[2021] JMCA Civ 1

JAMAICA

IN THE COURT OF APPEAL

PARISH COURT CIVIL APPEAL NO COA2019PCCV00010

BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MISS JUSTICE STRAW JA
THE HON MRS JUSTICE FOSTER-PUSEY JA

BETWEEN	**SHARON TIMOLL**	**1ST APPELLANT**
	MARGARET TIMOLL	**2NDAPPELLANT**
	JOSHUA TIMOLL	**3RD APPELLANT**
AND	**LESTER WATTS**	**1ST RESPONDENT**
	TIMOTHY WATTS	**2ND RESPONDENT**

Miss Margaret Timoll, 2nd appellant, in person for the appellants

Miss Joan Thomas instructed by Joan J Thomas & Co for the respondents

4, 18 November 2020 and 15 January 2021

BROOKS JA

[1] I have read in draft the judgment of my sister Foster-Pusey JA and I agree that it was for the reasons outlined that we arrived at our decision.

STRAW JA

[2] I too have read in draft the judgment of my sister Foster-Pusey JA and I agree that it was for the reasons outlined that we arrived at our decision.

FOSTER-PUSEY JA

Introduction

[3] On 25 February 2020 this appeal came up for hearing. At that time the appellants were present, but were without legal representation. The records indicate that the respondents and their attorney were present. The appeal hearing was adjourned to 18 May 2020 for the appellants to acquire the services of an attorney.

[4] Due to the intervention of the COVID – 19 pandemic, the appeal did not, however, come up again for hearing until 4 November 2020. At that time, the second appellant, Ms Margaret Timoll, appeared and Ms Joan Thomas, attorney-at-law, appeared representing the respondents. Ms Timoll indicated that the appellants were in the process of securing an attorney to represent them in the appeal. Ms Thomas indicated to the court that she had not served the appellants with the skeleton submissions and the bundle of authorities, as she had been waiting to be informed as to which attorney would be representing them.

[5] The court adjourned the hearing of the appeal to 18 November 2020 at 2:00 pm. It was also ordered that the respondents' attorney-at-law should, on or before 9 November 2020, file and serve on Ms Margaret Timoll, on behalf of the appellants, the skeleton arguments and bundle of authorities which the respondents had filed in opposition to the appeal.

[6] On 18 November 2020 at 2:00 pm, the hearing of the appeal proceeded with Ms Timoll representing herself and the other appellants and the respondents' attorney-at-law making submissions.

[7] This appeal stems from a successful claim brought by the respondents against the appellants in the Parish Court held at Spanish Town, Saint Catherine, for recovery of possession of lot 40 Darlington Drive, Old Harbour in the parish of Saint Catherine, registered at Volume 1043 and Folio 273 of the Register Book of Titles ("the property"). The presiding judge was Her Honour Ms N Brooks ("the Parish Court Judge").

Background

[8] At this time, a brief overview of the facts is useful. John Timoll was, at one time, the registered owner of Lot 40 Darlington Drive. He died leaving a will and, in accordance with its terms, on 22 July 1986 the property was transferred to his children Rupert Alexander Timoll, John Owen Timoll, Ms Daphne King, Ms Novelette Louise Williams (Timoll) and Mr Clifton Gilmore Timoll, as joint tenants.

[9] On 13 September 2008, Rupert Alexander Timoll died. John Owen Timoll then died on 16 October 2012 and thereafter Clifton Gilmore Timoll died on 14 January 2016. In accordance with the rule of survivorship where joint tenants are concerned, as the surviving joint owners, Daphne King and Novelette Louise Williams (Timoll), would, in the usual course of events, have become the owners of the property.

[10] The appellants, Sharon, Margaret and Joshua Timoll are the children of Clifton Timoll. Their father occupied the property and they have lived all their lives there.

[11] The respondents are two of three registered owners of the property which they purchased from Novelette Timoll and Daphne King, surviving siblings of Clifton Timoll. The property was transferred to them on 29 September 2016. Before the respondents had purchased the property, a shop at its front had been rented to a tenant. Upon their purchase of the property, the tenant began paying them rent for the shop.

[12] In order to recover possession of the remainder of the property, the respondents served on the appellants notices to quit dated 1 November 2016 and 6 October 2017. Despite these efforts, the appellants did not vacate the property, which resulted in the respondents, on 8 January 2018, initiating proceedings against them in the parish court for recovery of possession.

[13] In the proceedings, the appellants filed a notice of statutory defence relying on the provisions of the Limitation of Actions Act, 1881 ("the Act"). The appellants argued that their father had, prior to his death, dispossessed the other joint registered owners. As a consequence, Novelette Timoll and Daphne King were not able to transfer title to the respondents, the bona fide purchasers. Furthermore, the appellants claimed that, through their father Clifton Timoll, they had acquired a possessory title to the property.

[14] The matter went to trial before the Parish Court Judge on 2 November 2018, 6 December 2018 and 29 January 2019. The Parish Court Judge found that, on a balance of probabilities, the appellants were unable to substantiate their claim. Therefore, she found in favour of the respondents and ordered that the appellants forthwith quit and deliver up possession of the property to the respondents.

[15] On 5 February 2019 the appellants filed notice and grounds of appeal challenging the decision of the Parish Court Judge.

The decision on appeal

[16] At the conclusion of the hearing of the appeal, and after thorough consideration of the issues which arose, we made the following orders:

> "1. The appeal is dismissed.
>
> 2. The judgment and orders of the learned parish court judge Her Hon Ms N Brooks, which were handed down on 29 January 2019 are affirmed.
>
> 3. The appellants shall deliver up possession of the property the subject of the appeal at number 40 Darlington Drive, Old Harbour in the parish of St Catherine on or before 1 January 2021.
>
> 4. No order as to costs."

[17] We had promised that our reasons for the above-mentioned orders would follow in due course. In fulfilment of that promise we now give our brief reasons.

The evidence at the Parish Court

The respondents' evidence

[18] Timothy Watt testified that he, along with his brother and his son, purchased the property from Novelette Timoll. Having purchased the property, he had immediately rented a shop located at the front of it to a tenant named Mr Richards. Before purchasing the property, he had always seen persons in the yard. Novelette Timoll was at the property

"sometimes". Since serving a notice to quit on the appellants, Novelette Timoll told him that they were her nieces and nephew.

[19] Lester Watts, another registered owner, also testified in the course of the proceedings. Although he knew that Clifton Timoll had lived at the property for many years, he did not know whether he had owned it. When he was purchasing the property Novelette Timoll and "another lady name" were on the title. He knew Novelette Timoll was owner of the property but did not know of her living there.

The appellants' evidence

[20] Margaret Timoll testified that she, her sister Sharon and her brother Joshua had been living on the property for 43, 48 and 45 years respectively. Their father, Clifton Timoll, had lived on the property for 82 years before his death.

[21] She had heard of Rupert Timoll, her uncle who lived in England, but he had never lived on the property and she had never met him. She knew John Timoll who had also lived in England before he died. John Timoll had never come to the property. Novelette Timoll lived in England and had never painted the property, in addition, she had not lived on or spent weeks at a time at the property. Daphne King (Timoll) had never lived on the property.

[22] There is a shop on the property which her father, for a time, rented to tenants, and thereafter her sister Sharon also did so. Her father had never shared the proceeds of the rent with his siblings Novelette, Rupert, Daphne or John. Her father also made repairs to the property. The electricity bills for the property, she said, were originally sent in his name, but had been in her name for about 10 years up to the time of the trial. She testified that

she last saw Novelette Timoll in February 2016 at the church at which her father's funeral was held, however, Novelette did not visit the property after that time.

[23] In cross examination, Margaret Timoll acknowledged that her father had owned the property along with his siblings Rupert, John, Daphne and Novelette. She agreed that she and her siblings had occupied the property with her father's permission, but disagreed that they had done so with the permission of her father's siblings.

[24] Margaret Timoll said that she knew that the property did not belong to her and did not know whether it belonged to her siblings.

[25] She stated that the tenant of the shop, Mr Richards, had ceased paying rent to her or her siblings in 2016, and they took no action against him. After the property had been sold, one of the respondents entered into a rental agreement with Mr Richards.

[26] In response to the suggestion that she had no rights to the property, Margaret Timoll responded "I have rights". She said that it was not her understanding that when her father died in 2016 the sole owners of the property would have been Daphne King and Novelette Timoll.

[27] Joshua Timoll then testified. He stated that he and his siblings Margaret and Sharon had been served with notices to leave the premises, however they had not moved. He stated that he was born on the property, had lived there for 45 years, and had a right to be there. His father's name was on the title, along with Rupert, John, Novelette and Daphne.

[28] He stated that for the 45 years that he was on the property, Rupert Timoll never lived there. Neither did Novelette Timoll nor Daphne King. Insofar as John Timoll was concerned, Joshua Timoll stated:

> "Mr. John Timoll never really live there. Him go and come from England and stay little time but him never live there."

[29] He insisted that his father, Clifton Timoll, was the only one of the registered owners who had ever lived on the property.

[30] In cross examination, Joshua Timoll denied that his aunt Novelette Timoll had, at times, visited the property. He also initially denied that he had been taken to court in relation to the property. The evidence which came thereafter in the course of the cross examination is important and is outlined below:

> " Q. So in 2015 your father and Novelette never brought you before the court for recovery?
>
> A. No. Is my aunty alone try to get me off cause my father never too 'one hundred' inna him head.
>
> Q. Is court she bring you?
>
> A. Yes Miss. She bring me Old Harbour Court.
>
> - My aunty bring me to court for me to come out of the yard completely true mi did a go lease wa lady wa little piece.
> - Then me aunty give me permission to stay and she say anyhow me do anything wrong me haffi leave.
> - And the person I was going to lease had to leave.

Q. And at the time your aunty brought you to court she was the owner?

A. I wouldn't say that cause a five a dem name deh pan di Title."

[31] In re-examination Joshua Timoll stated that his father had never asked him to leave the property. Joshua Timoll also testified that, while Novelette Timoll attended court in 2015 when she had brought proceedings against him, his father was not present.

The Parish Court Judge's findings

[32] The Parish Court Judge indicated that the question which arose was whether, during his lifetime, the appellants' father, Clifton Timoll, had occupied the property without the consent of the other paper owners, and whether, while he was in occupation, the title of the other registered owners, Novelette Timoll and Daphne King, had been extinguished.

[33] The Parish Court Judge accepted the evidence of Joshua Timoll that John Timoll, who died on 16 October 2012, was present at the house on occasions, and did not merely pass by without entering. She found that this was not done in isolation, but over a period of time prior to his death, and was evidence of John Timoll being in possession and giving permission to his brother's children to remain on the property. The Parish Court Judge also found that this was evidence that John Timoll had no intention of being dispossessed as a co-owner by his brother Clifton. Importantly, at paragraph 17 of her reasons, the Parish Court Judge concluded:

> "I therefore do not find that Clifton Timoll before his passing had sufficient physical custody and control to the exclusion of the other paper owners. I further do not find that he possessed the requisite intention to possess the property for his own benefit

> and that of his children to the exclusion of his sibling-joint owners. He therefore was up to 2012 when John Timoll died not in undisturbed, exclusive, open occupation of the property. The evidence presented by the [appellants] was insufficient lacked credibility and as such I am unable to conclude otherwise in this regard."

[34] The Parish Court Judge further concluded that when Margaret Timoll transferred the light bill for the house into her name, this could only have been done with her father's permission, and was a part of the familial arrangement in which he had granted her permission to occupy the property. Similarly, when Margaret or her sister collected rent in respect of the shop at the front of the property, this flowed from the permission which their father had granted to them to occupy the property. The Parish Court Judge noted that Margaret Timoll had acknowledged that the property did not belong to her, and had taken no action against the tenant of the shop when he had stopped paying rent to them and had paid the respondents instead. She concluded that this indicated that Margaret Timoll and her sisters had no intention to possess the disputed property.

[35] In so far as Joshua Timoll was concerned, the Parish Court Judge noted that, from his evidence, he had occupied the property firstly with his father's consent and, after his father's death, the express consent of his aunt. He too, therefore, occupied the property as a part of a familial arrangement. He, along with his sisters, were mere licensees on the property.

[36] The Parish Court Judge considered the claim being made by the appellants that the registered co-owners had never visited the property for over 40 years, and had abandoned their interests in it. The Parish Court Judge wrote at paragraph 25 of her reasons:

> "There was, however, a material contradiction pertaining to this aspect of the evidence. Joshua Timoll contradicts his sister regarding whether their uncle John Timoll had ever been on the property. She said 'Mr John Timoll never come on the property.' His evidence is that 'John Timoll never really live there. Him go and come from England and stay little time but him never live there.' I had the opportunity of assessing his demeanour. He appeared relatively composed in his evidence in chief until he gave this bit of evidence. Thereafter I noted that he was hesitant to respond to his counsel. He began looking away and scratching his head. He then went on in cross examination to deny that he had ever been before the court regarding this said property. When pressed however, he admitted that he was taken to court. He however, pointed out that it was only his aunt Novelette who 'try to get me off as …' He then admitted under cross-examination that his aunt had wanted him to come out of the yard completely as he had intended to lease a lady a piece of the land. He further admitted that after the court hearing in 2015 his aunt gave him permission to remain but with the understanding that if he did anything wrong he would have to leave."

[37] At paragraph 27 of her reasons, the Parish Court Judge, after assessing the evidence of the appellants, also made the following findings. She said:

> "I found that in this regard [the appellants] were not reliable witnesses regarding the presence of the paper owners being on the property. They were not reliable regarding whether their aunts had abandoned their interest in the property during their dad's life time. The evidence presented regarding the co-tenants [sic] being extinguished on the basis of the operation of the statute of limitation was not reliable. There is evidence before me that [the third appellant] was served with a notice to quit in 2015 and the matter was dealt with in a court of competent jurisdiction. Since at the time there were three paper owners alive it is reasonable to infer that proceedings were initiated by all such owners. This notice I deem as a step by the surviving paper owners to secure their possessory rights to the property."

[38] Further, at paragraphs 31 and 32 of her reasons, the Parish Court Judge found that the appellants lived on the subject property based on a familial arrangement without any exclusive possession being vested to them. In addition, since the appellants were living at the premises with the permission of their father, when he died in 2016, such permission ended.

[39] The Parish Court Judge concluded that the appellants did not have a legitimate claim to the property through their father, as there was no severance of the joint tenancy during his lifetime. Since the appellants' claim to having acquired the property by way of adverse possession failed, the rule of survivorship stood. Had there not been a bona fide purchaser, or any interruption by a paper owner, then the time for the appellants to have acquired an interest in the property by way of adverse possession would have started running at the point of the death of their father. Less than two years had elapsed since his death, and so the appellants would not have satisfied the period for adverse possession against the respondents.

[40] The Parish Court Judge therefore, on 29 January 2019, entered judgment for the respondents and ordered the appellants to, forthwith, quit and deliver up possession of the property to the respondents.

The appeal

[41] The appellants challenged the decision of the Parish Court Judge on the following grounds:

"(i) The weight of the evidence showed that the Respondent's [sic] father, Clifton Timoll was in exclusive and undisturbed possession of the property prior to his death;

(ii) The fact of a familial relationship between the joint owners is not, without more, sufficient evidence on which to conclude that the said Clifton Timoll possessed the property based on a familial arrangement. No evidence was adduced to show that Clifton Powell [sic] was in possession of the property based on a familial arrangement.

(iii) The possession of the joint tenants is separate possessions and therefore the possession of one or more joint owners cannot be imputed to another joint owner or owners.

(iv) No evidence was adduced by the Respondents to show that Novelette Timoll and Daphne King were ever in factual possession of the property since they acquired title to the property in 1986 to the time of death of Clifton Timoll;

(v) The nature and purpose of the property is relevant for consideration in assessing whether a joint tenant was [sic] exclusive possession of the property.

(vi) No evidence was adduced to prove that [sic] Appellants occupied the subject property with the consent of the other joint owners of the property;

(vii) The Respondents, [sic] being licencees of the said Clifton Timoll, can claim A [sic] possessory title to the property by virtue of Clifton Timoll's adverse possession of the property.

(viii) Where the title of the joint owner has been extinguished by virtue of the operation of the Limitation of Actions Act, the dispossessed joint owner does not have a good title to pass to a subsequent bona fide purchaser for value.

(ix) An order for adverse possession can be made against a bona fide purchaser for value where the title of the vendors had been extinguished by virtue of the Limitation of Actions Act.

(x) The weight of the evidence showed that when the property was conveyed to the Respondents, the title of Novelette Timoll and Daphne King had been extinguished by operation of the Limitation of Actions Act for well in excess of twelve (12) years. Therefore, Novelette Timoll and Daphne King did not possess a good title to pass to the Respondents."

[42] On 27 February 2019, the appellants applied to this court for a stay of execution of the Parish Court Judge's decision. Brooks JA (as he was then), on 13 March 2019, granted the stay, pending the determination of the appeal, on certain conditions including that the appellants would pay to the respondents rent in the sum of $20,000.00 per month.

The appellants' submissions

[43] The main point made by Ms Margaret Timoll, on behalf of the appellants, was that the judge came to the wrong conclusion in light of the fact that she and her siblings were born on and grew up on the property. She also stated that her father was mentally ill for more than 10 years. When Novelette Timoll was informed that her father was ill, she would come to visit him twice per week. As for Daphne King, she too was mentally retarded.

Submissions for the respondents

[44] Counsel submitted that a person claiming to have acquired property by adverse possession must show both factual possession and the requisite intention to possess. She referred to **JA Pye (Oxford) Ltd v Graham** [2002] UKHL 30 where Lord Browne-Wilkinson, at paragraph 40, stated that the two elements needed are:

"(i) a sufficient degree of physical custody and control - i.e. factual possession; and

(ii) an intention to exercise such custody and control on one's own behalf and for one's own benefit – i.e. intention to possess."

Counsel argued that there was no evidence to demonstrate an intention by the appellants' father to dispossess the other joint owners, or the point in time when that intention was formed. As such, time would not begin to run in favour of the appellants until the death of their father in 2016 (see **Lois Hawkins (Administrator of the Estate of William Walter Hawkins, Deceased, Intestate) v Linette Hawkins McIniss** [2016] JMSC Civ 14). Counsel also relied on **Winnifred Fullwood v Paulette Curchar** [2015] JMCA Civ 37, **Ramnarace v Lutchman** [2001] UKPC 25 and the Limitation of Actions Act.

[45] Counsel further contended that, on an examination of the evidence:

i. no dates were mentioned as to when the first appellant or Mr Clifton Timoll began to rent the shop to others;

ii. the second appellant did not know whether her father would have sent money from the rent to the other joint owners. In her evidence she stated she was not always privy to his conversations;

iii. there is no evidence in terms of the purported repairs done by Mr Clifton Timoll on the property and if so, what repairs were done;

iv. the second appellant never paid property taxes or water bills for the property. The payment of utility bills is not conclusive of an intention to exclusively possess property;

v. no action was taken against the tenant who stopped paying the first appellant rent in 2016 and began paying the respondents instead;

vi. Ms Novelette Williams (Timoll) brought an action in 2015 against the third appellant preventing him from leasing a portion of the subject property. Thereafter, she permitted him to remain on the property on condition that he would behave himself; and

vii. the appellants lived on the property based on a familial arrangement. This is supported by the evidence of the third appellant who stated that Mr John Timoll would spend time at the property although he lived in England.

[46] In all the circumstances and in light of all of the evidence, counsel urged that the Parish Court Judge came to the correct conclusion after assessing the evidence and considering the demeanour of the witnesses. She submitted that, on the evidence, Clifton Timoll had not dispossessed the other titleholders including Novelette Timoll and Daphne King who sold the property to the respondents. Both John Timoll who died in 2012 and

Novelette Timoll showed ownership and possession of the property and, as a result, Clifton Timoll was not in exclusive possession of the property.

[47] As a result, the respondents were within their rights as bona fide purchasers to recover the property and the Parish Court Judge was correct in her decision.

Issue

[48] In resolving this appeal, the primary issue to be determined was whether the appellants' father (Clifton Timoll), one of the registered joint tenants, dispossessed the other registered joint tenants of their interest in the subject property.

The relevant law

[49] In the course of arriving at her decision, the Parish Court Judge had to resolve factual disputes and assess the demeanour, credibility and reliability of the witnesses. This court, in reviewing the findings of fact of a judge at first instance, is mindful of the scope of its review. In **Winnifred Fuller v Paulette Curchar** McDonald-Bishop JA (Ag) (as she was then), helpfully distilled the guidance enunciated in **Watt (or Thomas) v Thomas** [1947] AC 484 in this regard, when she stated at paragraph [27]:

> "… Some of the relevant principles as derived and synthesized from the speeches of Viscount Simon and Lord Thankerton at pages 486 to 488 will now be outlined.
>
> (i) An appellate court has the jurisdiction to review the record of the evidence that was before the trial judge in order to determine whether the conclusion originally reached upon that evidence cannot stand. The jurisdiction, however, must be exercised with caution.

(ii) If there is no evidence to support a particular conclusion arrived at the trial (which is a question of law), the appellate court will not allow the conclusion arrived at to stand. However, if the evidence as a whole can reasonably be regarded as justifying the conclusion, and especially if that conclusion has been arrived at on conflicting testimony, the appellate court should bear in mind that it has not enjoyed the opportunity which had been afforded the trial judge to see and hear the witnesses. Therefore, the view of the trial judge on matters concerning issues of credibility is entitled to great weight.

(iii) If there is no question that the trial judge had misdirected himself where a question of fact had been tried by him, an appellate court even if disposed to come to a different conclusion on the evidence, should not do so unless it is satisfied that the advantage enjoyed by the trial judge to see and hear the witnesses could not be sufficient to explain or justify the trial judge's conclusion.

(iv) The appellate court may take the view that without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the evidence. Where the appellate court is satisfied that the trial judge had not taken proper advantage of his having seen and heard the witnesses because the reasons given by the trial judge are not satisfactory, or it unmistakably appears to be so from the evidence, then the matter is at large for the appellate court.

(v) Ultimately, the decision of an appellate court whether or not to reverse conclusions of fact reached by the judge at the trial must naturally be affected by the nature and circumstances of the case

> under consideration. Also, the value and importance of having seen and heard the witnesses will vary according to the class of case and perhaps the individual case in question."

[50] In so far as the main issue to be determined was concerned, it is important to acknowledge that a co-tenant can obtain title by possession against other co-tenants. This position in law has been made clear in a number of cases and in light of the provisions of the Act which provides:

> "3. No person shall make an entry, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make any such entry, or to bring such action or suit, shall have first accrued to some person through whom he claims, or, if such right shall have not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to the person making or bringing the same.
>
> …
>
> 14. When any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares, of such land or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons or any of them.
>
> …
>
> 30. At the determination of the period limited by this Part to any person for making an entry, or bringing any action or suit, the right and title of such person to the land or rent, for the recovery

whereof such entry, action or suit respectively might have been made or brought within such period, shall be extinguished."

[51] In **Winnifred Fuller v Paulette Curchar** McDonald-Bishop JA (Ag) wrote:

> "[33] … **In effect, section 14 renders the possession of co-tenants as separate possessions from the time that they first became joint tenants (See Culley v Doe d Taylerson (1840) 11 Ad & El 1008). Therefore, it has modified the common law doctrine of non-adverse possession as it affects the rights of co-tenants. It means then that a co-tenant can obtain title by possession against the other co-tenant.** As Sampson Owusu, Commonwealth Caribbean Land Law at page 305, explained:
>
> > "The co-tenant in possession of the entire property is, therefore, for the purpose of the provision…not in a different position from a stranger in possession of separate property so far as regards the undivided interest of his co-tenant. [SEE Glyn v Howell [1909] 1 Ch 666,677.]:"
>
> [34] Sections 3, 14 and 30 were the focus of attention by the Privy Council in the well-known case **Wills v Wills** [2003] UKPC 84. That case, both in the reasoning and conclusion of their Lordships, clearly demonstrates, by reference to earlier authorities that had construed the Real Property Limitation Act 1833 of England (on which our statute is modeled [sic]) and similar legislation, **that a co-tenant in possession of jointly owned property can, in law, dispossess another co-tenant who had not been in possession for the requisite limitation period of 12 years.**" (Emphasis added)

[52] In **Lois Hawkins (Administrator of the Estate of William Walter Hawkins, Deceased, Intestate) v Linette Hawkins McIniss** Sykes J (as he was then) admirably summarized the applicable principles outlined in **Winnifred Fuller v Paulette Curchar**. At paragraph [12] he said:

"[12] The law in this area is no longer in doubt. It was most recently expounded by the Court of Appeal in **Fullwood v Curchar** [2015] JMCA Civ 37. This court cannot improve on the clarity, precision and exposition of McDonald Bishop JA (Ag). The court will simply refer to paragraphs [29] to [54]. From these passages the following propositions are established:

(i) the fact that a person's name is on a title is not conclusive evidence such that such a person cannot be dispossessed by another including a co-owner;

(ii) the fact of co-ownership does not prevent one co-owner from dispossessing another;

(iii) sections 3 and 30 of the Limitation of Actions Act operate together to bar a registered owner from making any entry on or bringing any action to recover property after 12 years if certain circumstances exist;

(iv) in the normal course of things where the property is jointly owned under a joint tenancy and one joint tenancy [sic] dies, the normal rule of survivorship would apply and the co-owner takes the whole;

(v) however, section 14 of the Limitation of Actions Act makes the possession of each co-tenant separate possessions as of the time they first become joint tenants with the result that one co-tenant can obtain the whole title by extinguishing the title of the other co-tenant;

(vi) the result of sections 3, 14 and 30 of the Limitation of Actions Act is that a registered co-owner can lose the right to recover possession on the basis of the operation of the statute against him or her with the consequence that if one co-owner dies the normal rule of survivorship may be displaced and a person can rely on the deceased co-owner's dispossession of the other co-owner to resist any claim for possession;

(vii) when a person brings an action for recovery of possession then that person must prove their title

that enables them to bring the recovery action and thus where extinction of title is raised by the person sought to be ejected, the burden is on the person bringing the recovery action to prove that his or her title has not been extinguished thereby proving good standing to bring the claim;

(viii) the reason for (vii) above is that the extinction of title claim does not simply bar the remedy but erodes the very legal foundation to bring the recovery action in the first place;

(ix) dispossession arises where the dispossessor has a sufficient degree of physical custody and control over the property in question and an intention to exercise such custody and control over the property for his or her benefit;

(x) the relevant intention is that of the dispossessor and not that of the dispossessed;

(xi) in determining whether there is dispossession there is no need to look for any hostile act or act of confrontation or even an ouster from the property. If such act exists it makes the extinction of title claim stronger but it is not a legal requirement;

(xii) the question in every case is whether the acts relied on to prove dispossession are sufficient."

[53] It is in light of the above principles that we considered the findings and decision of the Parish Court Judge.

Analysis

[54] On 22 July 1986, title to the property was transferred to Rupert Timoll, John Owen Timoll, Daphne King, Novelette Timoll and Clifton Gilmore Timoll, as joint tenants. When Rupert Timoll died 13 September 2008, John, Daphne, Novelette and Clifton would, by

virtue of the rule of survivorship, have become the owners of the property. As the Parish Court Judge was entitled to find, John visited and stayed at the property, showing actual possession and the intention to possess the property. John died 6 October 2012 and therefore, upon his death, Daphne, Novelette and Clifton were the owners of the property.

[55] In 2015 Novelette Timoll clearly showed her intention to possess the property as well as to prevent any activity which threatened the authority of the registered owners, when she brought an action for recovery of possession against Joshua Timoll. This was after Joshua Timoll had attempted to lease a portion of the property to another person. Joshua was only permitted to remain on the property on the basis that he would "behave", and if he did anything wrong he would have to leave. In addition, the person whom he had attempted to lease the land had to leave the property. All this took place in 2015 at a time when the appellants' father, Clifton Timoll, was still alive.

[56] In light of the court proceedings brought by Novelette Timoll against her nephew, Joshua Timoll, the third appellant, it is clear that, prior to his death, Clifton Timoll was **not** in exclusive and undisturbed possession of the property. The evidence reveals that it was made clear to Joshua Timoll that he was able to remain at the property only if he understood that he had no authority over it. Interestingly, Joshua Timoll said that his father, Clifton Timoll, did not attend the court proceedings and had not forbidden him, Joshua, from living on the property.

[57] In light of the evidence concerning the court proceedings, it was also open to the judge to find that Novelette Timoll's court action against her nephew Joshua, was pursued on behalf of all of the paper owners.

[58] Clifton Timoll then died 14 January 2016. There was no proof that Clifton had taken any action to show that he was exercising custody and control of the property for his benefit only. As the Parish Court Judge was entitled to find, his children, the appellants, lived on the property as a part of a familial arrangement. Upon his death, Daphne and Novelette became the owners of the property and were entitled to sell the property to the respondents on 29 September 2016.

[59] On the evidence, there was no dispute that the respondents took possession of a portion of the property and rented it to Mr Richards. Mr Richards had previously paid rent to the appellants, but, after the property was sold, paid rent to the respondents. The appellants did not take any action against Mr Richards when he stopped paying rent to them. The second appellant, Margaret Timoll, also admitted that the property did not belong to her.

[60] In light of the evidence, it was entirely open to the Parish Court Judge to find that Clifton Timoll had not dispossessed the other paper owners, his siblings. Further, sufficient time would not have passed since the death of their father, for the appellants to have exercised exclusive possession of the property so as to have acquired a possessory interest against the bona fide purchasers.

[61] Upon a review of the analysis of the evidence which the Parish Court Judge carried out, as well as her comments on the demeanour of the witnesses, it is also clear that she took proper advantage of having seen and heard the witnesses. Furthermore, the evidence as a whole can reasonably be regarded as justifying the conclusions to which she arrived.

[62] It was for all of the above reasons that we made the decision outlined at paragraph [16] herein.