

(1922) 02 MAD CK 0014
In the Madras High Court

C.D. Sarangapani Aiyangar and Another	APPELLANT
Vs	
Sadagopa Naidu and Others	RESPONDENT

Date of Decision : 01-02-1922

Acts Referred:

Citation : AIR 1922 Mad 398 : (1922) 16 LW 98 : (1922) 43 MLJ 152

Judgement

1. The appellants in this case are the plaintiffs who sought in no less than three courts to get a declaration that they are entitled to go on to their neighbour's land to gather the fruits, that fall there from such portion of a tree which belongs to the plaintiffs. It is not pretended that this right can be acquired by prescription but it is said that it arises by severance and that necessary implication is that a servitude was created ipso facto by the act of severance. In our opinion, the right claimed is not an easement within the meaning of the Act, and when it is claimed, as it is put here as an easement and not as the creation of an express agreement or contract between the parties, we are of opinion that the claim is a right which is unknown to law as pointed out in *Lemmon v. Webb* (1895) A.C. 1.
2. We, therefore, think that the appeal fails and must be dismissed with costs.