

**A.U. VALENCIA & CO., PLAINTIFF AND APPELLANT, VS.
HERMINIA C. LAYUG AND MARCIAL LAYUG, DEFENDANTS AND
APPELLEES.***G.R. No. 11060, May 23, 1958*

Ponente: MONTEMAYOR, J.

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On January 4, 1956, plaintiff A. U. Valencia & Co., a real estate broker, filed an action in the Municipal Court of Manila against defendants Herminia C. Layug and her husband, Marcial Layug, to recover the sum of P1,510.00, as commission for the sale of the property of Herminia to one Lope Yutuc, in accordance with a brokerage or exclusive agency contract between the plaintiff and Herminia. A copy of the said agency contract was annexed to the complaint. Defendants filed an answer with a counterclaim. After hearing, judgment was rendered in favor of the plaintiff for the sum of P1,510.00 with interest, plus P100.00 as attorney's fees, and costs. The defendants appealed to the Court of First Instance of Manila, where they filed a motion to dismiss on the ground that the complaint failed to state a cause of action. "The theory behind the motion was that the property sold belonged to the conjugal partnership and only her husband Marcial Layug, as the administrator thereof, had the authority to enter into the agency contract; that Herminia had no such authority, and consequently, said agency contract was void. Acting upon the motion, the trial court, accepting the theory of the defense, and holding the agency contract to be null and void, by order of June 23, 1956, dismissed the complaint, with costs. Plaintiff is appealing said order directly to us.

Nowhere in the complaint does it appear that the property in question is conjugal property. On the contrary, the agency contract wherein defendant Herminia authorized the plaintiff to find a buyer, referred to said property as her own. Not only that, but according to the deed of absolute sale of the said property, a copy of which is attached to the Memorandum in Lieu of Oral Argument filed by plaintiff-appellant, the vendor therein is Herminia. In other words, she appears as the owner of the property, and her husband signed the deed only to show his marital consent. We therefore find no justification whatsoever for the dismissal of the complaint, which to all appearances is sufficient to constitute a cause of action or to serve as a basis for granting the relief sought by the plaintiff.

The complaint was dismissed not on the basis of any evidence adduced by the parties or as the result of a trial on the merits because there has been neither a trial nor any presentation of evidence, but only a motion to dismiss. If the property really belonged to the conjugal partnership, that would be a matter of defense for the defendants to prove in a regular trial. The test of the sufficiency of facts alleged in the complaint to constitute a cause of action is, whether or not, admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of said complaint. (*Paminsan vs. Costales*, 28 Phil., 487, 489; *Blay vs. Batangas Transportation Co.*, 80 Phil, 373; *De Jesus vs. Belarmino*, 50 Off. Gaz. No. 7, p. 3064).

In view of the foregoing, the order appealed from is set aside and this case is hereby remanded to the trial court for further proceedings. The defendants will pay the costs.

Paras, C.J., Bengzon, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia and Felix, JJ., concur.

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