



[2026] JMSC Civ 125

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2023CV02175

IN THE MATTER of an Application
by Franklyn Simms

AND

IN THE MATTER of a Claim under the Partition Act

AND

IN THE MATTER of an Application concerning all that parcel of land part of Franklin Town in the parish of Kingston being the Lot numbered Twenty-Seven on the plan part of Albert Street, Franklyn Town aforesaid deposited in the Office of Titles on the 9th day of September, 2021 of the shape and dimensions and butting as appears by the said plan and being of the land comprised in Certificate of title registered at Volume 1209 Folio 88.

BETWEEN	FRANKLYN SIMMS	CLAIMANT
AND	CALVIN SIMMS	DEFENDANT
AND	LEEWORTH SIMMS	FIRST INTERESTED PARTY
AND	PRINCESS MARTINEZ (NEE SIMMS)	SECOND INTERESTED PARTY

IN CHAMBERS

Mr Harrington McDermott instructed by Nicholson Phillips for the Claimant

Mr Ruel Woolcock instructed by Ruel Woolcock & Company for the Defendant

Heard: November 19 & 20, 2025 and October 7, 2026

Real Property – Adverse Possession – Severance of Joint Tenancy – Sale of Property

WINT-BLAIR, J

- [1]** This claim concerns land situated at Lot 27 Albert Street, Franklin Town, in the parish of Kingston, registered at Volume 1209 Folio 88 of the Register Book of Titles. I shall refer to it as “the Franklin Town property” or “the property”.
- [2]** The claimant, Franklyn Simms, seeks relief under Part 55 of the Civil Procedure Rules, 2002 and sections 3, 4, 5, 6 and 8 of the Partition Act. He asks the court to sever the joint tenancy, order the sale of the property, direct the distribution of the proceeds of sale among the joint owners according to their respective interests, and order the defendant, Calvin Simms, to account for rents and outgoings from December 2018 to the date of judgment.
- [3]** The defendant counterclaims for declarations that the claimant’s title to the property has been extinguished and that he, the defendant, has dispossessed the claimant of his interest. He also seeks an order directing the Registrar of Titles, pursuant to section 158 of the Registration of Titles Act, to cancel the existing certificate of title and issue a new certificate excluding the claimant’s name.
- [4]** The main question is whether the defendant has proved, or whether the evidence establishes, that the claimant’s registered interest in the Franklin Town property has been extinguished by operation of the Limitation of Actions Act.
- [5]** By Amended Fixed Date Claim Form, the claimant seeks the following orders:

 - i. an order severing the joint tenancy in respect of the Franklin Town property;
 - ii. an order that the property be sold and that the proceeds of sale be distributed among the joint owners in accordance with their respective shares, after deduction of charges, fees, incidentals and expenses of sale;

- iii. an order that any joint owner have the first option to purchase the remaining shares in the property, such option to be exercised within 60 days of the orders made, failing which the option shall lapse and the property shall be sold on the open market;
- iv. an order that the property be valued by a reputable valuator to be agreed by the parties within 14 days, with the cost of valuation to be borne equally by the parties, and, failing agreement, that the Registrar of the Supreme Court select a valuator on the application of either party;
- v. an order that the defendant cooperates in all actions necessary to facilitate the marketing and sale of the property, including furnishing the claimant's attorneys-at-law with details of any lease and delivering up the duplicate certificate of title within 14 days;
- vi. an order that the marketing and sale be conducted through a real estate broker or realtor elected by the claimant or appointed by the Registrar;
- vii. an order empowering the Registrar of the Supreme Court to sign any document necessary for sale and transfer if the defendant fails or refuses to do so within 14 days of being required;
- viii. an order that the firm having conduct of sale be Nicholson Phillips, the claimant's attorneys-at-law;
- ix. an order that the defendant account for all rents and outgoings in respect of the property from December 2018 to the date of judgment and pay to the joint owners their respective apportioned shares of the net rental income;
and
- x. Costs and attorneys' costs.

The counterclaim

[6] The defendant counterclaims for:

- i. a declaration that the title of the claimant, Franklyn Simms, in respect of the property has been extinguished;
- ii. further or alternatively, a declaration that the defendant, Calvin Simms, has dispossessed the claimant of all his interest in the property;
- iii. an order directing the Registrar of Titles, pursuant to section 158 of the Registration of Titles Act, to cancel the certificate of title registered at Volume 1209 Folio 88 and issue a new certificate in duplicate excluding the claimant's name; and
- iv. Costs.

The evidence of the claimant

- [7]** The claimant gave evidence that he is one of eight children of the late Adolphus Simms, who died testate on 11 December 2007. His siblings include the defendant, Calvin Simms; Martin Simms, now deceased; Princess Simms; and Leeworth Simms.
- [8]** The claimant's evidence is that the Franklin Town property is registered in the names of Adolphus Simms, Calvin Simms, Martin Simms, Princess Simms, Leeworth Simms and Franklyn Simms as joint tenants. He also referred to Kezian Simms, his daughter, whose name was formerly registered on the title but has since been removed.
- [9]** The property contains several rented shops. His evidence is that after their father's death in 2007, the defendant took full control of the business carried on at the property, collected the rents, and excluded all the other joint owners from the proceeds.
- [10]** The claimant said that he and his siblings repeatedly requested that the defendant account for the money collected, pay the other joint owners their rightful share of

the earnings, and relinquish his sole management of the business. However, the defendant refused to respond or to share any of the proceeds.

- [11]** The claimant also gave evidence of attempted mediation in the Supreme Court in relation to their parents' estates, in Claim No SU2021ES02083, the estate of Adolphus Simms, and Claim No SU2021ES02082, the estate of Orpah Simms. He said that the Franklin Town property was among the estate-related matters discussed, but the defendant rejected efforts to resolve the matter amicably.
- [12]** The claimant lives outside Jamaica and has no wish to return. He seeks to sell the property as the fairest solution, as several other family members also wish to realise their interest in the property.
- [13]** The claimant agreed with the defendant's evidence that the defendant and their father jointly purchased the property in 1996 by means of the defendant's personal funds from a bank. The claimant said that when their father decided to make the purchase, he contacted the claimant, Leeworth, and Calvin. He (the claimant), did not initially have the funds, but later obtained a loan and informed his father that he had secured the necessary funds.
- [14]** The claimant said that in 1996 the defendant loaned their father money for the property. Their father repaid him, and three years later their father added the siblings' names to the title as joint tenants.
- [15]** The claimant challenged the defendant's claim that he alone could benefit from the rents. Because the other siblings were joint owners, the defendant could not collect the rents, deposit them into his personal bank account, or exclude the other siblings from these benefits.
- [16]** The claimant also said that, while in Jamaica, he helped by bringing workers to the Franklin Town property. During cross-examination, he admitted that he had miscalculated the year he transported the workers, as it was put to him that the

property was purchased in 1996, when he had earlier said he transported them between 1987 and 1989.

- [17]** The claimant gave evidence that, after his mother died in 2011, he contributed funds to the defendant to build Kyle Distilleries and also gave the defendant US\$1,000.00 to tile the stairs at the Franklin Town property. He also gave money for Little Kew Road, which he admitted was a separate matter. He did not know how the defendant used the money.
- [18]** The claimant said that he visited the property whenever he travelled to Jamaica. He said that over the past three years, he had visited on three occasions. From 1999 to 2007, he visited regularly, almost daily, and since 2007, he has visited approximately seven times. Most of these visits were for viewing and inspection rather than for speaking to tenants. He said that the defendant was never present during any of these visits.
- [19]** The claimant did not understand how the defendant could try to take his inheritance, and the defendant had tried to discuss the property. The claimant attempted to contact the defendant multiple times but received no response.
- [20]** In cross-examination, the claimant admitted that when Calvin and their father purchased the property, it consisted of a ground floor with two shops, and now it is a two-storey building with fifteen shops. He did not know how many of the shops were currently rented, the precise identity of all the tenants, the rents paid, or the cost of improving the property from two shops to its present state.
- [21]** He named some tenants he knew, such as Bigan, Ms Joyce and Pet. He said he had been inside three shops on the ground floor, namely the grocery, the restaurant and the bar, and the area where his brother Martin operated. He had not been inside the shops on the second floor, despite having been there to inspect.

- [22] He admitted that Calvin and their father repaid the Bank of Nova Scotia loan and that he never paid property tax for the Franklin Town property. He explained that the rent should have been used for that purpose. He agreed that Calvin and their father spent their own money to improve the property to what it is now, but maintained that no further improvements were made after his father died.
- [23] The claimant accepted that he had never filed any earlier claim seeking payment of rent from the defendant. He maintained, however, that he had tried to communicate with the defendant regarding the property and did not agree that he had no control or dominion over it.
- [24] In re-examination, he confirmed that the photographs he referred to in evidence were of the exterior of the building and its roof. He also corrected his earlier evidence about the number of shops downstairs, stating that there were five units downstairs rather than three.

The evidence of the defendant

- [25] The defendant gave evidence that the claimant is his brother and that their father, Adolphus Simms, died on 11 December 2007. It is undisputed that the claimant's name appears on the certificate of title as a registered proprietor of the Franklin Town property, along with the defendant, Princess Simms, and Leeworth Simms. Kezian Simms' name was formerly on the title but was removed in 2018.
- [26] The defendant's case is that he and his father purchased the property in 1996 using their own funds and a mortgage from the Bank of Nova Scotia. He said that neither the claimant nor any other person whose name appeared on the title played any role in the decision to purchase the property or in improving it to its present state.
- [27] The defendant said the claimant and others were added to the title as a gift in 1999 because he and his father wanted family members to benefit from the property.

They also expected them to help transform it from a run-down, unfinished building with barely two incomplete shops into the fifteen shops now there.

- [28]** The defendant admitted that since his father's death around late 2007, he alone has decided when and to whom to rent the property's shops, set the rent, and kept all rental income.
- [29]** The defendant stated that, after the transfer by gift, he and his father began treating the property as if it were theirs. He said they spent their own money to improve and maintain it, rented it for their benefit, and made decisions without referring to any of the other registered proprietors. He said this was done with the intention of possessing the property as if it belonged only to them.
- [30]** After his father died in 2007, the defendant said he possessed the property alone, improved it with his own funds, rented the shops for his sole benefit, paid taxes and utilities, and maintained it. He said he did so because he had always believed the property belonged to him alone and was his to use for his sole benefit.
- [31]** The defendant argues that the claimant's title has been extinguished, relying either on his sole possession after his father's death or on joint possession with his father from 1999, when they treated the property as their own.
- [32]** In cross-examination, the defendant said he was a businessman who rented the Franklin Town property. He confirmed that his brother Martin, who was named on the title, died in 2004, but denied that Martin was a joint tenant or operated a business there independently. He said Martin worked on vehicles by the roadside rather than occupying a shop, and worked at the property for their father, selling products owned by their father's business. He admitted that Martin worked there from 1999 until his death.
- [33]** The defendant said he and his father exclusively possessed and treated the property as their own from 1999. He said Martin neither possessed, managed, nor maintained it.

- [34] The defendant said the claimant never demanded rent or an accounting; he first learned of the rent issue when he was sued.
- [35] The defendant did not agree that, upon his father's death, his father's interest automatically passed to the surviving joint tenants. When shown his affidavit dated 2 June 2022, filed in Claim No SU2021ES02083 concerning the estate of Adolphus Simms, he admitted that he had sworn that, upon his father's death, his father's interest automatically transferred to the survivors. He accepted that the statement was made but maintained that, to his mind, the property belonged to him.
- [36] The defendant said that Kezian Simms transferred her interest to him and the other joint tenants in 2018. He accepted that he had seen the transfer bearing the joint tenants' signatures. He maintained, however, that by signing the transfer, he did not acknowledge that Kezian or the other joint tenants had an interest in the property.
- [37] The defendant denied receiving US\$1,000.00 from the claimant for work on the stairs. He accepted that the claimant had secured work for him on a cruise ship and expressed appreciation for that. He said he worked on a cruise ship for approximately 26 years and returned home every six weeks to two months.
- [38] The defendant admitted he had no documentary evidence, apart from his own testimony, that he improved the property after his father died. He said the building showed the work and that he paid property taxes, attaching receipts to his affidavit. It was put to him that all three receipts were copies of the same document.
- [39] The defendant admitted that he never informed the claimant that the property was his alone. He also admitted that he never informed the claimant that he was not permitted to visit the property, speak to tenants, or inspect the shops.
- [40] He said that six of the fifteen shops are currently rented. He could not provide the total monthly rent collected from those six shops or the monthly maintenance cost,

but he is the only one entitled to the rental income, and he intends to continue collecting it for himself.

Issues

[41] The issues for determination are:

- i. whether the claimant can show a good root of title to the Franklin Town property;
- ii. whether the claimant's registered title has been extinguished by the operation of sections 3, 14 and 30 of the Limitation of Actions Act.
- ii. whether the claimant may rely on the defendant's alleged acknowledgement of title where acknowledgement was not pleaded as part of his case;
- iii. whether, if the acknowledgement may be considered, it is fatal to the adverse possession claim;
- iv. whether the defendant should account for rents and outgoings in respect of the property; and
- v. whether the joint tenancy should be severed and the property sold pursuant to the Partition Act.

Submissions on behalf of the claimant

[42] Counsel for the claimant submitted that the defendant failed to establish that adverse possession extinguished the claimant's registered interest in the Franklin Town property. Relying on sections 3, 14 and 30 of the Limitation of Actions Act, counsel argued that although one co-owner may dispossess another, the evidence did not prove the factual possession and intention required to defeat the claimant's registered title.

- [43] Relying on **Powell v McFarlane**,¹ it was submitted that adverse possession requires physical custody and control, plus an intention to possess the land. The defendant's evidence fell short, for although he claimed exclusive possession from 1999, he testified that for many years he worked at sea and returned to Jamaica only every six weeks to two months. In **Robinson v Miller**,² it was held that the court must carefully assess whether the acts alleged establish possession sufficient to extinguish the registered owner's title.
- [44] Time could not properly begin to run in 1999 because Adolphus Simms, the parties' father, was then alive and in possession as a registered joint tenant. On the claimant's case, time could begin to run, if at all, only after Adolphus Simms died on 11 December 2007. The defendant could not prove that Adolphus Simms intended to dispossess the claimant and the other joint owners.
- [45] Further, evidence about Martin Simms weakened the defendant's claim of exclusive possession before 2007. Martin was named on the title, and the claimant said he operated from the property until his death in 2004. Counsel argued that Martin's presence and use undermined the defendant's assertion that he and his father possessed the property exclusively, excluding all other registered proprietors.
- [46] The defendant's acts of renting shops, collecting rent, and managing the property did not, by themselves, prove dispossession. The defendant produced no proper documentary evidence of improvements he made after his father's death and gave no reliable account of rental income, expenses or property tax payments. Counsel also emphasised that the defendant admitted that he never told the claimant that the property was his alone, never barred him from entering, and never prevented him from inspecting the property or speaking to tenants.

¹ [1977] 38 P & CR 452

² [2025] JMCA Civ 23

- [47] Citing **Arthur McCoy and Marcia McCoy v Fitzroy Glispie**,³ counsel argued that time may be stopped by an action to recover the property, physical re-entry, or acknowledgement of the paper owner's title. Counsel submitted that the claimant's visits constituted re-entry and that, in any event, the defendant acknowledged the joint tenants' continuing interests. The alleged acknowledgements went directly to the defendant's state of mind, not merely technical matters, as recognising the other joint tenants' continuing interests was incompatible with a settled intention to possess the property exclusively.
- [48] **Miller Weston v Paul Miller and Leithia Miller**,⁴ and **Traute Rafone v Alaric Astor Pottinger**,⁵ stand for the proposition that acknowledging the paper owner's title interrupts time. The defendant acknowledged the joint tenants' continuing interests by participating in the 2018 transfer of Kezian Simms's interest to the defendant and the other joint tenants.
- [49] The defendant's affidavit sworn in 2022 in the estate proceedings stated that Adolphus Simms' interest passed automatically to the surviving joint tenants. This sworn affidavit was inconsistent with the defendant's assertion that the claimant and the other joint tenants had already been dispossessed.
- [50] **Milton Hugh Taylor v Winston Thompson**⁶ was cited for the proposition that conduct acknowledging a co-owner's continuing interest may contradict a claim that the co-owner has been dispossessed. Counsel argued that, as in **Taylor**, the defendant's conduct contradicted his claim that he possessed the property solely for himself, excluding the other registered proprietors.

³ [2012] JMSC Civ 80

⁴ Claim No CL 2002 M094, delivered 22 June 2007

⁵ SCCA No 53 of 2002, delivered 11 March 2005

⁶ [2024] JMCA Civ 7

[51] Sections 3, 4 and 5 of the Partition Act and **Cynthia Delores Stephens v Clemenston George Stephens**⁷ support ordering sale when a co-owner seeks it and no sufficient reason justifies refusal. The Franklin Town property is commercial, jointly owned, difficult to divide, and controlled by the defendant to the exclusion of the other co-owners.

[52] The claimant is also entitled to an account of rents and outgoings from December 2018. The defendant admitted renting the shops, selecting tenants, setting rents, collecting the income, and keeping it. If the claimant's title remains valid, then the defendant must account for the income and expenses from the property.

Submissions on behalf of the defendant

[53] Counsel for the defendant submitted that sections 3, 14 and 30 of the Limitation of Actions Act extinguished the claimant's title. In **Winnifred Fullwood v Paulette Curchar**,⁸ it was established that a registered co-owner may lose the right to recover possession if another co-owner has exclusive possession for the statutory period.

[54] Further, **Lois Hawkins v Linette Hawkins McInnis**⁹ and **Timoll et al. v Watts**¹⁰ establish that section 14 treats co-tenants' possession separately, allowing one co-owner to dispossess another. Co-owner registration does not prevent title **from** being extinguished when statutory requirements are met. **Myra Wills v Elma Roselina Wills**¹¹ confirms that co-ownership does not bar the Limitation of Actions Act; courts must determine whether the alleged acts constitute possession adverse to the other co-owner.

⁷ [2012] JMSC Civ 134

⁸ [2015] JMCA Civ 37

⁹ [2016] JMSC Civ 14

¹⁰ [2021] JMCA Civ 1

¹¹ [2003] UKPC 84

- [55] The defendant established factual possession and intent to possess. He and his father bought the property in 1996 using their funds and a Bank of Nova Scotia mortgage. The claimant did not contribute to the price or mortgage, pay taxes or improvement costs, manage the property, or receive rent. Counsel argued these facts show the claimant had no practical possession, control, or benefit.
- [56] The claimant was added to the title by gift in 1999 but did not contribute to the property as expected. The defendant and his father continued treating it as their own, improving it, renting the shops, and collecting income without consulting the claimant or other registered proprietors.
- [57] In **Ewers v Thelwell**,¹² the Court of Appeal held that periods of possession may be tacked on where the evidence permits it. Counsel submitted that the defendant was entitled to tack the period from 1999 to 2007, when he and his father were in possession, to the period after 2007, when the defendant alone remained in possession. On that basis, counsel submitted that the defendant had established possession for approximately 24 years.
- [58] Alternatively, even if time began running only after Adolphus Simms died in December 2007, the defendant possessed the property alone for over 12 years before the claim was filed in 2023. Counsel said the defendant rented the shops, collected income, paid expenses, maintained the property, and exercised sole dominion throughout.
- [59] The claimant's occasional visits, mainly for viewing and inspection, did not amount to possession or physical re-entry sufficient to stop time running or disturb the defendant's open, continuous and exclusive possession.
- [60] Counsel objected to the claimant's reliance on the submission that there was an acknowledgement by the defendant, citing **Grace Kennedy Remittance Services**

¹² [2017] JMCA Civ 26

Ltd v Paymaster (Jamaica) Limited and Paul Lowe,¹³ and **Rasheed Wilks v Donovan Williams**¹⁴ and **Ricco Gartmann v Peter Hargitay**,¹⁵ arguing **that** the claimant pleaded fraud and deceit regarding the 2018 transfer, not acknowledgement of title. To rely on acknowledgement, he had to plead it or seek an amendment.

- [61] Counsel distinguished **Milton Hugh Taylor v Winston Thompson**¹⁶ arguing that inadequate pleadings were not at issue. **Taylor** also involved the other co-owner as a vendor whereas in this case, the defendant signed the 2018 transfer as transferee, not transferor, and the claimant did not sign as transferor. This claim is between Franklyn Simms and Calvin Simms alone, the court should limit its decision to their rights, not those of Kezian, Princess, or Leeworth Simms. Counsel argued that if the counterclaim succeeds, the claimant's claims for severance, sale and accounting must fail. If his title is extinguished, he has no interest to sever, right to sale under the Partition Act, or entitlement to rents.

Discussion

- [62] The claimant has pleaded his case under sections 3, 4, 5, 6 and 8 of the Partition Act and defended the counterclaim on the basis of an existing joint tenancy and fraud in relation to the 2018 transfer of Kezian Simms's interest. The pleadings presuppose the existence of his indefeasible fee simple interest as a registered proprietor under the Registration of Titles Act ("RTA").
- [63] The counterclaim is based on the defendant's position that he has dispossessed the claimant. The counterclaim alleges that as a consequence, the claimant's title has been extinguished.

¹³ Supreme Court Civil Appeal No. 5 of 2009

¹⁴ [2023] JMCA Civ 15

¹⁵ SCCA No 116 of 2005

¹⁶ [2024] JMCA Civ 7

- [64] It seems logical that determining these issues begins with accepting that the parties were both registered co-owners of the Franklin Town property. They hold the legal interest as joint tenants, entitling them to an undivided share and the benefit of survivorship.
- [65] The next factor to consider is the statutory defence under the LAA relied on by the defendant. He argues that he and his father jointly purchased and owned the Franklin Town property and as a consequence he has dispossessed the claimant who has no valid title, it having been extinguished. In addition, the defendant claims through his father, and in doing so he has acquired a possessory title by tacking on his period of possession since his father's death to his own.

The Limitation of Actions Act and Adverse Possession

- [66] The law relating to adverse possession in Jamaica is set out in both statute and the common law. The Limitation of Actions Act ("the statute of limitations") sets out the operation of the law relating to the extinction of the title of a registered proprietor to land. Section 3 operates to prevent a registered proprietor, who has not been in possession of land for the limitation period, from entering onto the land or bringing an action for recovery of possession of the same.
- [67] Section 14 provides that any one of several persons entitled to possession of land who is in physical and exclusive possession of that land is deemed to be in possession of the land for their own benefit. Essentially, one person entitled to possession of land may extinguish the title of another person who is similarly entitled to possession, by virtue of the latter's own physical possession. Section 30 of the Act extinguishes the title and accompanying rights of a person to whom Section 3 applies. The combined effect of Sections 3, 14 and 30 is that a registered proprietor of land may be dispossessed and lose their title and accompanying right to recover possession of the same, by virtue of the operation of the statute of limitations acting against them.

Issue 1

- [68] The claimant must show a good root of title, and he does so by relying on the certificate of title, which is conclusive evidence that he is registered joint tenant of the Franklin Town property and prima facie evidence of the estate or interest appearing in it. However, this registration is conclusive only subject to the operation of the LAA. The defendant having raised the extinction of the claimant's title under the Act, it is then for the claimant to show by evidence that his title has not been extinguished. The evidence he relied on was firstly, the nature of the interest itself, as the property was registered in the names of all the siblings and their father as joint tenants by way of gift from their father.
- [69] Secondly, the defendant's evidence that both he and his father wanted the other family members to benefit from the property. Once the claimant was added to the title, he acquired a legal interest capable of supporting a claim for partition and sale of the property and the accounting sought unless that interest was shown to have been extinguished by the operation of sections 3, 14 and 30 of the LAA. This gives him standing to bring the claim.

Issue 2

- [70] The next issue is whether the defendant has dispossessed the other paper owner by being in possession of the land for the requisite period without the other paper owner's consent. To determine whether he had, the court must look at the evidence to see whether there are acts sufficient to dispossess the claimant. The circumstances and purposes for which the property was being used or might have been used are all relevant to this issue.
- [71] The defendant has to prove the elements of factual possession with the requisite intention to possess. He must therefore show the acts of possession, the receipt of rents and profits relied on, and the period over which they occurred. The defendant must adduce sufficient evidence for the court to conclude that his

possession was sole, continuous, undisturbed, and for his own benefit, to the exclusion of the claimant over the statutory period.

- [72]** The property is not a private dwelling; it is commercial property consisting of shops. Possession may be demonstrated by control over the units, tenancies, fixing of rents, collection of rental income, payment of outgoings and retention of profits. Section 14 expressly refers to the receipt of profits from the land.
- [73]** The time periods relied on by the defendant are from 1999 to 11 December 2007, while Adolphus Simms was alive, and the period after his father's death, when the defendant asserts that he alone controlled the property and received the rents for himself. The first period was not proved to the court's satisfaction to meet the criteria for possession. Adolphus Simms was alive during that period and was also a joint tenant. His purchase, improvements, and asserted control do not prove that he possessed the property adversely to the claimant. There is no evidence that Adolphus Simms executed any document or took any clear action showing an intention to possess the property to the exclusion of the claimant or the other registered joint tenants. The defendant cannot give reliable evidence of his father's intentions after his death, and accordingly, that evidence is insufficient to support the counterclaim.
- [74]** Further, Martin Simms, who was a joint tenant, also occupied the property between 1999 and 2004. His connection with the property weakens the assertion that the property was possessed solely by the defendant and their father. Even if the court accepted that Martin Simms was not on the property in his own right as owner (which it does not), the defendant's evidence was that he was there with their father's permission. That defeats the contention as to sole possession as Martin, as a joint tenant, occupied the property in his own right.
- [75]** Then came the lengthy period during which the defendant worked aboard a vessel at sea. There was no reliable evidence about how he possessed the property, on

whose behalf he did so, or how he exercised possession with his father as against the claimant, all matters necessary to establish his claim.

[76] I therefore find that the defendant has not proven adverse possession against the claimant for the period 1999 to 11 December 2007, and that period cannot be tacked onto the later period.

[77] After Adolphus Simms's death on 11 December 2007, the position changed. Both parties accept that the defendant participated in the renovation works carried out on the subject property over the years and that he was in occupation of it. Regarding physical possession, the essential test is whether the possessor has *"been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else had done so."*¹⁷ The intention is merely an intention to possess the land not an intention to own or even acquire the land. It is *"not necessary to show that there was deliberate intention to exclude the paper owner or the registered proprietor."*¹⁸ All that has to be shown is the intention to occupy and use the land as one's own.

[78] The defendant's evidence and admissions establish that he alone controlled the property, selected tenants, collected and retained the rental income, paid expenses, and maintained the property, although he gave no precise evidence of the amounts paid. He paid one year of property taxes based on the exhibits.

[79] The claimant exercised no control and lived overseas, visiting occasionally. He collected no rent, had nothing to do with tenants; he only knew three of their names; he did not manage the shops or property; paid none of its outgoings or taxes; and exercised no acts of possession.

¹⁷ [2003] 1 AC 419 para 41

¹⁸ Supra Para 71

- [80] I do not accept that the defendant managed the family-owned property. He clearly treated it as his own and did not recognise the other joint tenants' entitlement to any profits. In relation to the commercial property, the defendant has demonstrated sufficient acts of factual possession, coupled with an intention to possess it for his own benefit, within the meaning of section 14 of the LAA. His absence at sea was accommodated through tenancies and commercial arrangements, as a formal ouster of the claimant is unnecessary, all of which evidence remains uncontradicted.
- [81] Section 14 therefore operated from the point at which the defendants' conduct after 2007 was exclusive in both form and substance. From that time, his possession of the property and receipt of the profits were not deemed to be on behalf of the claimant. That is when the limitation period under section 3 began to run against the claimant.
- [82] There was no agreement that the claimant was providing money for maintenance, repairs, upkeep, and renovations. The claimant spoke of wanting to help and sending money but provided no documentary evidence to support the assertion that he gave cash to his brother for this purpose. The claimant also said he came to Jamaica and he spoke to tenants. The conversations are unknown to the court and he conducted inspections, the why and wherefore is also unknown to the court. In short, the claimant did not give evidence as to whether maintenance was in fact done, on what part of the property, how much money was spent or how much he sent for that purpose, or how this was carried on during the period he lived outside of Jamaica. There is no documentary evidence of any cash payments for maintenance or renovations of the property. The claimant is not able to dispute that the defendant had renovated the property and he could give no evidence of how much was spent in that endeavour.
- [83] To the extent that either party seeks to rely on a single lump sum payment of outstanding property taxes as an act of ownership of the land, the law is set out in the cases of **Manfas Hay v Maisene Myrie-Hay And Clover Thompson And**

Jonathan Prendergast¹⁹ and **JISCO Alpart Jamaica V Monica White (By Executor And Representative Horace Gayle)**,²⁰ in which it was established that the payment of property taxes is not necessarily evidence of the ownership of land as anyone who desires to pay the taxes on the land may do so. The Courts noted that while the payment of taxes may be important it is not decisive of title and must be viewed in conjunction with some other evidence of possession.²¹

- [84] Once the defendant's exclusive possession and receipt of profits began, the claimant had twelve years to bring an action to recover possession or otherwise stop the clock, he did not do so. The twelve-year period began on 11 December 2007, and this claim was filed in 2023.
- [85] The claimant's occasional visits did not constitute physical re-entry, nor did he take possession of a shop, collect rent, serve notice on the defendant, select or direct tenants, hire a property manager, or otherwise take steps to regain control or demonstrate possession. An inspection, without asserting possession or doing anything to re-take the profits or recover possession for his own benefit, did not interrupt the defendant's period of possession for the purposes of section 3.
- [86] The acknowledgement relied on was not pleaded, and it does not outweigh the evidence of continuous, exclusive possession and receipt of profits for the defendant's benefit. It cannot independently stop the limitation period. The acknowledgement and the affidavit are treated as part of the narrative and are useful in the assessment of credibility as they showed that he was not consistent in his positions. However, the affidavit in 2022 came after the title had already been extinguished and could not revive it.

¹⁹ [2022] JMSC CIV 159

²⁰ [2022] JMSC CIV. 118

²¹ Para 84; para 89

[87] The effect of the conclusion of the court is confined to the claimant's interest and the parties before the court. It does not determine the interests of the other joint tenants.

[88] The court finds that the claimant's title has been extinguished by operation of the Limitations of Actions Act. The claimant therefore has no surviving proprietary interest on which to order severance, sale or upon which an accounting may be founded. The claimant's claim fails.

Counterclaim

[89] The defendant is entitled to a declaration that, by operation of law, the claimant's title to the Franklin Town property has been extinguished. Further, as between the claimant and defendant in this trial, the defendant has dispossessed the claimant of his interest in the property. Costs will follow the event.

Orders

[90] The court makes the following orders:

1. Judgment is entered for the Defendant.
2. It is declared that, as between the claimant, Franklynn Simms, and the defendant, Calvin Simms, the claimant's title and interest in Lot 27, Albert Street, Franklyn Town, in the parish of Kingston, registered at Volume 1209, Folio 88, of the Register Book of Titles, have been extinguished by operation of the Limitation of Actions Act.
3. The Registrar of Titles is directed pursuant to section 158 of the Registration of Titles Act to take such steps as are necessary to reflect on the Register Book of Titles, the extinguishment of the claimant's interest in the said property, without any alteration, extinguishing or determination of the interest of any other registered proprietor or estate not expressly adjudicated upon in this judgment.

4. For the avoidance of doubt, these orders do not determine or extinguish the interest of Princess Simms, Leeworth Simms, or the estate of Martin Simms, or any other registered proprietor or estate whose independent interest was not the subject of adjudication at trial.
5. Costs are awarded to the Defendant on the claim and counterclaim, to be taxed if not agreed.
6. Liberty to apply.
7. The Defendant's attorneys-at-law shall prepare, file and serve a copy of these orders on the Registrar of Titles.