[2026] JMCA Civ 18

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MISS JUSTICE SIMMONS JA
THE HON MRS JUSTICE G FRASER JA (AG)

PARISH COURT CIVIL APPEAL NO COA2020PCCV00020

BETWEEN	**THEOPHILUS COLEMAN**	**APPELLANT**
AND	**IVANHOE PUSEY**	**RESPONDENT**

George Clue for the appellant

Mrs Jeromha Crossbourne-Onfroy instructed by Scott Bhoorasingh & Bonnick for the respondent

15 February 2024 and 3 July 2026

Land law – Recovery of possession – Dispute as to title – Proof of title – Possessory title – Surveyor's report – Conclusiveness of surveyor's report – Valuation roll and payment of property tax – Whether proof of ownership – Statute of Frauds not satisfied – Procedural irregularity – Erroneous characterisation of dispute – Erroneous admission of evidence – No substantial miscarriage of justice – Judicature (Parish Court) Act, sections 97, 101 and the proviso to section 251

MCDONALD-BISHOP JA

[1] This appeal challenges the decision and orders of His Honour Mr Dale Staple, Judge of the Parish Court for the parish of Clarendon, as he then was ('the learned Parish Judge'), expressed by way of a written judgment delivered on 4 November 2019.

[2] The appellant, Mr Theophilus Coleman, alleged that the respondent, Mr Ivanhoe Pusey, is trespassing on ¾ acres of land belonging to him at Oliver Square, New Longville, in the parish of Clarendon ('the disputed land'). Consequently, by plaint and particulars of claim filed on 1 November 1999, the appellant initiated legal proceedings against the respondent in the Parish Court for the parish of Clarendon at May Pen for recovery of

possession, mesne profits amounting to $180,000.00 for unlawful use of the disputed land from 1993 to 1999, and an injunction restraining the respondent, his servants, and/or agents from entering or remaining on the said land.

[3] In his defence to the action, the respondent denied the appellant's claim to ownership of the disputed land and that he is a trespasser. He averred that he is the lawful owner of the property, having purchased it from his father in or around 1980. He had built his house on the land in which he has been residing since the 1980s. Therefore, the appellant is not entitled to the remedies he sought.

[4] Following a trial before the learned Parish Judge, judgment was entered in the following terms:

> "(i) Judgment for [the respondent] on the Plaint.
>
> (ii) [The appellant's] boundaries are set as those outlined in magenta and brown on the report and attached diagram of Mr Karem Dyer, Commissioned Land Surveyor, dated January 29, 2018.
>
> (iii) Costs to [the respondent] to be taxed if not agreed."

[5] Aggrieved by this decision, the appellant filed this appeal alleging error on the part of the learned Parish Judge on several grounds. The main issue arising from those grounds is whether the learned Parish Judge erred in concluding that the appellant was not the lawful owner of the disputed land and, as a result, was not entitled to recover possession or to obtain the associated remedies he sought.

[6] Given the issues raised by the grounds of appeal, it is convenient to set out a brief background to the case, including the material aspects of its pretrial procedural history.

Background

Relevant pre-trial procedural history

[7] For convenience, the following undisputed account of the progress of the case in the Parish Court is drawn from the learned Parish Judge's judgment.

[8] After the plaint was filed in November 1999, default judgment was entered against the respondent, but that judgment was later set aside. In 2001, the court referred the matter to a Commissioned Land Surveyor, Mr Noel Irvine, for survey. When the survey was completed and the report filed in 2002, the respondent's then counsel, Mr Barry Johnson (who had died by the time of the trial), filed a notice of special defence relying on section 3 of the Limitation of Actions Act.

[9] A trial commenced before Her Honour Miss Deneve Barnett but had to be aborted in 2007, after which the matter was ordered to proceed *de novo*. There were at least two further references to different surveyors between the aborted trial and the hearing before the learned Parish Judge. The final reference was made on 30 May 2017 by Her Honour Ms Dahlia Findley to Mr Karem Dyer, Commissioned Land Surveyor. After numerous adjournments for various reasons, the trial commenced before the learned Parish Judge in or about October 2018.

The case at trial

The appellant's case

[10] The appellant was his only historian. He testified that he purchased the disputed land from Mr John Spencer in 1993. By that time, he was the owner of other parcels of land, including one that he had purchased from Mr Spencer in 1992 and another from Mr Percival Pusey, the respondent's father, in 1993. He is paying taxes for all the parcels of land he owns, as evidenced by three receipts from the tax department (exhibits 3, 4 and 5).

[11] The appellant asserted that when he purchased the disputed land from Mr Spencer, Mr Spencer pointed out the boundaries to him. The respondent had built a house on it, and Mr Spencer spoke to him about the land in the presence of Mr Percival Pusey, telling him that the house was not on the land he, Mr Spencer, had sold to Mr Percival Pusey. Mr Spencer showed the appellant the land that his house should have been on, which was ¼ acre. Mr Percival Pusey agreed with Mr Spencer that the respondent should come off the land.

[12] The appellant tendered into evidence two receipts (exhibits 6 and 7) that he said he had received from Mr Spencer for the parcels of land he had purchased from him.

[13] The respondent later transferred to the appellant the ½ acre of land the appellant bought from Percival Pusey on which the respondent was trespassing.

[14] According to the appellant, Mr Percival Pusey had another parcel of land (1/4 acre in the same area) that he had given to the respondent for him to leave the parcel, with the house on it, that Mr Spencer sold to the appellant. The appellant identified this parcel of land as the area outlined with a yellow boundary on the surveyor's diagram. Nothing is on that land. The appellant contended that it is not true that Mr Percival Pusey sold the respondent the disputed land.

The respondent's case

[15] The respondent was also his own historian. His evidential answer to the appellant's case was based solely on his testimony given in support of the verbal statement of his defence at the commencement of the trial. His evidence was that he initially entered the disputed property in 1979 with his father's permission. He began building his house and moved onto the property in 1980 after completing one bedroom. In 1982, his father offered to sell him 1 acre for $1,000.00, but he could only afford to pay $500.00 at the time. His father provided him with a receipt, which was tendered and admitted as exhibit 10. He paid the remaining purchase price in 1993. The land he bought from his father had been acquired by his father from Mr Spencer, as evidenced by the receipt admitted as exhibit 9. In 1993, he approached a surveyor, "Mr Kenny", to have the land surveyed because he did not know the boundaries.

[16] He had been paying taxes for the disputed land from 1993 up to 1999, when the appellant commenced court proceedings against him.

Evidence of the Commissioned Land Surveyor

[17] As already indicated, prior to the commencement of the trial before the learned Parish Judge, on 30 May 2017, a reference was made by order of the court, through another Parish Judge, for Mr Karem Dyer to conduct a survey and produce his report. That report, dated 29 January 2018 ('the Dyer report'), was produced and admitted into evidence at the trial by consent as exhibit 2.

[18] The Dyer report identified the disputed land as covering 3,885 m², which was shaded in red on the diagram prepared by the surveyor for the benefit of the court ('the survey diagram'). The surveyor observed the respondent's house on the land, and the respondent presented to him a pre-checked diagram bearing the Survey Department number 236528.

[19] An area shaded with green crosses on the surveyor's diagram was claimed by the appellant, part of which fell in the disputed land. The appellant produced pre-checked plans for an area of 8,792 m² (shaded in magenta) and 1,296 m² (shaded in brown), bearing Survey Department numbers 236529 and 236527, respectively. The appellant argued that the area of 1,325 m² (shaded in yellow on the diagram) is all that the respondent owns.

[20] The surveyor presented the documents provided by the parties, including four receipts dated 1 June 1992, 1 June 1994, 6 November 1993, and 1 July 1991. He also attached to his report the survey diagram "outlining the position" of parcels of land identified by valuation numbers.

The learned Parish Judge's findings and conclusions

[21] The learned Parish Judge treated the matter as involving a boundary dispute with an issue as to title, rather than a simple recovery of possession claim. He noted that the respondent had asserted ownership of the disputed land and, on that basis, considered that there was a *bona fide* dispute concerning title.

[22] To address what he regarded as the real nature of the dispute, the learned Parish Judge amended the pleadings under section 190 of the Judicature (Parish Court) Act ('the JPCA') so as to include a claim under section 97. This, he said, allowed him to consider the surveyor's reports as part of the general body of evidence in resolving the boundary issue, though not as conclusive proof.

[23] The learned Parish Judge identified the central question as whether the appellant had proved title to the portion of land occupied by the respondent, thereby entitling the appellant to recovery of possession. He emphasised that, in a claim for recovery of possession, the claimant must first establish title to the land in dispute.

[24] Although the respondent's defence was also amended by the learned judge to include a limitation defence (on his own initiative based on the special defence on file), the learned Parish Judge dismissed that defence as inconsistent with the respondent's case at trial that he derived title through purchase from his father.

[25] In assessing the evidence, the learned Parish Judge found that the appellant had failed to prove that the disputed parcel formed part of the land he had purchased. He concluded that the receipts relied on by the appellant did not correspond with the disputed area as shown on the surveyor's diagram. He also found that the appellant's oral evidence was inconsistent with the documentary and survey evidence.

[26] The learned Parish Judge accepted that the respondent had been in long and undisturbed occupation of the land and found the appellant's account of the relevant conversations and transactions he relied on in proof of the ownership of the land to be unreliable. He rejected the suggestion that the disputed parcel had been mistakenly included in the appellant's purchases and found no credible written evidence of any sale or transfer of the disputed land to the appellant in satisfaction of the Statute of Frauds.

[27] Ultimately, the learned Parish Judge held that the appellant had not established, on a balance of probabilities, that he had title to the land occupied by the respondent. As a result, the claim for recovery of possession failed.

[28] The learned Parish Judge, therefore, entered judgment for the respondent, fixed the appellant's boundaries by reference to the Dyer report, and awarded costs to the respondent.

The grounds of appeal

[29] By his notice of appeal filed on 15 November 2019, the appellant advanced four grounds. They are, in substance, as follows:

a) that the learned Parish Judge erred in law in finding that the appellant was not the owner of the subject property, of which he sought to recover possession;

b) that the learned Parish Judge substituted his own view for the expert evidence of the surveyor, notwithstanding that the valuation number for the disputed area corresponds with the lands owned by the appellant;

c) that the learned Parish Judge erred in accepting the respondent's evidence that he had purchased the property in 1982, there being no evidence of the same, and that, in so doing, he wrongly treated the matter as a boundary dispute; and

d) that the judgment is inconsistent with the evidence at the trial.

[30] For convenience, ground b) will be addressed first, as it raises the discrete and logically anterior question relating to the status of the Dyer report, namely, whether the learned Parish Judge was bound to give effect to the report and whether he fell into error in his treatment of it when he rejected the valuation numbers stated by the surveyor. The resolution of that question will then clear the ground for consideration of the remaining grounds, which I shall examine together, since each is, in substance, an attack upon the central finding that the appellant failed to prove title to the disputed land.

The applicable standard of review and principles of law

[31] Before conducting an analysis of the issues arising, it is necessary to first have regard to some governing principles that guided my deliberations, starting with the applicable standard of review.

(a) The approach of this court to findings of fact

[32] The appellant's challenge is directed primarily to the learned Parish Judge's treatment of the evidence and to the findings of fact to which that treatment led. It is well established that an appellate court will not lightly disturb the findings of fact of the tribunal that saw and heard the witnesses. The learned Parish Judge would have enjoyed the singular advantage, denied to this court, of seeing and hearing the witnesses and observing their demeanour. This court will accordingly defer to those findings unless it is shown that they are plainly wrong, in the sense that no reasonable tribunal, properly directing itself, could have arrived at them on the evidence, or that the judge plainly failed to take proper advantage of having seen and heard the witnesses, or has otherwise gone demonstrably wrong (see **Industrial Chemical Co (Jamaica) Ltd v Ellis** (1986) 35 WIR 303; and, to like effect, **Watt (or Thomas) v Thomas** [1947] AC 484 and **Beacon Insurance Company Limited v Maharaj Bookstore Limited** [2014] UKPC 21 ('**Beacon Insurance**')).

[33] The cautionary guidance of Lord Neuberger in **Re B (A Child) (Care Proceedings: Threshold Criteria)** [2013] 1 WLR 1911, which was reinforced by the Privy Council in **Beacon Insurance**, regarding the applicable standard of review of findings of fact, deserves highlighting. Lord Neuberger stated:

> "52 ...The Court of Appeal, as a first appeal tribunal, will only rarely even contemplate reversing a trial judge's findings of primary fact.
>
> 53 ... this is traditionally and rightly explained by reference to good sense, namely that the trial judge has the benefit of assessing the witnesses and actually hearing and considering their evidence as it emerges. Consequently, where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that

> conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it. This can also be justified on grounds of policy (parties should put forward their best case on the facts at trial and not regard the potential to appeal as a second chance), cost (appeals on fact can be expensive), delay (appeals on fact often take a long time to get on), and practicality (in many cases, it is very hard to ascertain the facts with confidence, so a second, different, opinion is no more likely to be right than the first)... ."

[34] Those principles have been repeatedly applied by this court and are now too well settled to require further discussion beyond what has already been stated (see, for instance, **Rayon Sinclair v Edwin Bromfield** [2016] JMCA Civ 7). It suffices to say that findings as to credibility fall pre-eminently within the province of the trial judge, and this court should be especially slow to disturb them.

(b) The burden of proof in actions for recovery of possession

[35] Another key consideration when examining the issues in this case is the burden of proof in actions for recovery of possession and trespass to land. The starting point is simple but crucial. A claimant seeking to recover land must succeed, if at all, based on the strength of the claimant's own title, not on the weakness of the title of the party in possession. The party in possession has the right to remain until the claimant proves a better right to possession. This is not just a technicality; it reflects the well-established principle that possession itself can be a valid root of title against everyone except someone with a superior right. Therefore, in this case, the burden of proof throughout rested on the appellant to show that he, not the respondent, was entitled to the disputed land.

(c) Treatment of a trial judge's error

[36] Finally, there is a third principle upon which, in my view, the success of this appeal ultimately turns, and it is deemed appropriate to state it at the outset. It is this: the powers of this court in determining a civil appeal from the Parish Court are governed by section 251 of the JPCA. That section is subject to a proviso of long-standing effect,

which, in substance, is that this court is not bound to reverse or vary a judgment, nor to order a new trial, on the ground of any misdirection, or of the improper admission or rejection of evidence, or of any irregularity in the course of the proceedings, unless it is of the opinion that some substantial wrong or miscarriage of justice has thereby been occasioned.

[37] The practical significance of the proviso is that it is not enough for an appellant to simply identify an error, even a clear one, in the reasoning or procedure of the court below. He must go further and demonstrate to this court that the error has caused a substantial injustice, meaning that but for the error, the outcome might well have been different. When, on a correct view of the evidence, the result below is the only reasonable outcome, an error in the route the judge took to reach it will not benefit the appellant. The court may, in such cases, dismiss the appeal even if one or more points raised have been decided in favour of the appellant, because no substantial miscarriage of justice has occurred. I have kept this principle in mind throughout my review of the grounds of appeal, which I will now examine.

Analysis and conclusions

The learned Parish Judge substituted the expert evidence of the surveyor with his own, notwithstanding that the valuation number for the disputed area corresponds with the lands owned by the appellant (ground b)

[38] The appellant submitted that the surveyor's report supported his case. In addition, the disputed area amounts to ¾ acre and so corresponds to his evidence in the court below that the respondent transferred this section to him. Further, the learned Parish Judge fell into error when he neglected to give effect to the Dyer report regarding the valuation number for the disputed land. The appellant also complained that the learned Parish Judge went on to consider Mr Irvine's report that was never entered into evidence.

[39] The respondent's response to ground of appeal b) is that the two survey reports were properly considered by the trial court and do not establish the appellant's

entitlement to the disputed land. The respondent argues that the reports were not decisive and that the judgment in favour of the respondent should stand.

[40] In considering the complaint of the appellant in the ground under review, it is convenient to begin with the statutory framework within which the surveyors' reports came to be prepared. The JPCA confers upon the court a specific power to refer a matter to a commissioned land surveyor. That power, and the procedure attending it, are found in the group of provisions beginning at section 97, which deals with a plaint concerning disputed boundaries of adjoining lands, and the related sections that follow, ending at section 104.

[41] In broad outline, the scheme under section 101 provides that where a question arises under sections 97, 98 and 99, or in any other suit where it may be desirable for the purpose of determining the matter in issue, the Parish Judge may, if he thinks it expedient to do so, make an order that the matter in controversy shall be referred to a commissioned land surveyor or some other fit person whom he shall nominate with the consent of both parties. The surveyor or other person appointed, after due notice to the parties and to the adjoining owners affected, shall carry out a survey upon the land, prepare a report, and, if necessary, a diagram or plan delineating the true boundaries, easement, right of way or matter in issue. He shall return the report and diagram or plan to the court. The court shall, on a day to be appointed for that purpose, take the report into consideration, and the parties may take exception to the report. The court shall hear arguments about such exceptions and shall allow or disallow them or confirm the report, as the justice of the case may appear to require. If not satisfied, the court may refer the matter back to the surveyor or other appointed person for further enquiries.

[42] It is well established (and the point was, in substance, accepted by the learned Parish Judge himself) that where the statutory procedure is duly followed, and the report is regularly obtained and affirmed by the court, the report and the boundaries which it establishes are binding and conclusive upon the parties. In such a case, the court thereafter is not at liberty to receive other evidence to contradict the boundaries so

determined.The court gives judgment in accordance with the report. The conclusiveness of the report is the very object of the procedure: it exists to bring a boundary dispute, or any other issue in dispute forming the subject matter of the surveyor's reference, to a final and authoritative resolution by an impartial expert acting under the court's supervision. This position in law was reinforced by this court in **Lionel Golaub v Amos Walker et al** (1992) 29 JLR 238 following **Cox v Shields** (1909) S C J B Vol 9, 89 Stephens Report 354.

[43] Against this background, the learned Parish Judge recognised, at para. 11 of his reasons, that had the matter properly stood as a reference under section 97, he would have been confined to the surveyor's report and would have erred in proceeding to hear evidence beyond it. Notwithstanding that appreciation of the consequence of the procedure, he amended the plaint to include a dispute under section 97 while at the same time stating that this amendment allowed him to treat with the case outside the ambit of section 101. That approach was not only internally inconsistent but wrong in law because a dispute under section 97 would have attracted the procedure under section 101 regarding the prescribed treatment of the surveyor's report that was admitted into evidence.

[44] The position would also have been no different had the learned Parish Judge not amended the plaint because, given the nature of the dispute between the parties, the court had already considered the issue one for reference to a surveyor within the ambit of section 101, which provides for matters other than those addressed under sections 97, 98 and 99 to be referred. Accordingly, the section 101 regime would be applicable unless the parties had reserved some other issue for determination by the court, in which case evidence outside the surveyor's report would have been permissible. It is not evident on the record presented to this court if any issue was reserved for ventilation following the receipt of the surveyor's report.

[45] The decisive point, for present purposes, therefore, lies not in the binding character of the report duly obtained, which is at the heart of the appellant's contention,

but in the consequences of the correct procedure not having been followed by the learned Parish Judge. The question is whether the failure to treat with the case within the ambit of section 101 of the JPCA is fatal to the decision.

[46] The same question arises in relation to the learned Parish Judge's reliance on the Irvine report. The learned Parish Judge seemed to have regard to this report during the course of preparing his judgment, as there is nothing in the notes of proceedings to indicate any admission of the report into evidence with the knowledge of the parties. That approach cannot be accepted. The report was superseded by the reference to Mr Dyer; and the parties, by consent, had accepted Mr Dyer's report as the one to be admitted into evidence. The Dyer report was therefore the only survey report in evidence that was open to the consideration of the learned Parish Judge. He therefore erred in placing reliance on the Irvine report. It did not form part of the body of evidence before the court at the trial. There is therefore merit in the appellant's complaint on this matter.

[47] These irregularities in the conduct of the case are now considered: (a) the basis on which the reference to the surveyor was made; (b) the learned Parish Judge's after-the-event amendment to add a claim under section 97 on the basis that it was a boundary dispute; and (c) his reliance on the Irvine report not in evidence. These matters fall to be tested against the proviso to section 251 of the Act. The proviso, as previously indicated, embodies the principle that appellate intervention is warranted only where an error has occasioned a substantial miscarriage of justice. It also permits the court to grant partial relief where the injustice is confined to a separable part of the proceedings.

[48] Considering the procedural misstep against this backdrop, the governing question is not whether there were irregularities, which there were, but whether any substantial wrong or miscarriage of justice was thereby occasioned by all or any of them. The answer to that question turns on whether the decision was supported by other admissible and cogent evidence. If the learned Parish Judge's decision was supported by evidence properly before him, and the law applicable to that evidence, then, by force of the proviso to section 251, his decision cannot be disturbed, the irregularities notwithstanding.

[49] As an analysis of the issues raised in the remaining grounds of appeal will shortly reveal, the error resulting from the treatment of the surveyors' reports could not have resulted in any significant miscarriage of justice. This is so because the valuation number, which is central to the debate arising from ground b), could never, on its own, establish the appellant's right to the disputed land. An entry on the valuation roll and the payment of property taxes based on it do not constitute a transfer of ownership and, therefore, do not serve as proof or confirmation of land ownership. They merely record, for taxation purposes, the assessed person in respect of a parcel. Indeed, it is a notorious fact in this jurisdiction that a person may be entered on the roll and pay taxes for land to which they hold no valid title. Our legal system is rife with cases in which multiple individuals pay taxes for the same parcel of land. Therefore, the appellant's challenge to the learned judge's handling of the valuation number, which involved the rejection of the valuation numbers in the Dyer report and the acceptance of the numbers in the Irvine report, cannot avail him, even though the learned judge erred by placing reliance on the Irvine report.

[50] More crucially, the appellant must demonstrate that his documented root of title, including his receipts and the supporting plans he presented to the court, along with his oral evidence, proved, on a balance of probabilities, a superior right to the disputed land. The learned Parish Judge concluded that he had not done so and relied on the Dyer report in coming to that conclusion. He did not reject the report in its entirety; that was within his remit. The question of the weight and reliability of the expert evidence was still a matter for him.

[51] The ultimate question for determination is whether the learned Parish Judge erred in this critical aspect of his decision that the appellant failed to prove his title to the land. Because if he was correct that there was ample evidence, independent of the Irvine report (on which he relied for the correct valuation number), which established that the appellant had failed to prove a superior title to the land, then the decision cannot rightly be disturbed.

[52] At this juncture, it is enough to state that, based on the operability of the proviso to section 251, coupled with the reasons discussed below in respect of the other grounds of appeal, ground b) does not provide a sufficiently meritorious basis on which to disturb the decision of the learned Parish Judge. He was not obliged to give definitive weight to the relevant valuation number in the Dyer report, or to treat it as conclusive proof of the appellant's title. The irregularities in how the reports were treated resulted in no significant wrong or miscarriage of justice, as will be shown below in treating with grounds a), c) and d), which I take together.

The learned Parish Judge erred in law in finding that the appellant was not the owner of the subject property of which he sought to recover possession (ground a))

The learned Parish Judge erred in accepting the respondent's evidence that he purchased the property in question in 1982, there being no evidence of same, and in doing so wrongly treated the matter as a boundary dispute (ground c)).

The learned Parish Judge's judgment is inconsistent with the evidence at the trial (ground d)).

[53] Concerning these grounds, learned counsel for the appellant submitted, in essence, that the appellant had adduced cogent evidence of his ownership of the disputed area by way of a receipt, the surveyor's report, and his tax papers, and that the learned Parish Judge's conclusion to the contrary was against the weight of the evidence and inconsistent with it. It was further submitted that the learned Parish Judge was wrong to accept the respondent's evidence of a purchase from his father in 1982, of which, it was contended, there was no satisfactory proof. He was also wrong to treat the matter as a boundary dispute.

[54] I begin with the last contention. As already indicated, the learned Parish Judge was wrong to treat the case as a boundary dispute, as the parties were claiming ownership of the same piece of land. In any event, the procedure under section 101 would have been triggered even if it were a boundary dispute. This argument finds a

complete answer in the proviso to section 251, as the error in this regard is one not leading to any substantial miscarriage of justice.

[55] Regarding the other aspects of the appellant's submissions, I am unable to accept that he had presented cogent evidence of his ownership of the disputed land and that the learned Parish Judge's conclusion to the contrary was against the weight of the evidence. The learned Parish Judge's central finding was that the appellant's receipts and the pre-checked survey diagrams that corresponded to them placed the land he had bought from Mr Spencer in the magenta and brown areas, and not in the disputed red area. This was a finding of fact firmly grounded in the evidence. It rested upon the very documents on which the appellant himself relied as the foundation of his title: his receipts (exhibits 6 and 7), the pre-checked survey plans, the amendment to the valuation roll (exhibit 8B), and his own tax receipt (exhibit 5). Each of these, on the learned Parish Judge's analysis, pointed away from the disputed land.

[56] It is noted that in the plaint, the land being claimed is described as follows:

> "EAST: Parochial Road;
>
> WEST: Land owned by THEOPHILUS COLEMAN;
>
> NORTH: Land owned by IMOGENE SPENCER
>
> SOUTH: Land owned and/or occupied by IMOGENE SPENCER".

[57] However, none of the receipts on which the appellant relied to prove that he purchased the disputed land from Mr Spencer bears the above description. It is, therefore, not against the weight of the evidence for the learned Parish Judge to have found that none of the receipts or diagrams supported the appellant's contention that he had any title to the portion in red on Mr Dyer's diagram (the disputed land).

[58] Applying the principles of appellate restraint to which I have referred, there is no basis on which this court could properly characterise that finding against the appellant as plainly wrong.

[59] The submission that the appellant 'clearly pointed out' the disputed area on the diagram, in fact, tells against him. When invited to identify the lands he had bought from Mr Spencer, the appellant pointed out the entire area in the diagram identified by green crosses, thereby demonstrating an inconsistency between the location of the lands for which he had receipts and the boundaries described in his own receipts. A claimant cannot make good a title to a particular parcel merely by pointing to it; he must connect that parcel to a documented or otherwise proven root of title. This the appellant could not do.

[60] There is, moreover, a feature of the appellant's own evidence in cross-examination that, to my mind, places the correctness of the decision beyond serious argument. The appellant accepted that the respondent had a house at Oliver Square and that the respondent had continued to live in that house both after the appellant purchased from Mr Spencer and after the purchase from Percival Pusey. The evidence was that when he bought the disputed land from Mr Spencer, only the respondent was living in a house on the property. At the time he said he bought from Mr Percival Pusey in 1993, the respondent was already the occupier of the parcel the appellant had identified as his. Most significant of all, when it was put to the appellant that, on the survey diagram, the respondent's house is not on the appellant's land, he answered, simply, "I agree" (cross-examination question and answer no 26). That concession, coming from the appellant himself, is difficult to reconcile with the case he asked the court to accept and, therefore, provides independent support for the learned Parish Judge's conclusion that he is not entitled to recover possession of the disputed land.

[61] Regarding the appellant's claim that Mr Spencer told the respondent that his house was wrongly placed and that he must leave the disputed land, the learned Parish Judge was justified, for the reasons he provided, in dismissing this account as not credible. The credibility of the evidence fell within his remit. However, even if he had accepted it as true, it would not have benefited the appellant. A transfer of an interest in land must be in writing; and, as the learned Parish Judge rightly concluded, without any written evidence of a sale or transfer to the appellant of the parcel where the respondent's house is situated, no sale or transfer could be proved in accordance with the Statute of Frauds.

Consequently, the appellant's title to the disputed land could not be established on this basis of alleged oral assertions either.

[62] The complaint in ground c), that the learned Parish Judge wrongly accepted that the respondent had purchased land from his father, also does not assist the appellant. The burden was not on the respondent to prove title; it was on the appellant, as the party out of possession seeking to recover possession, to prove his own superior right to possession. Even if the respondent's evidence of the 1982 purchase had been rejected in its entirety, that would not have supplied the appellant with the title he needed to succeed in his claims for trespass and recovery of possession. The respondent's long, open, and undisturbed possession, which the learned Parish Judge accepted as dating from at least 1980, was sufficient to entitle him to remain in possession against a claimant who could not prove a better right. In those circumstances, the criticism of the learned Parish Judge's acceptance of the respondent's account is irrelevant and unmeritorious, and cannot advance the appellant's cause on appeal.

[63] The same conclusion applies to the complaint that the learned Parish Judge wrongly treated the matter as a boundary dispute. Any error in the characterisation of the dispute made no difference to the outcome of the claim for recovery of possession, which depended on whether the appellant had proved his title. The answer to the question of the appellant's title was unaffected by the label given to the proceedings by the learned Parish Judge.

[64] The learned Parish Judge's conclusion that the appellant had failed to prove title was not merely one that was open to him; it was, in my view, plainly correct. For these reasons, grounds a), c), and d) cannot succeed.

[65] Accordingly, any error made by the learned Parish Judge regarding the procedure to be adopted, his reliance on the Irvine report, and the characterisation of the dispute as a boundary dispute resulted in no substantial miscarriage of justice. This is a fitting case for the application of the proviso to section 251 of the JPCA, and, as a consequence,

this court is provided with no justifiable basis to interfere with the learned Parish Judge's decision. The appeal, therefore, fails.

The respondent's alternative case on limitation

[66] The respondent, by his counsel, advanced an alternative argument that, even if this court were to find that the disputed parcel fell within the lands the appellant had purchased from Mr Spencer, the appeal should still be dismissed, on the footing that the respondent's open and undisturbed possession for a period exceeding 12 years before 1993 would have extinguished Mr Spencer's title by the time he purported to sell to the appellant. He relied on section 3 of the Limitation of Actions Act, and **Iris Lungrin v Paul Monelal and another** (unreported), Court of Appeal, Jamaica, Resident Magistrate's Civil Appeal No 8/2003, judgment delivered 2 April 2004, in which this court applied the relevant law to the findings of the then Resident Magistrate where the point arose on appeal.

[67] That argument does not fall for decision as it is predicated upon a finding that the disputed land formed part of the Spencer lands purchased by the appellant, which the learned Parish Judge expressly rejected. Since the appellant has failed to prove that the disputed land was ever his, no question of the extinguishment of title by the respondent's possession arises for resolution. I, therefore, express no view on the limitation point.

[68] I would only note that the learned Parish Judge's acceptance of the respondent's long-standing and uncontested occupation from at least 1980, and his conclusion that neither Mr Spencer nor Percival Pusey did anything to disrupt it before the proceedings were brought in the Parish Court, serve only to strengthen the conclusion that the appellant's claim was rightly dismissed on the basis of the respondent's possessory title, which stood superior to any claim of ownership by the appellant.

Conclusion and disposition

[69] In conclusion, the appellant's claim was, in substance, one for recovery of possession. The burden, therefore, rested on him to prove title to the disputed parcel.

Although the Dyer report was not treated in accordance with the procedure prescribed by section 101 of the JPCA, that irregularity does not, without more, justify appellate intervention. The appellant's complaint that the learned Parish Judge failed to give binding effect to that report as it relates to the recorded valuation number for the disputed land must fail in light of the proviso to section 251 of the Act.

[70] Therefore, to the extent that there was an irregularity or error in the learned Parish Judge's treatment of the surveyor's report, his reliance on the Irvine report, or his recharacterisation of the proceedings as a boundary dispute involving title, no substantial miscarriage of justice resulted. The decision was amply supported by other admissible evidence and established principles of law, including: (i) the appellant's own receipts and plans; (ii) the valuation-roll documents; (iii) the absence of written evidence satisfying the requirements of the Statute of Frauds; (iv) the respondent's long possession, which gave him a valid possessory title as against the appellant with no better title; and (v) the appellant's concession in cross-examination that the surveyor's report did not show the respondent's house as being on the appellant's land.

[71] In the final analysis, although the learned Parish Judge erred in some respects, those errors did not affect the outcome. The proviso to section 251 of the JPCA provides a complete answer to the challenge advanced in this appeal regarding errors made by the learned Parish Judge.

[72] Accordingly, I would dismiss the appeal, affirm the judgment and order of the learned Parish Judge, and award costs of the appeal to the respondent in the sum of $100,000.00.

[73] I sincerely apologise for the delay in delivering this judgment. Nothing I say can adequately compensate for any inconvenience or anxiety that delay may have caused.

SIMMONS JA

[74] I have read, in draft, the judgment of McDonald-Bishop JA and agree with her reasoning and conclusion. There is nothing that I wish to add.

G FRASER JA (AG)

[75] I have also read the draft judgment of my sister, McDonald-Bishop JA. I agree with her analysis and the outcome, and have nothing useful to add.

MCDONALD-BISHOP JA

ORDER

1. The appeal is dismissed.

2. The judgment and order of His Honour Mr Dale Staple, made in the Parish Court for the parish of Clarendon on 4 November 2019, are affirmed.

3. Costs of the appeal to the respondent in the sum of $100,000.00.