



[2025] JMSC Civ.32

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. SU2020CV03752**

<b>BETWEEN</b>	<b>ROY DASSADO</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>JENNIFER BROWN</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

**Mr. Nicholas Jarrett instructed by McKenzie Powell and Company for the Claimant**

**Mr. Jermaine E. Campbell instructed by Williams and Campbell for the Defendant**

**Heard: January 14, and 15, 2025 and March 7, 2025.**

**The Property (Rights of Spouses) Act – The Definition of Spouse – The Definition of Family Home – Section 3 and 30 of The Limitation of Actions Act**

**CARR, J**

**The Claim**

**[1]** Mr. Roy Dassado (the Claimant) filed a fixed date claim form on October 5, 2020, seeking the following orders:

- 1) A declaration that the property situated at 2 Vilma Avenue, Kingston 20, Hughenden in the parish of Saint Andrew comprised in Duplicate Certificate of Title registered at Volume 1054 Folio 34 of the Register Book of Titles was the family home shared between the Applicant and Respondent.

- 2) A declaration that the Applicant is entitled to fifty percent (50%) share and interest in property at 2 Vilma Avenue, Kingston 20, Hughenden in the parish of Saint Andrew comprised in Duplicate Certificate of Title registered at Volume 1054 Folio 34 of the Register Book of Titles ('the family home').
- 3) An order that the property be valued within thirty (30) days of the date hereof by a registered Appraiser, agreed upon by the parties or failing an Agreement, by an Appraiser appointed by the Registrar of the Supreme Court. The cost of the valuation is to be borne equally by the parties.
- 4) An order that the Claimant shall exercise his first option to purchase the family home within ninety (90) days from the date of receipt of the Valuation report in respect of the family home failing which the Respondent shall exercise her right to purchase within sixty (60) days of the expiration of the Claimant's option to purchase.
- 5) That the Registrar of the Supreme Court be empowered to sign all the documents needed to give effect to the Order in the event that either of the parties' refusal or unwillingly to do so.
- 6) That the Applicant's Attorney has Carriage of Sale in relation to the transfer and sale of the property mentioned herein.
- 7) An order as to Costs.
- 8) Cost of sale is borne equally by both parties.
- 9) Any other Order which this Honourable Court deems fit.

**[2]** In defence to the claim Ms. Jennifer Brown (the Defendant) asked the court to find that the Claimant had no interest in the property or in the alternative that as a joint tenant of the property she had dispossessed his interest or that he has abandoned his interest.

## **Disposition**

[3] Having considered the evidence and the relevant law I find that the Claimant and Defendant are not spouses as defined by the Property (Rights of Spouses) Act PROSA and as such the declarations sought at paragraphs 1 and 2 of the fixed date claim form are refused. Further the Defendant has dispossessed the Claimant of his interest in 2 Vilma Avenue, Kingston 20 (the property) pursuant to Sections 3 and 30 of the Limitation of Actions Act (LAA).

## **Background**

[4] The Claimant and the Defendant met some time in 1988. They were in an intimate relationship, and they have one child together, Chantelle Dassado. During their relationship they acquired the property in their joint names. The property was purchased in 1999. The Claimant admittedly had an affair with another woman and the parties separated in July 2002 when he left the property.

[5] The parties filed a single affidavit each which stood as their evidence in chief, they were both cross-examined. A further affidavit of Chantelle Dassado was filed in support of the Defence. She was not cross-examined.

## **Issues**

[6] The Claimant avers that the property is the family home pursuant to PROSA. An application for an extension of time to file an application under PROSA was granted by the Court prior to the trial. Nonetheless Mr. Campbell in his submissions has asked the Court to find that the parties were never in a common law relationship and therefore were not spouses. In the alternative he has suggested that the Defendant has dispossessed the Claimant of his interest in the property.

[7] The issues before the Court for determination are therefore as follows:

- 1) Whether the parties are spouses.
- 2) Whether the property is the family home.

- 3) Whether the Defendant has dispossessed the Claimant of his interest in the property.

## **Analysis**

### **Whether the parties are spouses.**

- [8]** Section 2 (1) of PROSA provides:

*In this Act- "spouse" includes-*

*(a) a single woman who has cohabited with a single man as if she were in law his wife for a period of not less than five years.*

*(b) a single man who has cohabited with a single woman as if he were in law her husband for a period of not less than five years,*

*immediately preceding the institution of proceedings under this Act or the termination of cohabitation, as the case may be.*

*"cohabit" means to live together in a conjugal relationship outside of marriage and "cohabitation" shall be construed; accordingly.*

- [9]** Mr. Campbell has argued that the Claimant must satisfy the Court by evidence that the parties were in fact spouses. Even though this was never challenged in the Affidavit in response to the claim filed by the Defendant, it is his contention that the Claimant has the burden of proving that all the elements to support his claim are present.

- [10]** If the parties were not spouses, then there would be no basis upon which the Court could find that the Claimant has any right to be protected by PROSA.

- [11]** Mr. Jarrett submitted that there was no challenge to the assertion that they were spouses made by the Defendant and that she admitted that they were in a relationship.

- [12]** The evidence of the Claimant is that the parties were involved in a common law union that commenced in 1988, their only child was born in 1989. He admitted that during their union he had an affair with another woman, and this resulted in the

deterioration of their relationship. They resided at the property during their relationship until the couple separated.

**[13]** The Defendant in her affidavit did not deny that she and the Claimant were in a relationship. In 1994 they resided together at 3 Bronze Road, Kingston 20 prior to purchasing the property in 1999. That was the extent of her evidence in that regard.

**[14]** The first hurdle the Claimant must overcome is whether the parties were a single man and a single woman. There is no evidence before this Court that purports to address this issue. Neither of them indicated that at the time of their relationship they were single. In fact, the Claimant admitted that he had a relationship with another woman during their union. He never indicated when this relationship commenced, and I cannot speculate or infer that it was outside of the five-year period required to be established in law. I therefore cannot find that the Claimant and the Defendant were single during their union.

**[15]** The second hurdle is whether they cohabited together as if they were in law husband and wife. It is now a well-established principle of law that a determination as to this issue requires a consideration of several factors to include the following.

- (1) living together in the same household,*
- (2) a sharing of daily life,*
- (3) stability and a degree of permanence in the relationship; that is not a temporary infatuation or passing relationship such as a holiday romance,*
- (4) finances, that is to say, is the way in which financial matters are being handled an indication of a relationship,*
- (5) a sexual relationship,*
- (6) children,*
- (7) intention and motivation,*
- (8) the opinion of the reasonable person with normal perceptions.<sup>1</sup>*

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<sup>1</sup> Kimber v. Kimber [2000] 1FLR 383

[16] This list is not exhaustive, and the Court must consider each case on its own facts. It is apparent from the evidence that the only factors which exist in this case is that the parties lived together from 1994 – 2002, they have one child together, and they purchased property together. The evidence presented is stark and does not disclose a sufficient basis to find that they were living together as if they were husband and wife.

### **Whether the property is the family home**

[17] Mr. Jarrett submitted that the subject property ought rightly to be considered as the family home as it was the principal place of residence for the parties during their common law union albeit that they had only resided there for the short duration of three years.

[18] Mr. Campbell argued that having not satisfied the definition of spouse pursuant to PROSA, the subject property cannot be found to be the matrimonial home.

[19] The family home is defined as;

*...the dwelling-house that is wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings or improvements appurtenant to such dwelling house and used wholly or mainly for the purposes of the household...*

[20] As the finding is that the parties were not spouses as defined under PROSA, by extension the property cannot be regarded as the family home.

### **Whether the Defendant has dispossessed the Claimant of his interest in the property.**

[21] On this point, Mr. Jarrett submitted that the court must consider that the Defendant had barred the Claimant from entering the property, and he had not abandoned his interest as he did not leave willingly, his attempt at re- entry in 2003 was evidence of that fact. He argued that the Claimant's inability or failure to make

mortgage payments was because the relationship between himself and the Defendant was acrimonious and that he was ousted from the property.

[22] Mr. Campbell submitted that it is unchallenged that the parties are registered as joint owners, however, the Claimant's interest in the property is subject to the subsequent operation of the statute of Limitation. Relying on the authorities of **Myra Wills v Elma Wills**<sup>2</sup> and **Winnifred Fullwood v Paulette Curchar**<sup>3</sup> counsel submitted that the interest of a co-owner in property may be extinguished if it can be proved that the party against whom the action is brought has not been in possession for the limitation period of twelve years.

[23] In summary he argued that it was the Claimant's decision to vacate the property. Though he may have had intentions to return, those intentions are irrelevant if he had not acted upon them, furthermore it was not until seventeen years after vacating the property that he made an attempt to re-enter, his inaction is therefore tantamount to a discontinuance of his interest.

[24] In referring to the case of **JA Pye (Oxford) Ltd v Graham**<sup>4</sup>, it was submitted that the two elements that are to be satisfied in a claim for adverse possession are factual possession, showing a sufficient degree of physical custody and control, and an intention to possess. There is no need for hostile actions or ouster to prove dispossession, however, if there is, it makes the case stronger.<sup>5</sup>

[25] It was contended that the Defendant formed the intention to possess in 2002, when she decided, she did not want to occupy the premises with the Defendant any longer, she changed the locks to prevent his entry, did not involve him in decision making regarding the property and paid up the mortgage when it fell into arrears.

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<sup>2</sup> 2003] UKPC 84

<sup>3</sup> [2015] JMCA Civ 37, paragraph 39

<sup>4</sup> [2002] UKHL, 30, Paragraph 40

<sup>5</sup> Valerie Freckleton v Winston Freckleton (unreported) Claim No. HCV 01694 of 2005, judgment delivered July 25, 2006

She occupied the property since July 2002 and was in open, sole, exclusive and undisturbed possession for more than twelve years.

- [26]** The transfer of the property to the parties was registered on September 1, 1999. The Claimant's evidence is that he and the Defendant acquired a mortgage from the National Housing Trust and they both made mortgage payments. He stated that he began renovations to the property in or about October 2000 and the house was completed thereafter. In October 2002 the Defendant changed the locks and he was prevented from entering the property. Despite this he stated that he continued to maintain the property by having the house painted, the yard cleaned, and the mortgage paid. He made another attempt to enter the property in November 2019 and January 2020 however he was still unable to do so.
- [27]** The Defendant outlined a different version of events. It was agreed that the Claimant left the property in July 2002. However, she indicates that he has not made any mortgage payments, neither has he contributed to any of the expenses of the household. He has not paid property taxes and has not spent any money on the maintenance or upkeep of the property.
- [28]** The Defendant stated that she has had the sole responsibility for maintaining the property, which included the repair of the roof, the installation of kitchen cupboards, the completion of an unfinished bathroom, the installation of an electronic arm on the gate, improvement to the driveway, painting and the payment of the mortgage. She exhibited to her affidavit several documents in proof of those payments over the years July 2002 to September 2022 along with property tax receipts from 2002 to the present. She also took out a home improvement loan for the property with Grace Co-op Credit Union Ltd. on June 6, 2000. This loan was serviced by the money held in her account until the debt was satisfied. A letter from the company was also exhibited to her affidavit.
- [29]** Chantelle Dassado in her evidence told the Court that her father left the property with his furniture and personal belongings in 2002. He would randomly visit during



that same year, but due to the quarrels that arose between himself and her mother, the Defendant chose to change the locks in or about early 2003. Although her father tried to enter the property around that time, he was not able to do so, and he has not returned since.

**[30]** She affirmed that her mother solely maintained the property since her father's departure. She is now a medical doctor, and she has been assisting her mother with the household expenses since July 2015. Her father she stated has made no contribution to either the household or her own expenses since he left the property.

**[31]** The Claimant did not reply to either affidavit neither has he exhibited any proof of his payments of the mortgage.

**[32]** A defence under the LAA is a complete defence. Section 3 of the LAA provides the time frame within which a person can bring a claim to re-enter upon lands, recover possession, or make a claim for rent.

*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 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.*

**[33]** Section 30 of the LAA addresses the consequences of failing to assert your rights in accordance with Section 3. It states,

*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 responsible might have been made or brought within such period shall be extinguished.*

**[34]** In summary the Claimant had to bring a claim against the Defendant within twelve years of his leaving the property in July 2002. This claim was filed on October 5, 2020, eighteen years later.

- [35] The Court however is not just concerned with the period between the Claimant's departure from the property and the filing of the claim. The Defendant must establish that during those twelve years, as required by statute, she was in possession of the property to the exclusion of the Claimant.
- [36] In the Privy Council decision of **Wills v. Wills**, the facts of which are similar in some respects to the claim before this Court, Mr. and Mrs. Wills had owned two properties as joint tenants. One of the properties was used as their residence and the other let to tenants. Mrs Wills, then left Jamaica and went abroad, during which period, Mr. Wills met his second wife, and they began cohabiting. During this period Mrs. Wills would visit the residence and stayed with them. She visited Jamaica several years after, however, she did not visit the property and left none of her possessions there. Mr. Wills and his second wife managed the properties and accounted for the rental income to the exclusion of Mrs. Wills. Mr Wills died and his first wife gave notice to the tenants that they should pay her rent, his second wife then brought an action against her subject to the LAA.
- [37] It was held that the two elements necessary to establish possession in cases such as this, are, (1) a sufficient degree of custody and control (factual possession) and, (2) an intention to exercise such custody and control on one's own behalf and for one's own benefit (the intention to possess). It is not necessary to show that there was a deliberate intention to exclude the paper owner or the registered proprietor. The only intention which must be demonstrated is an intention to occupy and use the land as one's own.
- [38] The Court of Appeal decision of **Fullwood v. Curchar**<sup>6</sup> has settled the question as to whether this principle applies to persons who own property jointly. In that case the Claimant sought recovery of possession from the "common law" spouse of her deceased husband who she had owned the property with as joint tenants. Mr and
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Mrs Curchar had acquired property in 1973 as joint tenants, she later migrated to the United States of America with their children. The couple divorced in the 1980's.

**[39]** After migrating, Mrs. Curchar never returned to the premises for any purpose although she visited Jamaica and would pass the premises from time to time. She received no rental income or any other income from the property and had no belongings there.

**[40]** Ms. Fullwood started living with Mr. Curchar in 1985, she cared for him and assisted with the maintenance of the property. Mr. Curchar died intestate in September 2019 and Ms. Fullwood continued residing at the premises, she was served a notice to quit by Mrs. Curchar in January 2011. Ms. Fullwood refused to deliver up the property to Mrs. Curchar and as such proceedings ensued. The court held that the deceased during his lifetime had dispossessed his former wife of her interest in the property under the LAA and so she was estopped from proceeding with her claim for recovery of possession.

**[41]** The cases make it plain that the Defendant can dispossess her husband of his interest in the property and that the evidence required must establish that she had factual possession and the intention to dispossess him.

**[42]** There is no dispute that the Defendant was in factual possession of the property. She has been residing there since the Claimant departed in 2002. In cross-examination he agreed that he had no objection to her living there until 2020 when he filed this claim.

**[43]** What is in issue therefore was her intention during those years. In cross-examination the Claimant agreed that since he left the premises in 2002, he has not paid any property taxes and that he did not cause the house to be painted after that year. I did not accept the evidence of the Claimant as to his involvement with the property after he was unceremoniously evicted in July 2002. I am not of the view that having been locked out of the property that he would continue to maintain it by sending persons to clean the yard.

- [44] Further, he has not in answer to the Defendant sought to provide any receipts to show that he paid the mortgage and, based on the documentary evidence provided by the Defendant it is pellucid that she continued to make those payments single-handedly up to the last date shown as September 2022.
- [45] I find that the Defendant has been in exclusive physical possession of the property since the Claimant was locked out in July of 2002 and that the requisite twelve-year period has been met.
- [46] I also find that by locking him out the Defendant has satisfied me that she intended to treat with the property as her own. She has made significant repairs to the house over the period, paid the mortgage and property taxes without the input or agreement of the Claimant. Additionally, and most importantly she has prevented the Claimant from having access to the property. In this case her acts were in fact hostile to the Claimant and her decisions regarding the property clearly demonstrate that she had the intention to exercise control over the property for her own benefit. In contrast the Claimant has accepted that he made no efforts to recover his title to the property until the filing of this claim.
- [47] I am satisfied on the evidence that the Defendant has dispossessed the Claimant of his interest in the property.

**Orders:**

1. The orders sought on the fixed date claim form are refused.
2. Costs to the Defendant to be agreed or taxed.