his second written submissions, conveniently contradicting the earlier position he took. There was absolutely no mention of an argument premised on a common intention constructive trust in either his first or second supporting affidavit. This is despite the fact that the pieces of evidence the Son relies on for this argument, *ie*, the Handwritten Note and the Statutory Declaration, were exhibited in his very first supporting affidavit, which was filed close to nine months before the second written submissions were filed. It was therefore difficult not to draw the inference that this new argument is simply a *post hoc* rationalisation of the available evidence after it became increasingly clear that the argument of a presumed resulting trust would be unable to succeed.

39 Second, the Handwritten Note that is being relied on to support the existence of a common intention constructive trust is at best ambiguous and at worst contradicts the Son's case. To recapitulate, the Handwritten Note stated: "we have separate at 2006 you leave / the house and say you will not coming back / son and house give me [*sic*]". It is ambiguous whether the phrase "son and house give me" is meant to be a description of what the Father allegedly said to the Deceased, or merely a description of the state of affairs after the

[59] MS (29 October 2025) at pp 1–2.

Father's departure. The Handwritten Note also stated: "if anything happen to me / I hope you will give half / of the property to my two son / Leslie & John / my son must have the / share of my property [*sic*]". If it is true that the Father had made the Parting Remark, the Deceased would not need to "hope" that the Father would give part of the Property to their two sons upon her passing, since she would have believed that she was entitled to dispose of the entire Property at her discretion. The fact that the Deceased spoke of "half" and a "share" of the Property suggests that she was still of the view that the Father retained an interest in the Property. This contradicts the suggestion that the parties had a common intention that the beneficial title to the Property would fully vest in the Deceased from 2006 onwards. Indeed, even a cursory reading of the Handwritten Note would have made the contradictions painfully obvious; when I highlighted this at the Second Hearing, Mr Tan immediately conceded that it was difficult to square the contemporaneous evidence with the Son's arguments.[60]

40 Third, it is inaccurate for the Son to claim that the Deceased had mentioned the Parting Remark in the Statutory Declaration (see [20(d)] above). The Statutory Declaration only mentioned that the Father left the household in 2006. It made no mention of any statements made by the Father at the time of leaving. Even if the Handwritten Note is interpreted in the manner the Son claims it should, the fact that the Parting Remark was not mentioned in the Statutory Declaration raises serious doubts as to its truth. If the Father genuinely told the Deceased that the entire Property was left to her and their two sons, and the Deceased laboured under this impression for close to 18 years since 2006, one would have thought that the Deceased would have made the Parting Remark

[60] MS (29 October 2025) at p 6.

one of the central features of the Statutory Declaration. Instead, the Statutory Declaration made no mention of the Parting Remark at all.

41 Fourth, apart from the Handwritten Note, it is only the Son who claims in his first supporting affidavit that the Father had made the Parting Remark when leaving the household in 2006 (see [10(a)] above). It is entirely unclear if the Son was a first-hand witness to the Father's making of the purported Parting Remark in 2006, or if this is simply hearsay evidence which the Son learned of from the Deceased, or if this is the Son's *post hoc* interpretation of the Handwritten Note after the Deceased's passing. Given these uncertainties, the Son's attestation to the truth of the Parting Remark is, as things stand, not particularly persuasive.

42 Fifth, even if I put the abovementioned evidential difficulties aside, the evidence from the Deceased and the Son are still inadequate. Their evidence is necessarily one-sided as they are interested parties who stand to gain significantly if the court finds that the Parting Remark gave rise to a common intention constructive trust. There is no other third-party or objective evidence to corroborate that the Father had made the Parting Remark when leaving the household in 2006. It also bears emphasis that the relevant intention must be common to all parties involved (*Su Emmanuel* at [84]). Even if the Father had made the Parting Remark, and the Deceased and the Son interpreted it as the Father relinquishing his share of the beneficial title to the Property, there is no evidence to support the argument that this was the Father's subjective intention as well. Evidence of a subsequent common intention to vary the beneficial interest must be "sufficient and compelling" before it can give rise to a common intention constructive trust (*Chan Yuen Lan* at [160(f)]; *Su Emmanuel* at [83]), and the evidence before me on the alleged Parting Remark falls far short of this standard. It should be remembered that this court must not impute and foist upon

the parties a common intention which they never had, simply to achieve a supposedly "fair" result. The common intention constructive trust should not be a smokescreen for the court to effect "palm tree" justice in an unprincipled and arbitrary manner untethered to the objective evidence before the court (*Chan Yuen Lan* at [156]).

43 Seen in the round, it is clear to me that there is insufficient evidence that the Father had made the Parting Remark when he left the household in 2006 or that, if it were made, the Parting Remark was reflective of a common intention for the Deceased to have the full beneficial title to the Property. That being the case, the evidential substratum for the common intention constructive trust simply does not exist.

There is insufficient evidence regarding the legal and beneficial title to the Property

44 Where there is insufficient evidence of the parties' respective financial contributions to the purchase price of the property, and insufficient evidence of any common intention between the parties, whether at the time or subsequent to the acquisition of the property, regarding their beneficial interest in the property, it will generally be presumed that the parties hold the beneficial interest in the same manner as that in which the legal interest is held (see [23] and [35] above). This is consistent with how equity's starting assumption is that "equity follows the law" (*Lau Siew Kim* at [85]). It is thus tempting to conclude, at least up till the purported statutory severance of the legal joint tenancy in January 2024, that the beneficial title to the Property was also held as a joint tenancy. However, I decline to make such a determination. The evidence before me is so unsatisfactory that it would be unsafe to make an informed determination regarding the legal and beneficial title of the Property.

45 First, if HDB is right that the monthly payments on the Housing Loan were made primarily from the Father's CPF Ordinary Account, and if those regular payments can be linked to an agreement between the parties at the time the Property was acquired that the monthly payments would be deducted from the Father's CPF Ordinary Account, then, in theory at least, there is a possibility that a presumed resulting trust (if there is any at all to begin with) arose *in his favour*, entitling him to a larger than 50% share of the beneficial title. Likewise, if more concrete evidence regarding the circumstances of the Father's departure from the household in 2006 is subsequently made available, there remains a possibility that the Son's argument of a common intention constructive trust premised on the purported Parting Remark could be made out. I stress that I am not making a finding on any of this, but rather just stating this as a technical possibility, as it would not be proper at this stage to arrive at any informed conclusions on this matter – ultimately a future court would have to decide this if and when more evidence is available and properly stress-tested.

46 Second, the issue of whether the statutory severance of the legal joint tenancy was properly effected itself remains unresolved. I accept that the Son has exhibited the requisite supporting documents in his second supporting affidavit to show that the three steps for statutory severance have been complied with. However, I note that the instrument of declaration was registered on 12 January 2024, *the very same day the Deceased passed away*. One necessarily must question whether the instrument was registered before or after the Deceased's passing. In theory, if registration had taken place before the Deceased's passing, then the statutory severance would have been effective, and the Deceased's 50% share of the legal title would fall to her estate. If, however, the Deceased passed away before registration could take place, then it could conceivably mean that the right of survivorship would have applied at the point

of passing and the full legal title would have vested in the Father, such that there would no longer be any legal joint tenancy to sever.

47 The latter conclusion follows from the Court of Appeal's decision in *Chan Lung Kien* to overrule its earlier decision in *Diaz Priscillia v Diaz Angela* [1997] 3 SLR(R) 759 ("*Diaz*"). In *Diaz*, a mother and the elder of her two daughters were registered as joint tenants of a property. The mother executed an instrument of declaration to effect a statutory severance, served it on the elder daughter, but never registered it. The question was whether the statutory severance had been properly effected. The Court of Appeal held that the joint tenancy was severed as between the mother and the elder daughter because the instrument of declaration was served on the latter. However, third parties were not bound to treat the joint tenancy as severed because the instrument was not yet registered. In *Chan Lung Kien*, the Court of Appeal declined to accept the holding in *Diaz*, and held that statutory severance is only effected upon registration of the instrument of declaration (*Chan Lung Kien* at [64]–[65]). It would seem to follow that if the Deceased passed away before the instrument of declaration was registered, the right of survivorship would have applied before any statutory severance could have been effected. Thus, the factual issue of whether the registration of the instrument of declaration or the passing of the Deceased came first needs to be scrutinised before the court would be able to come to an informed determination as to the manner in which the parties hold the legal and beneficial title to the Property. When I highlighted this at the Second Hearing, Mr Tan conceded that this was an issue that had to be fully investigated.[61] I should clarify that this is not to say that it would not be, in theory at least, possible for the Son to take a different position on how one

[61] MS (29 October 2025) at p 5.

should understand the impact of *Chan Lung Kien* on these facts. Rather, the point is simply that there are no arguments before me to know if the holding in *Chan Lung Kien* even applies, and if so, how it might affect the question of whether the statutory severance was valid or otherwise.

48 It will therefore be seen that the evidence presented is so lacking and impossible to rationalise that any outcome remains possible: it may be that the Father owns the Property outright due to the right of survivorship; it may be that there was an effective statutory severance such that the Deceased and the Father owned 50% each at the time of the former's death; or it may be that either the Deceased or the Father owned a majority beneficial share at the time of the former's death. We simply do not know. In light of this, I decline to make any informed determination as to the legal and beneficial title to the Property. Consequently, it is inappropriate to grant any of the further orders sought by the Son, such as for the Father to sell his share of the Property to the Deceased's estate, and I decline to do so.

The Application should be converted into an originating claim

49 If the Son does not intend to pursue the matter, then the Application is dismissed. However, if the Son intends to pursue the matter, the Application is to be converted into an originating claim, and he is to file the statement of claim within three months of the release of this judgment. This follows from my findings above regarding the unsatisfactory nature of the evidence before me. The Application should proceed as an originating claim so that the factual controversies can be more comprehensively and adequately ventilated.

50 Under O 15 r 7(6)(*c*) of the Rules of Court 2021 ("ROC 2021"), the court may order that an originating application be converted into an originating claim

if the court is of the view that there are disputes of fact in the affidavits. Order 6 r 1(2) of the ROC 2021 further provides that a claimant must commence proceedings by an originating claim where the material facts are in dispute. In *Lim Soon Huat v Lim Teong Huat* [2024] 4 SLR 843 ("*Lim Soon Huat*"), the court endorsed a two-stage process in deciding whether to convert an originating application into an originating claim. First, the court must be satisfied, as a threshold requirement, that the material facts relating to the action are in dispute. Second, if the threshold requirement is satisfied, then the court is to decide whether to exercise its discretion to allow the conversion, based on all the circumstances of the case and having regard to the Ideals set out in O 3 r 1(2) of the ROC 2021 (*Lim Soon Huat* at [27]). The overarching query is whether there are disputes of fact which ought to be determined after a full trial (*Lim Soon Huat* at [25]). The court also affirmed that the case law applicable to O 28 r 8(1) and O 5 r 2 of the Rules of Court (2014 Rev Ed) (*ie*, the predecessors to O 15 r 7(6)(*c*) and O 6 r 1(2) of the ROC 2021 respectively) remain relevant (*Lim Soon Huat* at [25]).

51 In my view, the threshold requirement that there are material facts in dispute is clearly met. Contrary to the Son's submissions, the fact that the Father is absent in these proceedings does not necessarily mean that there are no disputes over the material facts. As explained in detail at [27]–[31] above, there are many stark contradictions between the evidence of the Deceased, the Son, Ms Chua, HDB and the underlying records regarding who contributed to the monthly payments on the Housing Loan and in what proportions. This is clearly a factual issue material to whether a presumed resulting trust arose in the present case. There also remain significant factual uncertainties regarding whether the Father had made the Parting Remark in 2006, whether the statutory severance was properly effected prior to the Deceased's passing, and whether the

Deceased had the requisite testamentary capacity and was not under undue influence at the material time (a point which I will elaborate on later). These are all matters which the Father should be given sufficient opportunity to respond to if he chooses to participate in these proceedings, and which may result in disputes over material facts. The fact that a defendant may not appear is not a reason for a claimant to commence an action involving disputes over material facts by way of an originating application (*Tien Choon Kuan v Tien Chwan Hoa* [2015] SGHC 155 at [6]).

52 I also find it appropriate to exercise my discretion to convert the Application into an originating claim. Given the unresolved and contradictory nature of the evidence before me, I am of the view that cross-examination would be useful, if not essential, in evaluating which evidence is to be believed. Only then can the factual uncertainties highlighted above be adequately resolved. Further, the issue of whether the Deceased had the requisite testamentary capacity, and whether there was any undue influence, at the material time should be properly interrogated. As I highlighted to Mr Tan at the First Hearing, the fact that the Deceased executed the Will, the Statutory Declaration, and the instrument of declaration for statutory severance seven days after her diagnosis and a mere three days before her passing, and all within the time span of a few hours on 9 January 2024, necessarily required the court to carefully scrutinise the circumstances surrounding their execution. In saying this, I also note that the affidavit evidence of Ms Chua suggests that she was at the Deceased's bedside on just a single discrete occasion for around three and a half hours. If so, that itself raises questions on how the Will, the Statutory Declaration and the instrument of declaration for statutory severance were prepared so quickly and, in the case of the instrument of declaration, sent out by registered mail that very same day. To be clear, there may very well be perfectly logical and benign

reasons for all of this. My simple point is that those facts are simply not before me for me to arrive at any meaningful conclusion.

53 The law on testamentary capacity is well established:

(a) For a will to be found valid, the testator must: (i) have the mental capacity to make a will; (ii) have knowledge and approval of the contents of the will; and (iii) be free from undue influence or the effects of fraud (*Chee Mu Lin Muriel v Chee Ka Lin Caroline* [2010] 4 SLR 373 ("*Muriel Chee*") at [37]).

(b) The essential requisites of testamentary capacity are: (i) the testator understands the nature of the act and what its consequences are; (ii) she knows the extent of her property of which she is disposing; (iii) she knows who her beneficiaries are and can appreciate their claims to her property; and (iv) she is free from an abnormal state of mind (*eg*, delusions) that might distort feelings or judgments relevant to making the will (*Muriel Chee* at [37], citing *George Abraham Vadakathu v Jacob George* [2009] 3 SLR(R) 631 at [29]).

(c) The court must look at the totality of the evidence as a whole, comprising of both factual (including evidence of friends and relatives who had the opportunity to observe the testator) and medical components. The court should generally accord equal importance and weight to both types of evidence, so long as both the factual and medical witnesses had the opportunity to observe the testator at the material time (*Muriel Chee* at [38]).

54 In the present case, the fact that the Deceased passed away ten days after her diagnosis might suggest that she was seriously ill and this might have

affected her mental capacity at the material time. Of course, I accept that a testator might still retain sufficient intelligence to understand and appreciate a testamentary act despite the fact that her mental power may be reduced to below the ordinary standard by physical infirmity or the decay of advancing age (*Muriel Chee* at [39], citing *Banks v Goodfellow* (1870) LR 5 QB 549 at 566). I make no finding either way as there is simply no evidence before me regarding the severity of the Deceased's illness at the material time. Suffice to say, the burden is on the Son to prove that the Deceased possessed the requisite testamentary capacity (*Muriel Chee* at [40]).

55 The Son's personal testimony that the Deceased had the requisite mental capacity to execute the documents and was not under any influence at the material time, while of course relevant, is not particularly persuasive, since he is a beneficiary under the Will and is necessarily an interested party. Dr Cai Mingzhe's affidavit evidence is somewhat ambiguous as it merely reaffirms that the Deceased had the mental capacity to make decisions regarding her *medical care*, but not anything else. I accept that Ms Chua's affidavit evidence, coupled with Dr Janice Tan's medical memorandum, go some way towards proving that the Deceased had the requisite mental capacity at the material time, and that the Will, the Statutory Declaration and the instrument of declaration for statutory severance truly reflected the Deceased's personal wishes. However, given the exceptional circumstances in which the documents were executed (as set out at [52] above), coupled with the fact that, as I have explained, the Statutory Declaration itself is littered with obvious factual inaccuracies and is, at times, contradicted by the Deceased's own evidence (see [27]–[31] above), it would be more appropriate for the evidence to be fully tested.

56 I am cognisant that the court can also order that the makers of the affidavits be cross-examined pursuant to O 15 r 7(6)(*b*) of the ROC 2021. As

alluded to earlier, cross-examination is not only useful, but essential, to make sense of the unresolved and contradictory evidence before me. This is not a case where there is a substantial body of objective evidence which speaks for itself, thereby making cross-examination unnecessary (*cf*, *Jiangsu Overseas Group Co Ltd v Concord Energy Pte Ltd* [2016] 4 SLR 1336 at [43]). However, going beyond the mere need for cross-examination, this is also not a case where the factual uncertainties are limited to specific issues or specific witnesses. The affidavit and documentary evidence conflict in respect of so many areas that the amount of cross-examination necessary in this case would effectively render the Application an originating claim in all but name (*Woon Brothers Investments Pte Ltd v Management Corporation Strata Title Plan No 461* [2011] 4 SLR 777 ("*Woon Brothers*") at [29]). Further, given that the potential issue of undue influence is a very serious one implicating the propriety of the process leading to the execution of the various documents, it is more appropriate for such concerns to be fully addressed at trial (*TDA v TCZ* [2016] 3 SLR 329 at [33]). To be clear, this does not mean that every case in which undue influence is a theoretical possibility must be fully interrogated through a trial process. Instead, it is the exceptional circumstances of the present case (as set out at [27]–[31], [52] and [55] above) that justifies the court taking an especially cautious approach.

57 I accept that the conversion of an originating application into an originating claim may entail more time and costs being spent on the proceedings, and this may in some senses seem contrary to the ideal of expeditious proceedings under O 3 r 1(2)(*b*) of the ROC 2021. However, the unsatisfactory manner in which this Application has unfolded should be kept in mind.

(a) The Son's first supporting affidavit and first written submissions were clearly inadequate. When I highlighted these deficiencies at the First Hearing, Mr Tan effectively agreed and claimed to have intimated the same to his colleague and/or associate.[62] That then begs the question why there were no attempts to adduce the missing documentary evidence prior to the First Hearing. Further, when the Son filed his second supporting affidavit, more contradictory evidence was adduced, such as HDB's statement that the monthly payments on the Housing Loan were deducted from the Father's CPF Ordinary Account. There was no attempt to reconcile the contradictory evidence even though the Son was still asking for an order in terms of the Application.[63]

(b) When it became clear that more documents from CPF were needed to prove the case, Mr Tan simply wrote to the court by letter seeking an order compelling CPF to disclose the relevant documents, without making any proper application to the court.[64] As I explained to Mr Tan at the Second Hearing, I declined to do so given that court orders granted by way of letter without the requisite application being made are generally inappropriate.[65] At the Second Hearing, I also pointed out to Mr Tan that CPF's website indicates that a nominee or an eligible family member may be given access to a deceased person's CPF account information, and that Ms Chua's attendance notes indicated that the Deceased's CPF monies was to be given to one of her sons. However, Mr Tan was unable to confirm whether the Son was nominated by the

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62 NEs (26 March 2025) at 3:4–3:5 and 4:15–4:23.

63 Son's Second Affidavit at para 20.

64 Letter from counsel for the Son to the court dated 20 August 2025 at para 4(b).

65 MS (29 October 2025) at p 3.

Deceased to receive her CPF monies or whether he would be able to obtain the Deceased's CPF account information in that capacity.[66] To be fair to Mr Tan, it is uncertain whether the Deceased's CPF account information would include information regarding her financial contributions to the purchase price of the Property (if any), but the fact that this route was not explored, and indeed, that Mr Tan did not even know whether the Son was a nominee to the CPF monies to begin with, is less than ideal.

(c) When it became clear that the argument of a presumed resulting trust could not succeed, the Son launched a brand new argument of a common intention constructive trust, which was not only unsupported by the available evidence, but also contradicted his earlier position that there was a lack of evidence of any common intention between the parties. As has been noted at various junctures in this judgment, even at the Second Hearing, Mr Tan conceded that the evidence available was less than satisfactory.

58 All in all then, there is a distinct sense that the Application is a stab in the dark on the hope that something sticks, largely premised on the logic that, as the Father has seemingly elected not to be involved, whatever assertions that are made, regardless of the objective evidence, ought to be accepted and need not be carefully scrutinised. I am, with respect, unable to agree. The mere fact that a respondent has not participated in proceedings does not mean that the court simply "rubber-stamps" an application without due regard to the adequacy of the evidence. It is clear to me that the Son commenced this Application without sufficient evidence and without having thought through his position on

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66 MS (29 October 2025) at pp 3–4.

the various legal and factual issues. He has attempted to procure further evidence in dribs and drabs over multiple months, adopted contradictory legal positions as and when he comes up with new legal arguments, and at times elected to simply ignore the objective evidence that squarely contradicts his claims. All of this has been taking place whilst the Application continues languishing on the docket. This court cannot possibly keep adjourning the matter whilst the Son consolidates his case in bits and pieces and morphs his case further to fit whatever comes his way. While I am inclined to give the Son one final opportunity to make good his case, this should be on the basis that this will be the Son's best and final case, with all relevant evidence and legal issues properly thought through and presented to court, and with the issues being fully ventilated. To that extent, I am of the view that the full interlocutory process that follows from an originating claim should apply to ensure that the Son is able to, where needed, clearly formulate his claim and the precise matters that need to be proved (*Woon Brothers* at [32]). If considered necessary, the Son can also, in due course, make the appropriate applications for documents that he feels would be required to make good his case. In my view, the serious evidential gaps necessitate a proper production of documents exercise to properly understand what in fact transpired.

59 Further, given the very serious allegations that are made against the Father, should the Father choose to participate in these proceedings moving forward, he should be entitled to file a defence and seek other interlocutory orders as he deems appropriate. Indeed, throughout the course of these proceedings, I struggled to reconcile the fact that the Father has seemingly elected not to be involved in these proceedings despite being served with the cause papers, with the Son's claim that the Father had gone to the wake for the

Deceased and "caused ruckus at the funeral demanding for the [Property]".[67] These paint two vastly distinct pictures and the two narratives sit very uncomfortably with each other. This is yet a further reason why the full rigour of an originating claim, as opposed to mere cross-examination, is warranted in the present case.

60 Thus, I hold that this Application should be converted into an originating claim should the Son decide to pursue the matter.

Conclusion

61 I have some sympathy for the difficult situation the Son finds himself in. The Deceased and the Father are the central figures to this case, but the former cannot, and the latter has seemingly chosen not to, participate in these proceedings. The Son may understandably feel a sense of frustration in having to procure the requisite evidence to obtain the orders that he seeks. Nonetheless, tough cases should not make bad law. In civil proceedings, an applicant is required to establish his case on the balance of probabilities. The court cannot compromise on the standards expected of all parties simply because the facts are unfortunate, or because the court has understandable sympathy for one party or the other, or because it is inconvenient for a party to procure the evidence, or even because no other party wishes to challenge factual assertions that are *prima facie* questionable. Indeed, turning to the present facts, the court cannot "rubber-stamp" an application founded seemingly on a narrative that appears, on its face, to be contradicted by the objective evidence, and which ostensibly raises more questions than it answers, even if no one else appears motivated to challenge such an account. As I had explained at the outset, the court's task in an

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67 Son's First Affidavit at para 34.

uncontested application is not simply to lend its imprimatur to it, but to ensure that such application is supported by cogent evidence and anchored in principle, fact and law.

62 For the reasons set out above, I decline to grant the orders sought by the Son. If the Son intends to pursue the matter, the Application is to be converted into an originating claim, and the Son is to file the statement of claim within three months of the release of this judgment. If that is the course the Son takes, he should consolidate his case and the evidence he is relying on properly while, of course, being able to use the interlocutory process subsequently as part of the management of his case. If, however, the Son does not intend to pursue the matter, or otherwise decides not to file the statement of claim, the Application is dismissed.

63 For the avoidance of doubt, nothing I have said should bind the court presiding over the originating claim if that is the course the Son ultimately elects to pursue. The evidence before such a court could potentially be vastly different from the evidence presently before me. Indeed, this must be so for if it were otherwise, the future court would be in a no better position to make any informed finding as to the proper legal and beneficial ownership of the Property.

64 Given the findings I have made above, I make no order as to costs. I have granted the Son relatively liberal timelines to cater for the possibility that he may require time to carefully consider his options and obtain whatever evidence he feels may be of assistance in the interim.

Mohamed Faizal
Judicial Commissioner

Tan Tse Chia Patrick and Chan Shin Nee Esther (Fortis Law Corporation) for the applicant;
The respondent absent and unrepresented.
